

## **VIRTUAL ASSET AND INITIAL TOKEN OFFERING SERVICES BILL**

**To** To provide a comprehensive legislative framework for virtual asset service providers and issuers of initial token offerings, and to provide for matters connected, incidental and related thereto.

**(TO BE) ENACTED** by the Parliament of the Republic of Namibia as follows:

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**PART 1**  
**PRELIMINARY**

**Definitions**

1. For purposes of the Act:

“asset” means movable and immovable property of any nature, whether tangible and intangible;

“auditor” means a person registered as an accountant and auditor under section 23 of the Public Accountants and Auditors Act, and who has been admitted as a member of the Institute of Chartered Accountants of Namibia referred to in that Act;

“Bank” means the Bank of Namibia established by Article 128 of the Namibian Constitution and the Bank of Namibia Act, 2020 (Act No 01 of 2020);

“banking institution” has the same meaning as in the Banking Institutions Act, 1998 (Act No 02 of 1998) as amended;

“beneficial owner” has the same meaning as prescribed under the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended;

“beneficiary”, in respect to a transfer of virtual asset and for purposes of this Act, means the person that will own the virtual asset on completion of a transfer;

“Governor” means the Governor of the Bank appointed under Article 32(4)(b)(bb) of the Namibian Constitution;

“class of license” means such class of license as described in the First Schedule;

“company” means a company incorporated as such under the Companies Act, 2004 (Act 28 of 2004);

“competent authority” means has the same meaning as prescribed under the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended;

“controller”, in respect to a company, means a person –

- (a) who is a member of the governing body of the company;
- (b) who has the power to appoint or remove a member of the governing body of the company;

- (c) whose consent is needed for the appointment of a person to be a member of the governing body of the company;
- (d) who, either by himself or through one or more other persons –
  - (i) is able to control, or exert significant influence over, the business or financial operations of the company, whether directly or indirectly;
  - (ii) holds or controls not less than 20 per cent of the shares of the company;
  - (iii) has the power to control not less than 20 per cent of the voting power in the company;
  - (iv) holds rights in respect to the company that, if exercised, would result in the conditions in subparagraphs (ii) and (iii) being satisfied;
- (e) who is a parent undertaking of that company or a controller of such parent undertaking;
- (f) who is a beneficial owner of a person referred to in paragraphs (a) to (e) and who appears to the Commission to be a controller of that company;

“corporate body” means an incorporated body wherever or however incorporated, and includes a company and a close corporation;

“cyber-reporting event” means any act that results in unauthorised access to, disruption, or misuse of the electronic systems or information stored on such systems of a virtual asset service provider, including any breach of security leading to the loss or unlawful destruction or unauthorised disclosure of or access to such systems or information;

“distributed ledger technology” means a consensus of replicated, shared or synchronised virtual data geographically spread across multiple sites, countries or institutions;

“Enforcement Committee” means the Enforcement Committee of the Regulatory Authority set up under the applicable legislation;

“Financial Intelligence Unit” means a jurisdiction’s agency established as per relevant national laws in terms of the FATF Recommendations. Referred to as FIU;

“fiat currency” –

(a) means a banknote or coin that is in circulation as a medium of exchange; and

(b) includes a digital currency issued by the central bank or the central bank of a foreign jurisdiction;

“financial institution” has the same meaning as in the Financial Institutions and Markets Act, 2021.

“initial token offerings” or “ITO” means an offer for sale to the public, by an issuer of initial token offerings, of a virtual token in exchange for fiat currency or another virtual asset;

“investigating authority” has the same meaning as in the Financial Intelligence Act, 2012 (Act No 13 of 2012);

“issuer of initial token offerings” means a company registered as such under section 26;

“legal practitioner” has the same meaning as in the Legal Practitioners Act, 1995 (Act No 15 of 1995);

“licence” means a virtual asset service provider’s licence issued under section 10;

“Minister” means the Minister responsible for Finance;

“officer” means a member of the board of directors, a Governor, a managing director, a chief financial officer or chief financial controller, a senior executive, a manager, a company secretary, a partner, a trustee, a money laundering reporting officer, a deputy money laundering reporting officer, a compliance officer or a person holding any similar function with a virtual asset service provider;

“originator”, in respect to a transfer of virtual asset, means –

(a) the person that places an order with a virtual asset service provider for the transfer of virtual assets; or

(b) where the transfer is carried out by a virtual asset service provider on behalf of a client or other third party, the client or third party who owned the virtual asset immediately before the transfer;

“person” means a natural person or legal person;

“platform” means any distributed ledger technology, with or without smart contract functionality, or such other platform as may be prescribed;

“Rules” means rules issued by the Regulatory Authority under this Act;

“smart contract” means a form of technology arrangement consisting of a computer protocol or an agreement concluded wholly or partly in an electronic form, which is automatable and enforceable by computer code, though some parts may require human input and control and which may be enforceable by ordinary legal methods or by a mixture of both;

“transfer of virtual asset” means any transaction carried out on behalf of another person that moves a virtual asset from one virtual asset address or account to another;

“Regulatory Authority” means the Bank of Namibia, particularly the Exchange Control function, established under the relevant laws;

“virtual asset” means –

(a) a digital representation of value that may be digitally traded or transferred, and may be used for payment or investment purposes; but

(b) does not include a digital representation of fiat currencies, securities and other financial assets that fall under the purview of the Securities Act;

“virtual asset exchange” means a centralised or decentralised virtual platform, whether in Namibia or in another jurisdiction –

(a) which facilitates the exchange of virtual assets for fiat currency or other virtual assets on behalf of third parties for a fee, a commission, a spread or other benefit; and

(b) which –

(i) holds custody, or controls virtual asset, on behalf of its clients to facilitate an exchange; or

(ii) purchases virtual assets from a seller when transactions or bids and offers are matched in order to sell them to a buyer, and includes its owner or operator but does not include a platform that only provides a forum where sellers and buyers may post bids and offers and a forum where the parties trade in a separate platform or in a peer-to-peer manner;

“virtual asset service provider” means a person that, as a business, conducts one or more of the following activities or operations for, or on behalf of, another person –

(a) exchange between virtual assets and fiat currencies;

(b) exchange between one or more forms of virtual assets;

(c) transfer of virtual assets;

(d) safekeeping of virtual assets or instruments enabling control over virtual assets;

(e) administration of virtual assets or instruments enabling control over virtual assets;

(f) participation in, and provision of, financial services related to –

(i) an issuer’s offer and sale of a virtual asset;

(ii) an issuer’s offer or sale of a virtual asset;

“virtual asset wallet services” means the provision of a software application or other mechanism or medium to enable a person to transfer virtual assets;

“virtual token” means any cryptographically secured digital representation of a set of rights, including smart contracts, provided on a digital platform and issued or to be issued by an issuer of initial token offerings;

“white paper” means the document referred to in section 27.

