

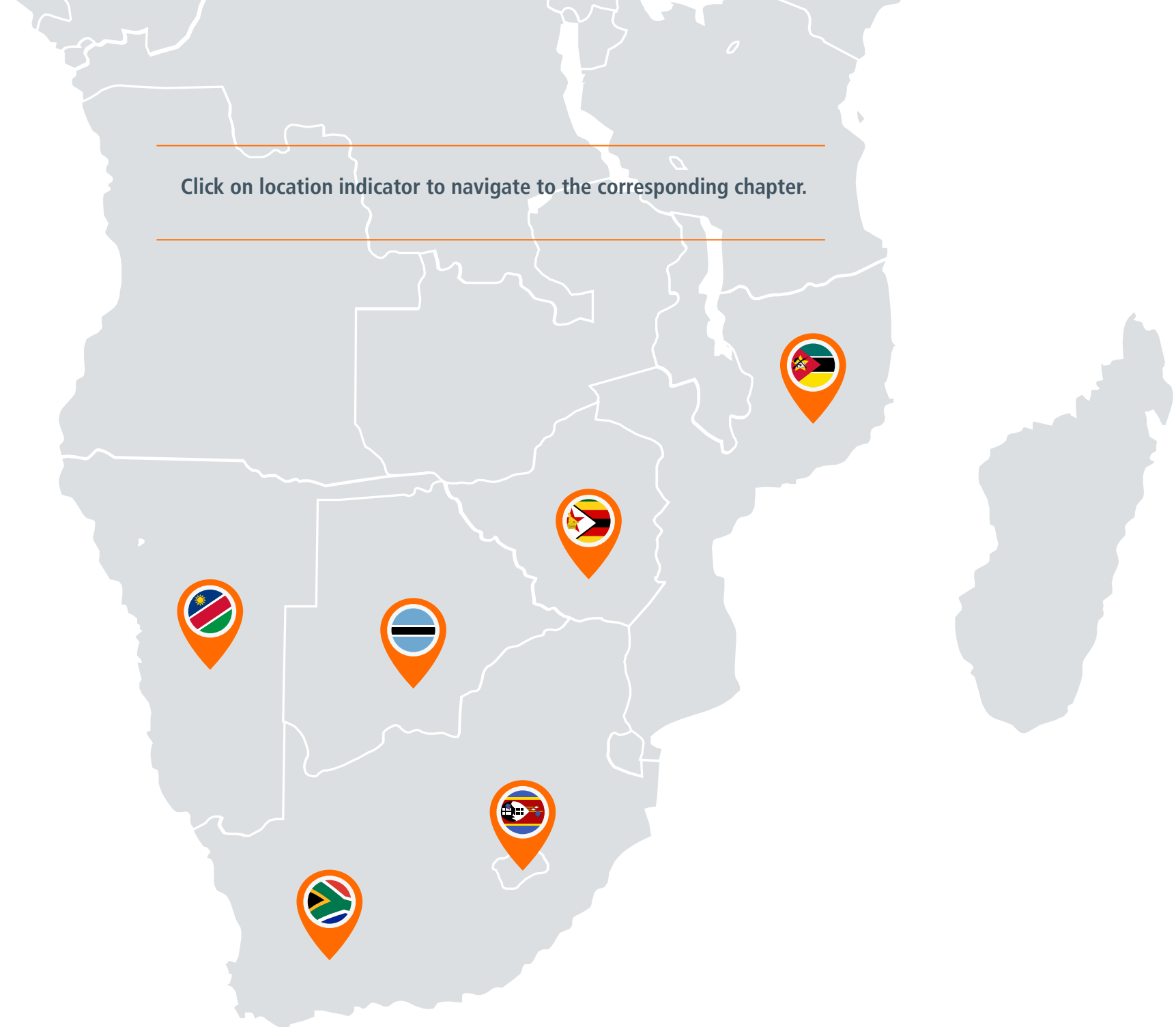
# VIRTUAL ASSETS REGULATION IN SOUTHERN AFRICA

## A REGIONAL COMPARATIVE ANALYSIS





Virtual Assets, digital assets, crypto assets all refer to the same concept, namely a digital representation of value. Virtual assets are transforming the financial sector and the way financial transactions are executed. Africa is ripe for benefiting from the advantages that fintech solutions can provide in addressing certain challenges around financial inclusion and access to services. The benefits of digital payments are identified as safety, convenience, cost-effectiveness and transparency. This guide examines the development of the regulatory regime for virtual assets across the southern region of Africa.



