

Virtual Asset and Initial Token Offerings Services (Client Disclosure) Rules 2022

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THE VIRTUAL ASSET AND INITIAL TOKEN OFFERINGS SERVICES ACT

FSC Rules made by the Financial Services Commission under
section 52 of the Virtual Asset and Initial Token
Offerings Services Act

PART I - GENERAL PROVISIONS

1. Citation

These rules may be cited as the **Virtual Asset and Initial Token Offerings Services (Client Disclosure) Rules 2022**.

2. Interpretation

"Act" means the Virtual Asset and Initial Token Offerings Services Act;

"relevant Acts" has the same meaning as in the Financial Services Act;

"relevant products and services" means products and services that are those provided in connection with, or by reference to, virtual assets;

3. Scope of the Rules

(1) These rules shall apply to all virtual asset service providers that carry out business in or from Mauritius as well as all virtual asset service providers which sell relevant products / services in Mauritius.

(2) These rules shall be read in conjunction with the Act, applicable Acts, relevant Acts and guidelines which the Commission may issue from time to time.

PART II - GENERAL REQUIREMENTS

4. The general requirement

(1) A virtual asset service provider shall pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

- (2) A virtual asset service provider shall ensure that communications -
 - (a) are presented in a way that is likely to be understood by the average member of the group to whom it is directed, or by whom it is likely to be received;
 - (b) do not disguise, diminish or obscure important items, statements or warnings;
 - (c) are accurate, up-to-date and relevant to the means of communication used; and
 - (d) do not omit any relevant fact where this would result in the communication being insufficient, unclear, unfair or misleading, and do not make definitive statements that cannot be substantiated.
- (3) A virtual asset service provider advertising relevant products and services into Mauritius shall also comply with the Virtual Asset and Initial Token Offerings Services (Publication of Advertisements) Rules 2022.

PART III - DISCLOSURE REQUIREMENTS

5. General disclosure requirements

- (1) A virtual asset service provider shall provide clients with the following general information in writing, as applicable before providing relevant products and / or services -
 - (a) the name and address of the virtual asset service provider, and the contact details necessary to enable a client to communicate effectively with the virtual asset service provider;
 - (b) a description of the products and services provided;
 - (c) the methods of communication to be used between the virtual asset service provider and the client;
 - (d) the languages in which the virtual asset service provider and clients may communicate;
 - (e) any specific technological requirements that the clients shall have in place in order to benefit from the products or services (for example, if the client must have a particular wallet in order to receive virtual asset);
 - (f) a statement of the fact that the virtual asset service provider is licensed under the Act and the activities for which it is licenced;
 - (g) a description, which may be provided in summary form, of any conflicts of interest which may arise and how the virtual asset service provider will ensure fair treatment of the client;

- (h) any cancellation or withdrawal rights that the client has in relation to the products or services, including practical instructions for exercising any right to cancel or withdraw, including the contact details to which any cancellation or withdrawal notice shall be sent;
 - (i) minimum duration of the contract, in the case of services to be performed permanently or recurrently;
 - (j) any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases;
 - (k) details regarding how complaints may be made and the virtual asset service provider's procedure for handling complaints;
 - (l) the law and competent court applicable to the provision of the product / services; and
 - (m) any other information as may be required.
- (2) Where a communication refers to a particular tax treatment, there shall be a clear statement that tax treatment depends on client(s) individual circumstances and may be subject to change in future.
- (3) Where a communication refers to -
- (a) features as "guaranteed", "protected" or "secure", that statement shall be factually accurate;
 - (b) yield figures, it shall provide a balanced impression of both the short and long term prospects of the relevant product / service;
 - (c) a comparison—
 - (i) the comparison shall be meaningful and presented in a fair and balanced way;
 - (ii) the sources of the information used for the comparison shall be specified; and
 - (iii) the key facts and assumptions used to make the comparison shall be included.
 - (d) past performance, there shall be a clear and prominent statement that past performance is not an indicator of future performance, and the reference period and the source of information shall be clearly stated. Any information on past performance shall be based on objective information;
 - (e) future performance, the virtual asset service provider shall -
 - (i) give a balanced impression (covering both negative and positive scenarios);
 - (ii) be clear as to the basis on which future performance is predicted;

- (iii) contain a clear and prominent statement that such forecasts are not a reliable indicator of future performance; and
 - (iv) not provide information on future performance if it is not able to obtain the objective data to substantiate the claim.
- (f) products or services having or not having regulatory protections, this information is provided in a way which is clear and accurate.
- (4) A virtual asset service provider shall not make any comparison, or any reference to past or future performance, unless it represents a balanced approach and does not take advantage of the recipient of the communication, for example by creating a fear of missing out.
- (5) A virtual asset service provider shall not use the name of the Commission or that of any other regulatory body or authority in such a way that would indicate or suggest endorsement or approval by the Commission or other regulatory body or authority of the relevant products or services of the virtual asset service provider.
- (6) A virtual asset service provider shall not use the name of any regulator, including the Commission, in a way that is misleading.

6. Execution disclosure

Virtual Asset Broker-Dealer(s) and Virtual Asset Market Place(s) shall disclose to clients the factors they have taken into account when executing transactions on behalf of clients, including in terms of price, costs, speed, likelihood of execution and settlement, size, nature and any other consideration that they deem relevant.