### **Scope and Application of the Act**

1. (1) This Act applies to any Virtual Asset Service Provider and to any issuer of initial token offerings, that carries out its business activities in or from Namibia.

(2) This Act shall not apply to –

(a) closed-loop items which are non-transferable, non-exchangeable, and cannot be used for payment or investment purposes, and which a person cannot sell onward on a secondary market outside of the closed-loop system;

(b) digital representations of fiat currencies, securities and other financial assets;

(c) digital currencies issued by the Bank or the central bank of a foreign jurisdiction;

(d) a person who, by virtue of his acting in a professional capacity on behalf of persons engaged in the participation and provision of financial services related to a virtual asset service provider and an issuer of initial token offerings, as prescribed in the Rules; and

(e) a person who provides ancillary services or products, as specified in the Second Schedule, to a virtual asset service provider.

(3) If any conflict relating to the matters dealt with in this Act arises between this Act and any other law, a provision of this Act prevails.

## **Fitness and Propriety**

2. In determining whether a person is, for the purposes of this Act, a fit and proper person, the Regulatory Authority may have regard –
  - (1) in respect of the person and, where the person is a company, the officers and beneficial owners of the company, to –
    - (a) the financial standing;
    - (b) the relevant education, qualifications and experience;
    - (c) the ability to discharge the relevant functions properly, efficiently, honestly and fairly;
    - (d) the reputation, character, financial integrity and reliability; and
    - (e) any relevant criminal record;
  - (2) to any matter relating to –
    - (a) any person who is or is to be employed by, or associated with, the person;
    - (b) any agent or representative of the person;
    - (c) where the person is a company –
      - (i) any officer and shareholder of the company;
      - (ii) any related company of the company and any officer of any related company;
    - (d) to any matter specified in the applicable Acts as relating to the fit and proper person requirement; and
    - (e) any other information or any other matter as it deems necessary.

## **PART 2**

### **FUNCTIONS AND POWERS OF REGULATORY AUTHORITY**

3. (1) The Regulatory Authority may –
  - i. License virtual asset service providers and issuers of initial token offerings;

- ii. Regulate, monitor and supervise the issuance of virtual assets and persons conducting virtual asset business in Namibia;
- iii. Develop rules, guidance and codes of practice in connection with the conduct of virtual asset business and initial token offerings;
- iv. Advise the Minister on all matters relating to virtual assets business;
- v. Promote investor education and other conditions that facilitate innovation and development of virtual asset businesses within Namibia;
- vi. Publish notices, guidelines and circulars regarding the interpretation, application and enforcement of the Act;
- vii. In collaboration with the Bank, ensure financial soundness and stability of the financial system in Namibia in respect of virtual assets;
- viii. Issue directives and take enforcement action against a license holder;
- ix. Take any other action as may be necessary in fulfillment of the objectives of this Act.

(2) The Minister may, on recommendation of the Regulatory Authority, by notice published in the Gazette, set up such advisory bodies as may be necessary to examine and report on any matter in respect of the administration of the Act

### **Request for Information**

4. (1) The Regulatory Authority may, by notice in writing, require a person to furnish to the Regulatory Authority, at such time and place and in such form as prescribed, information and documentation, with respect to –

- (a) A virtual asset business;
- (b) An offer, pursuant to Chapter 2;
- (c) A beneficial owner of a virtual asset business

(2) A person, in subsection (1), may include –

- (a) Any person who is, was or appears to be or to have been, a virtual asset service provider or issuer of initial token offerings;
- (b) An agent of a virtual asset service provider or issuer of initial token offerings;
- (c) An intermediary involved in a virtual asset service;
- (d) A person who issues, or appears to have issued, an offer.

- (3) The Regulatory Authority may request a virtual asset service provider or issuer of initial token offerings to appear before the Authority or a person appointed by the Regulatory Authority at such time and place as it may specify, to answer questions and provide information and documentation with respect to a virtual asset, initial token offering or an offer issued by the virtual asset provider or issuer of initial token offering.
- (4) Where a person is appointed under subsection (3), such a person shall, for the purposes of carrying out his or her functions, have all the powers conferred on the Regulatory Authority under this section, and a requirement made by such a person shall be deemed to have the same force and effect as a requirement made by the Regulatory Authority.
- (5) Where the person required to provide information or documentation under this section does not have relevant information or documentation, the person shall, to the best of his or her knowledge disclose to the Regulatory Authority where that information or documentation may be found, and the Regulatory Authority may require any person who appears to be in possession of that information or documentation to provide it.

### **Appointment of Inspectors**

5. (1) The Regulatory Authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the activities or operations of a virtual asset business or license holder.
  - (2) An inspector appointed in terms of subsection (1) –
    - (a) may exercise all the powers conferred on the Regulatory Authority under this Part, and any requirement made by the inspector shall have the same effect as a requirement made by the Regulatory Authority; and
    - (b) must submit a report of his or her investigations under this section to the Regulatory Authority, within one month after the conclusion of the investigations.

6. (1) An inspector appointed in terms of section 6 may, on producing evidence of his or her authority, enter premises occupied by a person on whom a notice has been issued under section 5 or whose virtual asset business is being investigated under section 6, for the purposes of —
  - (a) obtaining information or documents required under the notice;
  - (b) the investigation; or
  - (c) exercising any of the powers conferred by sections 5 and 6.
- (2) Where an inspector has reasonable cause to believe that if the notice to be issued in terms of section 5 would not be complied with or that any documents to which it could relate would be removed, tampered with or destroyed, the inspector may, on producing evidence of his or her authority, enter any premises referred to in subsection (1) for the purpose of obtaining any information or documents, being information or documents that could have been required under such notice as is referred to under section 5.