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## SOUTH AFRICA



### HOW IS THE TERM 'VIRTUAL ASSET' DEFINED IN THE JURISDICTION?

Virtual assets are defined as 'crypto assets'. A crypto asset is a digital representation of value; not issued by a central bank; capable of being traded, transferred, or stored electronically; used for the purpose of payment, investment and other forms of utility; applies cryptographical techniques; and uses distributed ledger technology.

### ARE VIRTUAL ASSETS REGULATED IN THIS JURISDICTION? IF SO, WHAT LEGAL OR REGULATORY FRAMEWORKS APPLY?

Yes. Under the Financial Advisory and Intermediary Services Act.

### WHICH REGULATORY AUTHORITY IS RESPONSIBLE FOR THE ENFORCEMENT OF THE ABOVE LAWS? FRAMEWORKS APPLY?

The Financial Sector Conduct Authority.

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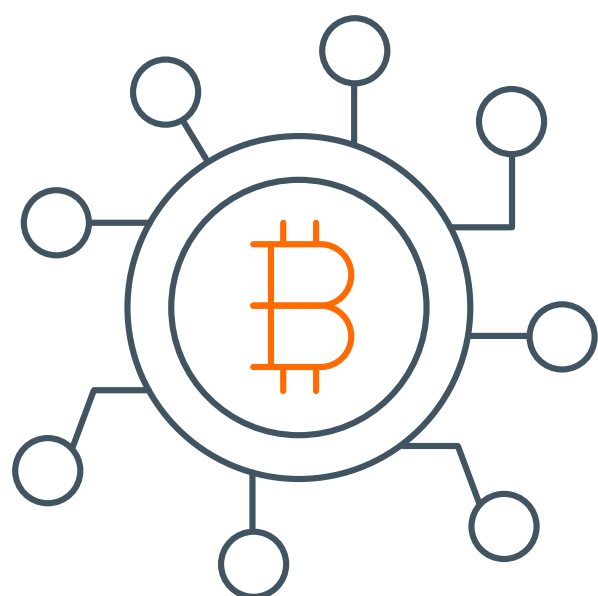
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### DO YOU NEED A LICENCE TO DEAL WITH VIRTUAL ASSETS, IF YES, WHAT KIND?

Yes. A financial service provider (FSP) licence.

### IS A VIRTUAL ASSET SERVICE PROVIDER REQUIRED TO HAVE A PHYSICAL PRESENCE IN YOUR JURISDICTION?

No.



### ARE THERE MINIMUM FINANCIAL REQUIREMENTS FOR VIRTUAL ASSET SERVICE PROVIDERS, AND IF SO, WHAT ARE THEY?

Yes. Crypto asset FSPs must be financially sound. They must maintain financial resources that are adequate in both amount and quality to carry out their activities and supervisory arrangements and to ensure that liabilities are met as they fall due.

### ARE THERE LOCAL OWNERSHIP REQUIREMENTS FOR VIRTUAL ASSET SERVICE PROVIDERS?

No.

### IS OWNERSHIP IN A VIRTUAL ASSET SERVICE PROVIDER FREELY TRANSFERABLE?

Yes, ownership in a crypto asset service provider is freely transferable; however, the FSP licence itself is not transferable.

### ARE THE SHAREHOLDERS/DIRECTORS OF VIRTUAL ASSET SERVICE PROVIDERS REQUIRED TO MEET ANY PRESCRIBED QUALIFICATIONS?

Yes. Significant owners and directors of an FSP must meet certain “fit and proper” requirements.

### ARE THERE ADDITIONAL LICENSING CONSIDERATION RELATING TO VIRTUAL ASSETS?

Yes. A crypto asset service provider is an accountable institution under the Financial Intelligence Centre Act (FICA) and is required to register with the Financial Intelligence Centre. FICA is South Africa’s anti-money laundering legislation.