7. Virtual Asset Advisory Services

- (1) A virtual asset service provider providing any recommendation or advice in connection with virtual assets shall always disclose any benefits they are receiving in connection with those virtual assets, as well as any other matter that could create a conflict of interest in relation to or otherwise bias any recommendation or advice provided.
- (2) A virtual asset service provider providing any recommendation or advice in connection with virtual assets shall disclose all benefits paid to them, whether by way of fees, commissions, dividends (directly or indirectly) in connection with such recommendation or advice, or otherwise received from any party which are associated with the relevant virtual assets.

8. Risk disclosure requirements

- (1) A virtual asset service provider shall provide their clients with appropriate risk disclosures before providing services or selling virtual assets to them, and ensure that the risk disclosures

are prominently displayed using a font size at least equal to the predominant font size used throughout the information provided.

- (2) Risk disclosures shall be appropriate to the services and virtual assets provided, and shall include the following coverage, as applicable -
 - (a) the fact that the value of virtual assets may be subject to sudden and extreme volatility, including a total loss of value;
 - (b) past performance is not a reliable indicator of future performance;
 - (c) virtual assets may not always be liquid or transferrable or there may not be secondary market;
 - (d) virtual assets involve new and evolving technologies, that the markets in virtual assets are still in an early stage of development, and that client may be disadvantaged by information asymmetries when dealing in virtual assets;
 - (e) the operation of virtual assets can be complicated, and so clients shall take care to understand the risks of virtual assets before dealing in them; and
 - (f) there is a greater risk of virtual assets being irrevocably lost, stolen or compromised as a result of a security issue than with traditional investments.
- (3) A virtual asset service provider shall always give a fair and prominent indication of any relevant risks when referencing any potential benefits of relevant products or services.

9. Fees disclosure requirements

- (1) A virtual asset service provider shall provide their clients with clear and transparent disclosure regarding fees, costs and charges of services provided so that the client can verify and has an informed view of their total costs.
- (2) Where applicable, the virtual asset service provider shall give notice of the possibility that other costs, including taxes and gas or other fees, may arise for the client that are not paid via the virtual asset service provider or imposed by it.
- (3) Where a virtual asset service provider offers a yield as part of relevant products and services, the virtual asset service provider shall give a transparent explanation of the effect of costs and charges on such yield.
- (4) A virtual asset service provider shall disclose to clients the arrangements for payment.
- (5) Where any part of the total fees, costs and charges is to be paid in or represents an amount of foreign currency or virtual assets, the virtual asset

service provider shall indicate the currency or virtual assets involved and applicable conversion rates and costs.

- (6) Fees information shall be provided to clients in writing before providing the relevant service. In relation to an ongoing service, clients shall be kept up to date regarding fees regularly, and at least quarterly.

10. Disclosure requirements when holding virtual assets

- (1) A virtual asset service provider that holds virtual assets, subject to the Virtual Asset and Initial Token Offerings Services (Custody of Client Assets) Rules 2022, shall, where applicable, provide that client with information about the existence and the terms of any security interest or lien which the virtual asset service provider or any third party used by the virtual asset service provider has or may have over the client's virtual assets, and any right of set-off it holds in relation to the client's virtual assets.
- (2) A virtual asset service provider that holds virtual assets with a third party subject to the Virtual Asset and Initial Token Offerings Services (Custody of Client Assets) Rules 2022 shall provide that client with the following information, where applicable -
 - (a) that virtual assets may be held by a third party on behalf of the virtual asset service provider;
 - (b) the level of responsibility taken by the virtual asset service provider for any acts or omissions of the third party;
 - (c) the consequences for the client of the insolvency of the third party;
 - (d) that the virtual assets may be held with the virtual assets of other persons in an omnibus account by a third party and a prominent warning of the resulting risks;
 - (e) if it is not possible under national law for virtual assets belonging to a client held with a third party to be separately identifiable from the virtual assets of that third party or the virtual asset service provider, that fact and a prominent warning of the resulting risks; and
 - (f) that accounts that contain virtual assets belonging to that client are or will be subject to the law of a jurisdiction other than that of Mauritius, an indication that the rights of the client relating to those instruments or money may differ accordingly.
- (3) A virtual asset service provider that holds virtual assets shall provide clients with information regarding the clients' reports in accordance with the Virtual Asset and Initial Token Offerings Services (Custody of Client Assets) Rules 2022.

11. Additional disclosure requirements in relation to virtual asset advisory services

- (1) A virtual asset advisory service provider shall, before providing advice:
 - (a) explain to the client the range and types of virtual assets that may be recommended in its advice, including any relationship with issuers or providers of the virtual assets where these may pose a risk of impairing the independent basis of any advice provided; and
 - (b) inform the client whether the virtual asset advisory services provider will provide the client with a periodic assessment of the suitability of the virtual assets recommended to that client.

12. Record keeping

A virtual asset service provider shall maintain adequate records of its communications with clients for a period of not less than 7 years after the relationship with the client has ended, or such other period which the Commission may request.

13. Commencement

These rules shall be deemed to come into operation on 1 July 2022.

Made by the Financial Services Commission on 28 June 2022.