### **Right of Entry**

7. For the purposes of any action taken under the provisions of this Chapter, the Regulatory Authority may request the assistance of the Commissioner of Police, who may for such purpose, exercise such powers as are vested in the Namibia Police Service for the prevention of offences and the enforcement of law and order.

## **PART 3**

### **VIRTUAL ASSET SERVICE PROVIDERS**

#### **Chapter 1: License**

### **Requirement to be licensed**

8. (1) No person shall carry out the business activities of a virtual asset service provider in or from Namibia unless he is the holder of a virtual asset service provider's licence.

- (2) Any person who contravenes that contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$ 100 million or, where the commission of the offence is attributable to a representative of the person, to such a fine or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

### **Application for license**

9. (1) No person, other than a company shall carry on the business of a virtual asset service provider.

- (2) Subject to subsection (3), an application for a licence shall –

- (a) be made in such form and manner as the Regulatory Authority may prescribe;
- (b) specify the class of license being applied for;
- (c) be accompanied by –
  - (i) the certificate of incorporation for the company;
  - (ii) business plan or feasibility study setting out, amongst others, the nature and scale of the business activities proposed to be carried out;
  - (iii) particulars of the applicant’s arrangements for the management of its business activities;
  - (iv) policies and measures to be adopted by the applicant to meet its obligations under this Act, the Financial Intelligence Act, 2012 (Act No 13 of 2012) and the United Nations (Financial Prohibition, Arms Embargo and Travel Ban) Act 2019 relating to anti-money laundering and combatting the financing of terrorism and proliferation;
  - (v) particulars and information relating to customer due diligence of promoters, beneficial owners, controllers and directors;
  - (vi) a written authorisation given by each of the directors of the applicant or by at least 2 directors duly authorised by a resolution of the board of directors, for any regulatory body, law enforcement body or financial institution, in Namibia or in a foreign country, to release to the Regulatory Authority, for use in respect to the application and enforcement of this Act, any information about the applicant, and

any of its promoters, beneficial owners, officers and controllers, as may be applicable; and

(vii) such application fee as may be prescribed in the Regulatory Authority.

(3) Notwithstanding any other enactment –

(a) a banking institution may, with the written approval of the Bank, apply –

- (i) for a class “R” licence or class “I” licence to carry out the business activities of a virtual asset service provider;
- (ii) through its subsidiary, for a class “M” licence, class “O” licence or class “S” licence to carry out the business activities of a virtual asset service provider;

(b) the holder of a licence issued under the Payment Systems Management Act, 2003 (Act No 18 of 2003) Act may, with the written approval of the Bank, apply, through its subsidiary, for a licence to carry out the business activities of a virtual asset service provider.

(4) The Regulatory Authority may require an applicant to –

- a. give such other information, document or report in connection with the application; and
- b. have any information submitted in support of the application verified at the cost of the applicant.
- c. The Regulatory Authority shall not be bound to deal further with the application until the requirements under this section are satisfied.

(5) An applicant may withdraw an application by giving written notice, including the reasons thereof, to the Regulatory Authority at any time before the determination of the application.

### **Determination of Application**

10. (1) Subject to this Act and to the applicable Acts, the Regulatory Authority may, on an application made under section 9, and after being provided with all such information, documents and reports as it may require, reject or grant the application.

(2) The Regulatory Authority shall not grant an application unless it is satisfied that –

- (a) The application complies with this Act;

- (b) The criteria set out for the grant of the license are met;
  - (c) The applicant has adequate resources, infrastructure, staff with appropriate competence, experience and proficiency to carry out the business activities of a virtual asset service provider;
  - (d) The applicant has adequate arrangements for proper supervision of everything done under the license so as to ensure compliance with this Act, the Financial Intelligence Act, 2012 (Act No 13 of 2012), any other applicable Acts and the conditions of the license;
  - (e) the applicant and each of its controllers, beneficial owners, their associates and officers are fit and proper persons to carry out the business activities to which the licence is sought;
  - (f) the applicant, once licensed, will satisfy criteria or standards, including prudential standards, issued by the Regulatory Authority; and
  - (g) no prejudice would be caused or would ensue to the financial services industry or any part thereof, if the application is granted.
- (3) Notwithstanding the class of licence applied for, the Regulatory Authority may, having regard to all the circumstances of the application and, in particular:
- (a) the business activities proposed to be carried out by the applicant;
  - (b) the capacity of the applicant to carry out the business activities; and
  - (c) the interests of the clients or potential clients and the public generally,
- determine that the applicant should be issued with a different class of licence.
- (4) In determining an application, the Regulatory Authority may, in addition, consider -
- (a) any international standard relating to matters falling under this Act; and
  - (b) any information obtained from a foreign regulator or foreign enforcement authority.
- (5) Where the Regulatory Authority grants an application, it must, on payment of such fee as prescribed by the Minister by Notice in the Gazette, issue a licence to the applicant on such terms and conditions as it may determine.

## **Office premises of virtual asset service provider**

11. (1) A virtual asset service provider must have a physical office in Namibia.
- (2) The business activities of a virtual asset service provider shall be directed and managed from Namibia and, in determining whether it complies with this requirement, the Regulatory Authority may consider, inter alia, the following factors –
- (a) where the strategy, risk management and operational decision making of the virtual asset service provider occurs;
  - (b) whether the presence of executives who are responsible for, and involved in, the decision making related to the business activities of the virtual asset service provider are located in Namibia; and
  - (c) where meetings of the board of directors of the virtual asset service provider take place;
  - (d) where management of the virtual asset service provider meets to effect policy decisions;
  - (e) the residence of the officers or employees of the virtual asset service provider; and
  - (f) the residence of one or more directors of the virtual asset service provider.

## **Register of Virtual Asset Service Providers**

12. (1) The Regulatory Authority shall establish and maintain a Register of Virtual Asset Service Providers which shall be published on its website and shall, in respect of every virtual asset service provider, contain the following information –
- (a) the name and address of the principal place of business of the virtual asset service provider;
  - (b) the class of licence issued to the virtual asset service provider;
  - (c) the date on which the licence was issued;
  - (d) the expiry date of the licence, as may be applicable;
  - (e) the names of the principal contact person of the virtual asset service provider; and
  - (f) any other relevant information that the Regulatory Authority deems necessary.