# BOTSWANA



## HOW IS THE TERM 'VIRTUAL ASSET' DEFINED IN THE JURISDICTION?

Virtual assets are defined as:

(a) a digital representation of value that:

(i) may be digitally traded or transferred, and may be used for payment or investment purposes; or

(ii) is distributed through a distributed ledger technology where value is embedded or in which there is a contractual right of use, and includes virtual tokens; and

(b) excludes:

(i) a digital representation of legal tender as provided for under the Bank of Botswana Act.

(ii) securities and other financial assets that are regulated under the Securities Act of Botswana.

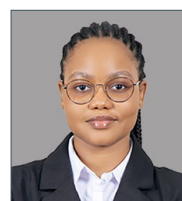
## ARE VIRTUAL ASSETS REGULATED IN THIS JURISDICTION? IF SO, WHAT LEGAL OR REGULATORY FRAMEWORKS APPLY?

Yes. Under the Virtual Assets Act No. 3 of 2022. This Act is to be read alongside the Non-Bank Financial Institutions Regulatory Authority Act.

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## WHICH REGULATORY AUTHORITY IS RESPONSIBLE FOR THE ENFORCEMENT OF THE ABOVE LAWS?

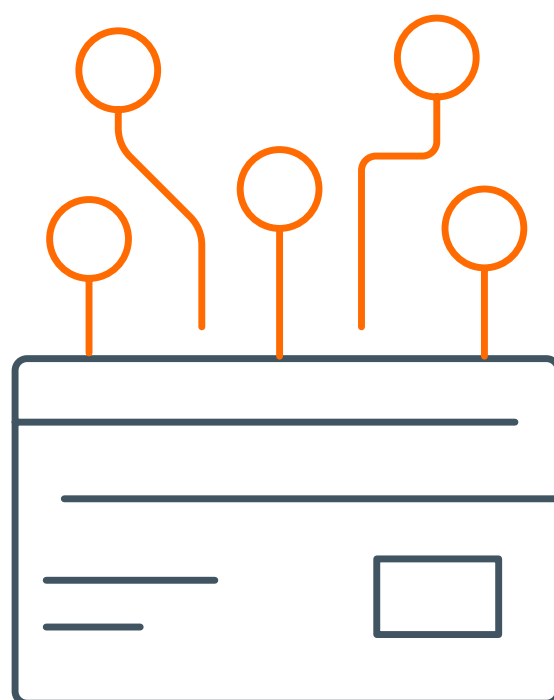
Non-Bank Financial Institutions Regulatory Authority (NBFIRA).

## DO YOU NEED A LICENCE TO DEAL WITH VIRTUAL ASSETS, IF YES, WHAT KIND?

Yes. A virtual asset business (VAB) licence.

## IS A VIRTUAL ASSET SERVICE PROVIDER REQUIRED TO HAVE A PHYSICAL PRESENCE IN YOUR JURISDICTION?

Yes.

**ARE THERE MINIMUM FINANCIAL REQUIREMENTS FOR VIRTUAL ASSET SERVICE PROVIDERS, AND IF SO, WHAT ARE THEY?**

Yes. VAB licence holders shall maintain, at all times, minimum financial resources comprising:

- (a) cash amounts equal to one-half of the estimated gross operating costs of the virtual asset business for the next 12-month period; and
- (b) such other base capital amount as may be set by NBFIRA.

**ARE THERE LOCAL OWNERSHIP REQUIREMENTS FOR VIRTUAL ASSET SERVICE PROVIDERS?**

No.

**IS OWNERSHIP IN A VIRTUAL ASSET SERVICE PROVIDER FREELY TRANSFERABLE?**

Yes, ownership in a virtual asset business is transferable. However, the transfer is subject to prior authorisation by NBFIRA and the payment of prescribed fees. The VAB licence is not transferable.

**ARE THE SHAREHOLDERS/DIRECTORS OF VIRTUAL ASSET SERVICE PROVIDERS REQUIRED TO MEET ANY PRESCRIBED QUALIFICATIONS?**

Yes. Shareholders and directors of a virtual asset business must meet certain “fit and proper” requirements.

**ARE THERE ADDITIONAL LICENSING CONSIDERATION RELATING TO VIRTUAL ASSETS?**

Yes. NBFIRA requires VAB licence holders to establish clear and fair business rules. These rules must be legally enforceable by customers and must be published and made freely available.