### **Variation of licence**

13. (1) An application to vary or remove any limitation imposed on the scope of a licence, including the period of validity of the licence, shall be made in such form and manner as the Regulatory Authority may approve and shall be accompanied by such –
- (a) information and documents as the Regulatory Authority may require; and
  - (b) fee as prescribed by the Minister by notice in the Gazette.

### **Material change to business activities**

14. (1) No virtual asset service provider may, without the prior written approval of the Regulatory Authority –
- (a) modify the scope of its business activities;
  - (b) reorganise its legal structure;
  - (c) merge with another entity;
  - (d) change its name; or
  - (e) change its external auditor.

## **Chapter 2:**

### **Officers, Controllers and Beneficial Owners of Virtual Asset Service Providers**

#### **Approval of officers**

15. (1) A virtual asset service provider may not appoint an officer without the prior approval of the Regulatory Authority.
- (2) Any appointment made in contravention of subsection (1) shall be of no effect.
- (3) An application for the approval of the Regulatory Authority pursuant to subsection (1) must –
- (a) be accompanied by full particulars of the person to be appointed and such other information as the Regulatory Authority may require;
  - (b) not be proceeded with by the Regulatory Authority unless all information required under paragraph (a) has been submitted; and

- (c) be deemed to be approved where the Regulatory Authority has not objected to the proposal within 30 days of having received the application, or any information required under paragraph (a), whichever is later.
- (4) Where the Regulatory Authority objects to a proposed appointment, it must give the virtual asset service provider an opportunity to make representations within such reasonable time as the Regulatory Authority may specify.
- (5) The Regulatory Authority may, after having considered the representations made pursuant to subsection (4), withdraw its objection to the proposed appointment.
- (6) A virtual asset service provider must forthwith give written notice to the Regulatory Authority of the termination of appointment of an officer, for any cause whatsoever, and must provide particulars of such termination as the Regulatory Authority may require.
- (7) Notwithstanding any other enactment, where, at any time, the Regulatory Authority is satisfied that an officer of a virtual asset service provider is not a fit and proper person, it may, after giving the virtual asset service provider an opportunity to make representations thereon, direct the virtual asset service provider to terminate the appointment of the officer.
- (8) Any virtual asset service provider who contravenes that contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$ 10 million or, where the commission of the offence is attributable to a representative of the person, to such a fine or imprisonment for a period not exceeding 5 years, or to both such fine and such imprisonment.

### **Executive Officer**

16. (1) (a) A virtual asset service provider may not appoint an executive officer without the prior approval of the Regulatory Authority.
- (b) Any appointment made in contravention of paragraph (a) shall be of no effect.

- (c) A person may be appointed as an executive officer where is –
  - (i) he/she is a natural person resident in Namibia;
  - (ii) he/she of at least senior management level, and
  - (iii) he/she had been passed fitness and probity requirements.
- (d) An application for the appointment of an executive officer must be accompanied by –
  - (i) the location of the executive officer’s office; and
  - (ii) particulars of the executive officer.
- (e) A virtual asset service provider must forthwith give written notice to the Regulatory Authority of the termination of appointment of an executive officer, for any cause whatsoever, and must provide particulars of such termination as the Regulatory Authority may require.
- (f) Where there is any change in the location of the executive officer’s office or particulars of the executive officer, the virtual asset service provider must, not later than 30 days after such change, give written notice to the Regulatory Authority.
- (g) Notwithstanding any other enactment, where, at any time, the Regulatory Authority is satisfied that an executive officer of a virtual asset service provider is not a fit and proper person, it may, after giving the executive officer and the virtual asset service provider an opportunity to make representations thereon, direct the virtual asset service provider to terminate the appointment of the executive officer.
- (h) Any virtual asset service provider who contravenes that contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$ 10 million or, where the commission of the offence is attributable to a representative of the person, to such a fine or imprisonment for a period not exceeding 5 years, or to both such fine and such imprisonment.

- (2) (a) An executive officer must forthwith give written notice to the Regulatory Authority where he/she has reason to believe that there is a likelihood of any of the following occurring or having occurred –
- i. the virtual asset service provider becoming insolvent;
  - ii. a cyber-reporting event;
  - iii. failure by the virtual asset service provider to comply with this Act;
  - iv. involvement of the virtual asset service provider in any criminal proceedings, whether in Namibia or abroad;
  - v. the virtual asset service provider ceasing to carry out its business activities in or from Namibia; and
  - vi. a material change to the business activities of the virtual asset service provider.
- (b) The executive officer must, not later than 7 days of a written notice under paragraph (a), furnish the Regulatory Authority with a report setting out all the information that is in his/her possession.
- (c) An executive officer who contravenes that contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$ 10 million or imprisonment for a period not exceeding 5 years, or to both such fine and such imprisonment.

### **Controllers and Beneficial Owners**

17. (1). Subject to subsections (3) and (4), no shares or legal or beneficial interest in a virtual asset service provider may be issued or transferred to any person except with the prior approval of the Regulatory Authority.
- (2) Any issue or transfer of shares or legal or beneficial interest in contravention of subsection (1) shall be of no effect.
- (3) Subsection (1) shall not apply to a transfer of shares or legal or beneficial interest of less than 5 per cent in a virtual asset service provider unless such transfer results in –

- (a) a person who holds more than 20 per cent of the shares or legal or beneficial interest;
  - (b) a change in the effective control in the virtual asset service provider.
- (4) Where there is a transfer of shares or legal or beneficial interest of less than 5 per cent in a virtual asset service provider, he/she must give written notice to the Regulatory Authority of the transfer.
- (5) A virtual asset service provider must provide such particulars of any person under this section as the Regulatory Authority may require.
- (6) Where, at any time, the Regulatory Authority is satisfied that a controller or beneficial owner of a virtual asset service provider or any of its related corporate body or its associates is not a fit and proper person, it may, after giving the virtual asset service provider an opportunity to make representations about the matter, direct –
  - (a) such person to dispose of his/her shareholding in the virtual asset service provider;
  - (b) such person not to exercise any voting rights with respect to his/her shareholding in the virtual asset service provider; or
  - (c) the virtual asset service provider to take such remedial measures, as the Regulatory Authority may determine.
- (7) Where the Regulatory Authority refuses an approval under subsection (1), it must give written notice to the virtual asset service provider.

### **Chapter 3:**

#### **Responsibilities of Virtual Asset Service Providers**

##### **Custody and protection of client assets**

18. (1) A virtual asset service provider that has custody of one or more virtual assets for one or more clients must maintain, in its custody, a sufficient amount of each type of virtual asset in order to meet its obligations to clients.

(2) The virtual asset referred to in subsection (1) shall –

- (a) be held by the virtual asset service provider for the client entitled to the virtual asset;
- (b) not be the property or virtual asset of the virtual asset service provider; and
- (c) not be subject to the claims of creditors of the virtual asset service provider.

(3) In this section –

“property” has the meaning attributed to that term in section 1 of the Prevention of Organised Crime Act.

### **Prevention of market abuse**

19. (1) A virtual asset service provider must ensure that the systems and controls applied to its business activities are adequate and appropriate for the scale and nature of those business activities, including systems and controls which adequately and appropriately address –

- (a) the recording, storing, protecting and transmission of information;
- (b) the effecting and monitoring of transactions;
- (c) the operation of the measures taken for securing the timely discharge, whether by performance, compromise or otherwise, of the rights and liabilities of the parties to transactions;
- (d) the safeguarding and administration of assets belonging to investors; and
- (e) in the event of disruption, business continuity and planning.

(2) For the purpose of subsection (1), a virtual asset service provider that holds a Class “S” licence must ensure that the systems and controls cover, in respect to its virtual asset exchange –

- (a) identification and detection of suspicious price spikes or anomalies;
- (b) prevention and monitoring of abusive trading strategies; and

- (c) immediate steps for the restriction or suspension of trading upon discovery of market manipulative or abusive trading activities, including temporarily freezing of accounts.
- (3) A virtual asset service provider that holds a Class “S” licence must –
- (a) as soon as practicable, give written notice to the Regulatory Authority where it becomes aware of any market manipulative or abusive trading activities on its virtual asset exchange; and
  - (b) implement appropriate remedial measures and provide the Regulatory Authority with such additional assistance as the Regulatory Authority may direct.

### **Transfer of virtual assets**

20. (1) Where a transfer of virtual asset is made –
- (a) the originating virtual asset service provider must –
    - (i) obtain and hold required and accurate originator information and required beneficiary information on the transfer; and
    - (j) immediately and securely submit the information obtained and held pursuant to subparagraph (i) to the beneficiary virtual asset service provider or any other financial institution; and
  - (b) the beneficiary virtual asset service provider must obtain and hold required originator information and required and accurate beneficiary information on the transfer.
- (2) The information obtained and held pursuant to subsection (1) must be kept in a manner that they are immediately made available to the Regulatory Authority and, upon request, to any other relevant competent authority.
- (3) For the purpose of subsection (1)(a), an originating virtual asset service provider must ensure that all transfers of virtual assets are always accompanied by –
- (a) required and accurate originator information, including –
    - (i) the name of the originator;

- (ii) the originator virtual asset account number where such an account is used to process the transaction or, in the absence of a virtual asset account number, a unique transaction reference number which permits traceability of the transaction; and
- (iii) any of the following information –
  - (A) the originator’s physical address;
  - (B) the originator’s National Identity Card number or passport number;
  - (C) the originator’s customer identification number; or
  - (D) the originator’s place of birth;

(b) the following required beneficiary information –

- (i) the name of the beneficiary; and
- (ii) the beneficiary virtual asset account number where such an account is used to process the transaction or, in the absence of a virtual asset account number, a unique transaction reference number which permits traceability of the transaction.

(4) The originating virtual asset service provider may not execute a transfer of virtual asset where it does not comply with the requirements specified in subsection (3).

(5) For the purpose of subsection (1)(b) – the “required information” includes –

(a) the name of the originator;

(b) the originator virtual asset account number where such an account is used to process the transaction or, in the absence of a virtual asset account number, a unique transaction reference number which permits traceability of the transaction;

(c) any of the following –

- (i) the originator’s physical address;
- (ii) the originator’s National Identity Card number or passport number;

- (iii) the originator's customer identification number; or
- (iv) the originator's place of birth;
- (d) the name of the beneficiary; and
- (e) the beneficiary virtual asset account number where such an account is used to process the transaction or, in the absence of a virtual asset account number, a unique transaction reference number which permits traceability of the transaction.

(6) A beneficiary virtual asset service provider must –

- (a) take reasonable measures, which may include post-event monitoring or real-time monitoring where feasible, to identify transfers of virtual assets that lack required originator information or required beneficiary information;
- (b) have risk-based policies and procedures for determining –
  - (i) when to execute, reject or suspend a transfer of virtual asset lacking required originator or required beneficiary information; and
  - (ii) the appropriate follow-up actions.

(7) This section shall apply to a financial institution when sending or receiving virtual asset transfers on behalf of a customer as they would have applied to a virtual asset service provider, with such modifications, adaptations and exceptions as may be necessary to bring them in conformity with this section.

(8) In this section –

“accurate” means information that has been verified for accuracy.

## **Chapter 4:**

### **Financial Obligations of Virtual Asset Service Providers**

#### **Financial requirements**

21. A virtual asset service provider must maintain such minimum stated unimpaired capital and such other financial requirements, as prescribed by the Regulatory Authority.

### **Separate accounts**

22. A virtual asset service provider that holds virtual assets of clients must keep their accounts in respect of such assets separate from any accounts kept in respect of any other business.

### **Audited financial statement**

23. (1) A virtual asset service provider must, every year but not later than 4 months after the close of its financial year, file with the Regulatory Authority an audited financial statement in respect of all transactions and balances relating to its business activities.

(2) Notwithstanding any other enactment, the audited financial statement to be filed with the Regulatory Authority under subsection (1) must be –

(a) prepared in accordance with such accounting standards as the Regulatory Authority may approve; and

(b) be audited by an auditor acceptable to the Regulatory Authority and who must perform the audit in accordance with International Standards on Auditing or such other auditing standards as the Regulatory Authority may approve.