In addition, VABs must have a compliance procedure in place to ensure:

- I. the business rules are enforced;
- II. procedures exist for complaints and appeals relating to virtual asset services; and
- III. disciplinary action, including financial and other penalties, is available where appropriate.

VABs are also classified as specified parties under the Financial Intelligence Act, requiring compliance with Botswana’s anti-money laundering laws. This includes implementing customer due diligence, and maintaining policies and programmes for reporting suspicious or fraudulent transactions and preventing and combating money laundering, terrorism financing, and the proliferation of weapons of mass destruction.

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### HOW IS THE TERM 'VIRTUAL ASSET' DEFINED IN THE JURISDICTION?

Virtual assets are defined as a digital representation of value that:

- (a) can be digitally transferred, stored or traded;
- (b) uses a distributed ledger technology or similar technology; and
- (c) can be used for payment or investment purposes; but does not include digital representations of fiat currencies and securities, or other financial assets regulated under the securities or financial assets law of Namibia.

### ARE VIRTUAL ASSETS REGULATED IN THIS JURISDICTION? IF SO, WHAT LEGAL OR REGULATORY FRAMEWORKS APPLY?

Yes. Under the Virtual Assets Act No. 10 of 2023, and supported by several rules such as:

- Advertising Rules
- Capital and other Financial Requirements
- Client Disclosure Rules
- Custody of Client Assets Rules
- Cybersecurity Rules
- Fit and Proper Person Guidelines
- Risk Management Rules
- Statutory Returns Rules
- Travel Rules
- Virtual Assets Rules.

### WHICH REGULATORY AUTHORITY IS RESPONSIBLE FOR THE ENFORCEMENT OF THE ABOVE LAWS?

Bank of Namibia.

### DO YOU NEED A LICENCE TO DEAL WITH VIRTUAL ASSETS, IF YES, WHAT KIND?

Yes. Below are the licenses to have:

- Token Issuer Licence.
- Class "M" Virtual Asset Broker – Dealer Licence.
- Class "S" Virtual Asset Market Place Licence.
- Class "O" Virtual Asset Wallet Service Licence.
- Class "R" Virtual Asset Custodian Licence.
- Class "I" Virtual Asset Advisory Services Licence.



**IS A VIRTUAL ASSET SERVICE PROVIDER REQUIRED TO HAVE A PHYSICAL PRESENCE IN YOUR JURISDICTION?**

Yes.

**ARE THERE MINIMUM FINANCIAL REQUIREMENTS FOR VIRTUAL ASSET SERVICE PROVIDERS, AND IF SO, WHAT ARE THEY?**

Yes. A licence holder must have, at a minimum, unimpaired capital and liquidity resources, equal to the higher of:

- (a) the own funds requirement, as set out for the different licences below;
- (b) the prudential requirements, being one quarter of the fixed overheads of the licence holder over the preceding year and the financial resources requirements set out under the Risk Management Rules;
- (c) such other amount as may be specified by the Regulatory Authority from time to time.
  - Token Issuer: Sufficient working capital to meet its debts as they fall due.
  - Virtual Asset Broker – Dealer: NAD 1 million or its equivalent in any fiat currency.
  - Virtual Asset Market Place: NAD 2.7 million or its equivalent in any fiat currency.
  - Virtual Asset Wallet Service: sufficient working capital in fiat currency to continue business for 12 months, based on realistic forecasts under both negative and positive market scenarios.
  - Virtual Asset Custodian: NAD 2 million or its equivalent in any fiat currency.
  - Virtual Asset Advisory Services: Sufficient working capital to meet its debts as they fall due.

**ARE THERE LOCAL OWNERSHIP REQUIREMENTS FOR VIRTUAL ASSET SERVICE PROVIDERS?**

No.

**IS OWNERSHIP IN A VIRTUAL ASSET SERVICE PROVIDER FREELY TRANSFERABLE?**

Yes, but prior written approval by the Regulatory Authority must be obtained for any transfer of ownership of 5% or more.

**ARE THE SHAREHOLDERS/DIRECTORS OF VIRTUAL ASSET SERVICE PROVIDERS REQUIRED TO MEET ANY PRESCRIBED QUALIFICATIONS?**

Yes. They must comply with the “fit and proper” requirements as set out in the Fit and Proper Person Guidelines.

**ARE THERE ADDITIONAL LICENSING CONSIDERATION RELATING TO VIRTUAL ASSETS?**

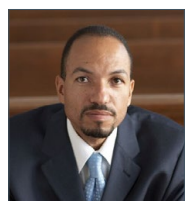
Yes. A VASP is an accountable institution under the Financial Intelligence Act No. 13 of 2012 and must register with the Financial Intelligence Centre (FIC).



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### HOW IS THE TERM 'VIRTUAL ASSET' DEFINED IN THE JURISDICTION?

Virtual assets are defined as digital representations of value that can be digitally traded, or transferred, and can be used for payment or investment purposes, and excludes digital representations of fiat currencies, securities and other financial assets.

### ARE VIRTUAL ASSETS REGULATED IN THIS JURISDICTION? IF SO, WHAT LEGAL OR REGULATORY FRAMEWORKS APPLY?

No. There is currently no specific legislation in place, the Anti-Money Laundering, Counter Financing of Terrorism and Proliferation Financing (Miscellaneous Amendments) Act of 2024 provides that supervisory authorities (any authority having oversight over an accountable institution) shall establish a framework to regulate virtual assets service providers.

### WHICH REGULATORY AUTHORITY IS RESPONSIBLE FOR THE ENFORCEMENT OF THE ABOVE LAWS?

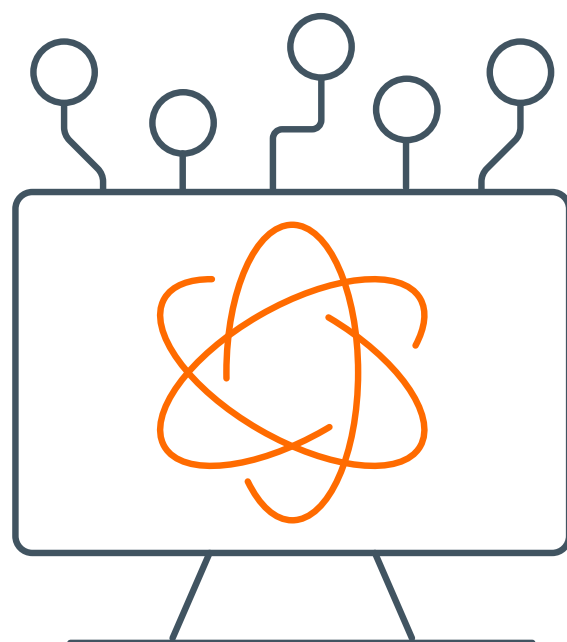
Eswatini Financial Intelligence Centre.

### DO YOU NEED A LICENCE TO DEAL WITH VIRTUAL ASSETS, IF YES, WHAT KIND?

Yes. As per the Anti-Money Laundering Act of 2024, Virtual Asset Service Providers (VASPs) require the requisite licence to carry out VASP activities and will be subject to inspections and investigations by competent authorities (eg the Attorney-General, DPP).

### IS A VIRTUAL ASSET SERVICE PROVIDER REQUIRED TO HAVE A PHYSICAL PRESENCE IN YOUR JURISDICTION?

No.



**ARE THERE MINIMUM FINANCIAL REQUIREMENTS FOR VIRTUAL ASSET SERVICE PROVIDERS, AND IF SO, WHAT ARE THEY?**

Yes. Financial Service Providers are required to meet capital adequacy, solvency, and other prudential and minimum financial requirements as prescribed by the Financial Services Regulatory Authority (FSRA).

**ARE THERE LOCAL OWNERSHIP REQUIREMENTS FOR VIRTUAL ASSET SERVICE PROVIDERS?**

No.

**IS OWNERSHIP IN A VIRTUAL ASSET SERVICE PROVIDER FREELY TRANSFERABLE?**

Yes. The FSRA Act provides that, if it appears to the Authority that a person has acquired control over an authorised FSP and the likely effect of the acquisition is uncertain or prejudicial to the interests of stakeholders or the financial services sector, the Authority may impose conditions on the FSP or vary a requirement in the FSP's licence.