(3) A virtual asset service provider must keep a copy of the most recent audited financial statement, together with a copy of the auditor's report thereon or accounts, as the case may be, for a period of not less than 7 years beginning with its filing date under subsection (1).

(4) In this section – “financial year” means –

(a) in respect of its first financial year, a period not exceeding 18 months from the date of its incorporation and, in respect of every subsequent financial year, a period not exceeding 12 months; or

(b) where there is a change in its financial year, a period not exceeding 18 months.

## **PART 4**

### **ISSUERS OF INITIAL TOKEN OFFERINGS**

#### **Chapter 1: Registration as Issuer of Initial Token Offerings**

##### **Requirement to be registered**

24. (1). No person may carry out the business of initial token offerings in or from Namibia unless he is registered as an issuer of initial token offerings.

(2) Any person who contravenes subsection (1) or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$ 10 million or imprisonment for a period not exceeding 5 years, or to both such a fine and such imprisonment.

##### **Application for registration**

25. (1) No person, other than a company, may carry out the business activities of an issuer of initial token offerings.

(2) An application for registration as an issuer of initial token offerings must, in such form and manner as the Regulatory Authority may approve, be made through a virtual exchange in Namibia or its equivalent acceptable to the Regulatory Authority at least 45 days before the start of the offer period.

(3) An application under subsection (1) must be accompanied by –

(a) the certificate of incorporation of the company;

(b) a white paper, together with a written legal opinion obtained from a law practitioner, legal consultant or law firm concerning the compliance with the requirements of this Act;

- (c) an approval letter, in respect to the initial token offerings, issued by the virtual asset exchange or its equivalent acceptable to the Regulatory Authority;
  - (d) policies and measures to be adopted by the applicant to meet its obligations under this Act and under the applicable Acts relating to anti-money laundering and combatting the financing of terrorism and proliferation;
  - (e) such application fee as prescribed in by the Regulatory Authority.
- (4) The Regulatory Authority may require an applicant to –
- (a) give such other information, document or report in connection with the application;  
and
  - (b) have any information submitted in support of the application verified at the cost of the applicant.
- (5) The Regulatory Authority shall not be bound to deal further with the application until the requirements under this section are satisfied.
- (6) An applicant may withdraw an application by giving written notice, including the reasons thereof, to the Regulatory Authority at any time before the determination of the application.

### **Determination of application for registration**

26. (1) Subject to this Act and to the applicable Acts, the Regulatory Authority may, on an application made under section 26, and not later than 30 days after being provided with all such information, documents and reports as it may require, reject or grant the application.
- (2) The Regulatory Authority may not grant an application unless it is satisfied that –
- (a) the application complies with this Act;
  - (b) the criteria set out for the grant of the application are met;

- (c) the applicant has adequate resources, infrastructure, staff with the appropriate competence, experience and proficiency to carry out the business activities of an issuer of initial token offerings;
  - (d) the applicant has adequate arrangements for proper supervision of everything done as an issuer of initial token offerings so as to ensure compliance with this Act, the applicable Acts and the conditions of its registration;
  - (e) the applicant is a fit and proper person to carry out the business of initial token offerings;
  - (f) the applicant, once registered, will satisfy criteria or standards, including prudential standards, issued by the Regulatory Authority; and
  - (g) no prejudice would be caused or would ensue to the financial services industry or any part thereof, if the application is granted.
- (3) In determining an application, the Regulatory Authority may, in addition, consider –
- (a) international standards relating to matters falling under this Act; and
  - (b) any information obtained from a foreign regulator or foreign enforcement authority.
- (4) Where the Regulatory Authority's assessment is that a virtual token is a security, the applicant must withdraw its application for registration of the token and may proceed to have the token registered in accordance with the Securities Act.
- (5) Where the Regulatory Authority grants an application, it shall, on payment of such fee as prescribed by the Regulatory Authority, register the applicant as an issuer of initial token offerings on such terms and conditions as it may determine.

### **Register of Issuers of Initial Token Offerings**

- 28.(1) The Regulatory Authority must establish and maintain a Register of Issuers of Initial Token Offerings which must be published on its website and must, in respect of every issuer of initial token offerings, contain the following information –
- (a) the name and address of the principal place of business of the issuer of initial token offerings;
  - (b) the date on which the issuer of initial token offerings was registered;

- (c) the name and symbol of the virtual token created;
- (d) the exchange or platform on which the virtual token is traded;
- (e) any condition imposed by the Regulatory Authority, including conditions concerning the sale or redemption of the virtual token;
- (f) the regulatory licenses or registrations held by the issuer of initial token offerings, including any foreign licences or registrations;
- (g) any other relevant information that the Regulatory Authority deems necessary.

## **Chapter 2: Obligations of Issuers of Initial Token Offerings**

### **White paper**

27. (1) An issuer of initial token offerings must, in its white paper, provide full and accurate disclosure of information which would allow potential purchasers to make an informed decision.
- (2) An issuer of initial token offerings must publish its white paper by posting a copy on a website operated and maintained by it, or by a third party for and on its behalf, which shall be readily accessible to, and downloadable by, potential purchasers for the duration of the offer period and for not less than 15 days after the offer period ends.
- (3) The white paper required to be published pursuant to subsection (2) must –
- (a) be signed by every member of the governing body of the issuer of initial token offerings;
  - (b) address the matters specified in the Third Schedule.
- (4) The Regulatory Authority may order an issuer of initial token offerings to amend its white paper to include supplementary information.

### **Offer period**

28. (1) Any virtual token offered must be distributed only during the offer period stipulated in the white paper.
- (2) For the purpose of subsection (1), an offer period must not exceed 6 months, but where the offer period exceeds 6 months, the Regulatory Authority may order the cancellation of any initial token offerings and take enforcement action.

### **Disclosure by issuers of initial token offerings**

29. (1) Where, after an issuer of initial token offerings has published its white paper but before the close of the offer period, it becomes aware of any information which could affect the interests of purchasers, it must immediately give written notice to the Regulatory Authority and disclose that information by a supplement to the white paper.