**ARE THE SHAREHOLDERS/DIRECTORS OF VIRTUAL ASSET SERVICE PROVIDERS REQUIRED TO MEET ANY PRESCRIBED QUALIFICATIONS?**

Yes. FSPs in Eswatini must be managed or controlled by "fit and proper" persons and should further be managed by, or employ, persons who meet with the required standards of training and experience as prescribed by the FSRA.

**ARE THERE ADDITIONAL LICENSING CONSIDERATION RELATING TO VIRTUAL ASSETS**

Yes. VASPs are considered accountable institutions in terms of the Money Laundering and Financing of Terrorism (Prevention) Act and must register with the Eswatini Financial Intelligence Centre.

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## HOW IS THE TERM 'VIRTUAL ASSET' DEFINED IN THE JURISDICTION?

Virtual assets are a species of securities by virtue of the definition of 'security' in the Securities and Exchange Act [Chapter 24:25] of Zimbabwe. Security means and includes any share or stock in the share capital of a company, any debt security, any depositary receipt, any future, any contract for differences or any other instrument declared to be a security under the Act.

The Financial Action Task Force's (FATF) definition of 'virtual asset' has also been acknowledged in Zimbabwe. The FATF defines a virtual asset as a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes. This includes cryptocurrencies, excluding digital representations of fiat currencies, securities and other financial assets already covered by FATF standards.

## ARE VIRTUAL ASSETS REGULATED IN THIS JURISDICTION? IF SO, WHAT LEGAL OR REGULATORY FRAMEWORKS APPLY?

Yes. Although Zimbabwe does not have a dedicated legal framework for the regulation of virtual assets, certain laws and directives provide partial oversight.

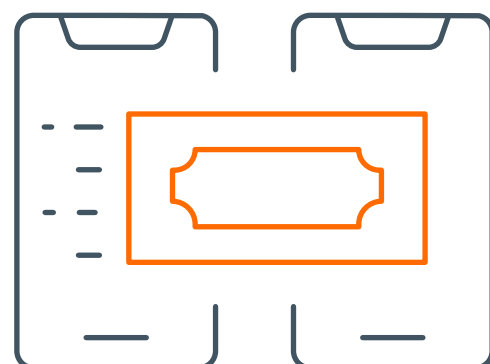
The Securities and Exchange Act [Chapter 24:25] authorises the Securities & Exchange Commission of Zimbabwe (SECZ) to formulate guidelines and notices for the securities market. In 2021, the SECZ issued a directive (SECZ/SS18/03/21), requiring securities market intermediaries to assess money laundering/terrorist financing risk assessment associated with virtual assets. This directive provided that Virtual Asset Service Providers (VASPs) and Virtual Assets (VA) are regulated for anti-money laundering and combating the financing of terrorism and proliferation (AML/CFT/PF) purposes and are subject to effective systems for monitoring.

Additionally, the trading of virtual assets would need to be via a platform that is duly approved by the SECZ in terms of the Securities (Alternative Trading Platform) Rules, 2016. At present, virtual assets such as crypto do not have an approved platform.

The Money Laundering and Proceeds of Crime Act [Chapter 9:24] has established the Financial Intelligence Unit as the regulatory authority tasked with collecting and disseminating information to support the development of virtual asset regulation within the Zimbabwean securities market. The SECZ and the Reserve Bank Financial Intelligence Unit are currently working on establishing the rules and identifying the competent supervisor.



## ZIMBABWE



### WHICH REGULATORY AUTHORITY IS RESPONSIBLE FOR THE ENFORCEMENT OF THE ABOVE LAWS?

Securities and Exchange Commission of Zimbabwe and the Reserve Bank Financial Intelligence Unit.

### DO YOU NEED A LICENCE TO DEAL WITH VIRTUAL ASSETS, IF YES, WHAT KIND?

Licensing requirements are yet to be put in place. However, all securities trading platforms must be approved by the SECZ in terms of the Securities (Alternative Trading Platform) Rules, 2016.

### IS A VIRTUAL ASSET SERVICE PROVIDER REQUIRED TO HAVE A PHYSICAL PRESENCE IN YOUR JURISDICTION?

No.

### ARE THERE MINIMUM FINANCIAL REQUIREMENTS FOR VIRTUAL ASSET SERVICE PROVIDERS, AND IF SO, WHAT ARE THEY?

Not applicable.

### ARE THERE LOCAL OWNERSHIP REQUIREMENTS FOR VIRTUAL ASSET SERVICE PROVIDERS?

No.

### IS OWNERSHIP IN A VIRTUAL ASSET SERVICE PROVIDER FREELY TRANSFERABLE?

Not applicable as there are no local ownership requirements for virtual asset service providers.

### ARE THE SHAREHOLDERS/DIRECTORS OF VIRTUAL ASSET SERVICE PROVIDERS REQUIRED TO MEET ANY PRESCRIBED QUALIFICATIONS?

Not applicable.

### ARE THERE ADDITIONAL LICENSING CONSIDERATION RELATING TO VIRTUAL ASSETS?

Not applicable.



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### HOW IS THE TERM 'VIRTUAL ASSET' DEFINED IN THE JURISDICTION?

Virtual assets are defined as a digital representation of a value that can be stored, traded or transferred digitally and used for payment or investment purposes, which do not include the digital representation of fiduciary currencies, securities or other financial assets.

### ARE VIRTUAL ASSETS REGULATED IN THIS JURISDICTION? IF SO, WHAT LEGAL OR REGULATORY FRAMEWORKS APPLY?

Yes. Several notices and laws such as:

- Notice No. 4/GBM/2023 of 14 September 2023 - Concerning the Registration of Virtual Asset Service Providers with the Bank of Mozambique.
- Notice No. 10/GBM/2024 of 30 August 2024 - Guidelines on Preventing and Combating Money Laundering, Financing of Terrorism and Financing the Proliferation of Weapons of Mass Destruction.
- Law No. 14/2023 of 28 August 2023 - Law on Preventing and Combating Money Laundering and Terrorist Financing.
- Decree No. 53/2023 of 31 August – Regulation of Law No. 14/2023 of 28 August 2023.

### WHICH REGULATORY AUTHORITY IS RESPONSIBLE FOR THE ENFORCEMENT OF THE ABOVE LAWS?

Bank of Mozambique.

### DO YOU NEED A LICENCE TO DEAL WITH VIRTUAL ASSETS, IF YES, WHAT KIND?

Yes. A certificate of registration as a virtual asset service provider issued by the Bank of Mozambique is required.

### IS A VIRTUAL ASSET SERVICE PROVIDER REQUIRED TO HAVE A PHYSICAL PRESENCE IN YOUR JURISDICTION?

No, however, virtual asset service providers operating in Mozambique from a foreign jurisdiction must comply with applicable registration and compliance obligations.



**ARE THERE MINIMUM FINANCIAL REQUIREMENTS FOR VIRTUAL ASSET SERVICE PROVIDERS, AND IF SO, WHAT ARE THEY?**

No financial thresholds have been specified.

**ARE THERE LOCAL OWNERSHIP REQUIREMENTS FOR VIRTUAL ASSET SERVICE PROVIDERS?**

No.

**IS OWNERSHIP IN A VIRTUAL ASSET SERVICE PROVIDER FREELY TRANSFERABLE?**

Yes, ownership in a virtual asset service provider is freely transferable. However, registration is subject to the fulfilment of legal requirements and approval by the Bank of Mozambique. The transfer of a virtual asset service provider registration certificate is subject to prior authorisation by the Bank of Mozambique.

**ARE THE SHAREHOLDERS/DIRECTORS OF VIRTUAL ASSET SERVICE PROVIDERS REQUIRED TO MEET ANY PRESCRIBED QUALIFICATIONS?**

Yes. Shareholders and directors of virtual asset service providers must meet prescribed qualifications that evidence good reputation and professional qualifications.

**ARE THERE ADDITIONAL LICENSING CONSIDERATION RELATING TO VIRTUAL ASSETS?**

Yes. Virtual asset service providers must implement documented systems, programmes and procedures for detecting and reviewing suspicious or fraudulent transactions, and for preventing and combating money laundering, terrorism financing and the financing of the proliferation of weapons of mass destruction. When warranted by the size or risk profile of their activities, the Bank of Mozambique may subject them to prudential supervision and apply, with the necessary adaptations, the prudential rules applicable to credit institutions and financial companies.



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