(2) Where an issuer of initial token offerings fails to give written notice to the Regulatory Authority or make a disclosure pursuant to subsection (1), it commits an offence and is liable to a fine not exceeding N\$ 10 million or imprisonment for a period not exceeding 5 years, or to both such a fine and such imprisonment.

### **Classification of virtual tokens**

30. (1) For the purpose of section 38, an issuer of initial token offerings must identify the class or classes of virtual tokens which must be available for subscription in its white paper.

(2) No issuer of initial token offerings shall change the class or classes of virtual tokens to be offered except with the prior written approval of the Regulatory Authority.

(3) Where, pursuant to subsection (2), the Regulatory Authority approves a change of class or classes of virtual tokens, the issuer shall amend and publish its white paper in accordance with section 28.

### **Advertisement of initial token offerings**

31. (1) Any advertisement relating to an initial token offerings must be –

- (a) accurate and not be misleading;
- (b) clearly identifiable as an advertisement;
- (c) consistent with the information contained in the white paper; and
- (d) compliant with any criteria prescribed by the Regulatory Authority under subsection (2).

- (2) The Regulatory Authority may prescribe criteria in respect of the publication, form and content of advertisements relating to initial token offerings.
- (3) Criteria set by the Regulatory Authority in terms of subsection (2) may –
- (a) prohibit the publication of advertisements of any description, whether by reference to their contents, to the persons by whom they are published or otherwise;
  - (b) make provision as to the matters which should or should not be included in such advertisements; and
  - (c) provide for any exemption from any requirement.
- (4) Where it appears to the Regulatory Authority that an advertisement relating to initial token offerings –
- (a) does not comply with criteria set by the Regulatory Authority made under this section; or
  - (b) is false, inaccurate or misleading, the Regulatory Authority must issue such directives, as it deems appropriate in the circumstances, to the persons who have published or caused to be published the advertisement.
- (5) A directive under subsection (4) may –
- (a) require a person to modify, in whole or in part, the advertisement;
  - (b) require the publication of the advertisement to be removed.
- (6) Nothing in this section shall prejudice any remedy that an aggrieved person may have against a person who published or caused to be published an advertisement contrary to the requirements in criteria set by the Regulatory Authority made under this section, or which is false or misleading.
- (7) The Regulatory Authority must publish a notice advising the public of any action taken pursuant to this section.

## **Chapter 3 – Purchaser’s Right Against Virtual Token Purchased**

### **Purchaser’s right to rescission or damages**

32. (1) Where an issuer of initial token offerings publishes its white paper, or any amendment thereto, which contains a material misrepresentation relating to any matters specified in the Third Schedule, a purchaser shall have a right of action against the issuer of initial token offerings for –
- (a) the rescission of the subscription; or
  - (b) damages.

### **Purchaser’s right of withdrawal**

33. (1) A purchaser of a virtual token shall be entitled to withdraw his purchase by giving written notice to the issuer of initial token offerings.
- (2) A purchaser’s notice of withdrawal shall be made not later than 72 hours after the date of the agreement to purchase the virtual token.
- (3) Where a purchaser has exercised the right of withdrawal, all funds paid by the purchaser shall be paid over by the issuer of initial token offerings to the purchaser not later than 5 working days of the purchaser’s request.

## **PART 5**

### **PROFESSIONAL CONDUCT AND COMPLIANCE**

#### **Professional conduct of virtual asset service providers and issuers of initial token offerings**

34. (1) A virtual asset service provider and an issuer of initial token offerings shall, in carrying out its respective business activities –
- (a) act honestly and fairly;
  - (b) act with due skill, care and diligence;
  - (c) observe and maintain a high standard of professional conduct;
  - (d) refrain from engaging in any improper or illegal conduct;
  - (e) maintain adequate financial resources and solvency;

- (f) ensure that appropriate measures are put into place for the protection of client assets and money;
- (g) have effective corporate governance arrangements consistent with this Act; and
- (h) have measures in place to comply with the Applicable Acts.

## **Confidentiality**

35. Subject to the Financial Intelligence Act, 2012 (Act No 13 of 2012), as amended, a virtual asset service provider and an issuer of initial token offerings must implement and maintain measures for preserving the confidentiality of information of its clients.

## **PART 6**

### **REQUEST FOR INFORMATION, INSPECTION, INVESTIGATION AND COOPERATION**

#### **Chapter 1: Request for Information, Inspection and Investigation**

#### **Request for Information**

37. (1) Every –

- (a) virtual asset service provider and issuer of initial token offerings;
- (b) controller of a virtual asset service provider and issuer of initial token offerings;
- (c) past virtual asset service provider and issuer of initial token offerings; or
- (d) other person who ought to be licensed as a virtual asset service provider or registered as an issuer of initial token offerings,

must furnish to the Regulatory Authority all such information and produce all such records or documents at such time and place as may be required of him in writing.

- (2) Subsection (1) applies to information, records or documents required in connection with the discharge by the Regulatory Authority of its functions under this Act and the applicable Acts.

(3) The Governor may require any information or document supplied to the Regulatory Authority to be verified or authenticated in such manner as he may specify, at the cost of the person supplying it.

(4) In this section – “information” –

(a) means any type of information; and

(b) (b) includes information relating to due diligence verification on the identification of the beneficial owners and persons acting on behalf of the customers of the virtual asset service providers and issuers of initial token offerings.

## **Inspection**

36. (1) The Regulatory Authority may, at any time, cause to be carried out an inspection into the business activities of a virtual asset service provider and an issuer of initial token offerings, and cause to be carried out an audit of their books and records, so as to verify whether they –

(a) are complying or have complied with the requirements of this Act or any applicable Acts, or the conditions of their licence or registration, as the case may be;

(b) satisfy criteria or standards set out in, or made, under this Act.

(2) For the purpose of subsection (1), the Governor may –

(a) direct orally or in writing –

(i) the virtual asset service provider or issuer of initial token offerings; or

(ii) any other person whom the Governor reasonably believes has in his possession or control a document or thing that may be relevant to the Regulatory Authority,

to produce the document or thing as specified in the direction;

(b) examine, and make copies or extracts from, any document or thing that he considers may be relevant to the inspection;

(c) retain any document or thing he deems necessary; or

(d) direct a person who is or apparently is an officer or employee of the virtual asset service provider or issuer of initial token offerings to give information about any document or thing that he considers may be relevant to the inspection.

(3) A virtual asset service provider or an issuer of initial token offerings, and their officers and employees must give the Governor full and free access to the records and other documents of the virtual asset service provider or issuer of initial token offerings as may be reasonably required for an inspection.

(4) (a) Any person who, during an inspection –

- (i) intentionally obstructs the Governor in the discharge of his functions and exercise of his powers;
- (ii) fails, without reasonable excuse, to comply with the directions of the Governor in the discharge of his functions and exercise of his powers,

commits an offence and is liable to a fine not exceeding N\$ 10 million or imprisonment for a period not exceeding 5 years, or to both such a fine and such imprisonment.

(b) In this subsection – “person” includes –

- (i) a controller of the virtual asset service provider or issuer of initial token offerings; and
- (ii) a past virtual asset service provider or issuer of initial token offerings.

(5) In this section –

“Governor” includes any person designated by the Governor or Regulatory Authority.

### **Frequency of inspection**

37. (1) The frequency of an inspection carried out under section 37 shall be determined on the basis of, but not limited to –

- (a) the money laundering or terrorism financing risks and policies, internal controls and procedures associated with a virtual asset service provider or an issuer of initial token offerings, as assessed by the Regulatory Authority;
- (b) the money laundering or terrorism financing risks present in Regulatory Authority;
- (c) the characteristics of a virtual asset service provider or an issuer of initial token offerings and the degree of discretion allowed to them under the risk-based approach implemented by the Regulatory Authority.

(2) The Regulatory Authority must review the assessment of the money laundering or terrorism financing profile of a virtual asset service provider as and when there are major developments in the management and operations of their business activities.

## **Investigation**

38. (1) Where the Governor has reasonable grounds to believe that a virtual asset service provider or an issuer of initial token offerings –

- (a) has committed, is committing or is likely to commit a breach of –
  - (i) this Act and any applicable Acts;
  - (ii) any condition of its licence or registration, as the case may be;
  - (iii) any direction issued by the Regulatory Authority under this Act;
- (b) has carried out, is carrying or is likely to carry out its business activities which may cause prejudice to the soundness and stability of the financial system of Namibia or to the reputation of Namibia or which may threaten the integrity of the system, the Governor may order that an investigation be conducted into its respective business activities.
- (c) The Governor shall, for the purpose of subsection (1), discharge its functions and exercise its powers in the same manner provided for under

section .... of the ..... Act, with such modifications, adaptations and exceptions as may be necessary to bring them in conformity with this Act.

- (2) (a) Any person who, in respect to a question put to him during an investigation
- (i) says anything that the person –
    - (A) knows to be false or misleading in a material particular; or
    - (B) is reckless as to whether it is false or misleading in a material particular; or
  - (ii) refuses, without reasonable excuse, to answer, commits an offence and is liable to a fine not exceeding N\$ 10 million or imprisonment for a period not exceeding 5 years, or to both such a fine and such imprisonment.
- (b) Any person who, during an investigation –
- (i) intentionally obstructs the Governor in the discharge of his functions and exercise of his powers;
  - (ii) fails, without reasonable excuse, to comply with the directions of the Governor in the discharge of his functions and exercise of his powers, commits an offence and is liable to a fine not exceeding N\$ 10 million or imprisonment for a period not exceeding 5 years, or to both such a fine and such imprisonment.
- (c) In this subsection – “person” includes –
- (i) a controller of the virtual asset service provider or issuer of initial token offerings;
  - (ii) a past virtual asset service provider or issuer of initial token offerings.

### **Special investigation**

39. (1) Where the Governor has reasonable grounds to believe that –
- (a) any person who, either as a principal or as an agent, provides, advertises or holds himself out in any way as providing services as a virtual asset

- service provider or an issuer of initial token offerings without being licensed or registered, as the case may be; or
- (b) a person has committed, is committing or is likely to commit a breach of this Act,

the Governor may order that a special investigation be conducted into the business activities of that person.

(2) The Governor must, for the purpose of subsection (1), discharge his functions and exercise his powers in the same manner provided for under ~~section 44 of the Financial Services Act~~, with such modifications, adaptations and exceptions as may be necessary to bring them in conformity with this Act.

#### **Use of investigative tools and information**

40. (1) The Regulatory Authority or any investigatory authority may, in carrying out an investigation, supervision or other function under this Act or the applicable Acts, make use of any appropriate tool or information, including –
- (a) blockchain or distributed ledger analytics tools;
  - (b) law enforcement and intelligence reports;
  - (c) web-scraping or open-source information;
  - (d) information obtained from international co-operation; or
  - (e) any other reliable or reputable source of information.
- (2) The Regulatory Authority and any investigatory authority may share, amongst each other, any information obtained pursuant to subsection (1) when reasonably required for the purpose of any criminal investigation, prosecution or Court proceedings.
- (3) Notwithstanding any other enactment, where, pursuant to subsection (1), the Regulatory Authority or any investigatory authority obtains information that leads it to suspect that an offence has been, or is about to be, committed, it must immediately report the matter to any one of them.

(4) In any criminal proceedings under this Act or the applicable Acts, any tool or information used pursuant to subsection (1) shall be admissible as evidence for the truth of its contents.

(5) Nothing in subsection (4) must affect the relevance or weight to be attached in criminal proceedings by a Court to any tool or information used pursuant to subsection (1).

### **Agent to conduct inspection and investigation**

41. (1) The Regulatory Authority may, at the expense of a virtual asset service provider or an issuer of initial token offerings, engage a qualified person to act as an agent for conducting an inspection, an investigation or a special investigation.

(2) An agent must submit a written report of the findings of the inspection, investigation or special investigation to the Regulatory Authority.

## **Chapter 2: Cooperation with Other Entities**

### **Exchange of information and mutual assistance**

42. (1) Notwithstanding any other enactment, the Regulatory Authority may exchange information with law enforcement agencies, investigatory authorities, supervisory authorities, regulatory bodies, FIU, public sector agencies and comparable overseas entities.

(2) The Regulatory Authority may enter into any agreement or arrangement for the exchange of information with a public sector agency, a supervisory authority, a law enforcement agency, FIU and a comparable overseas entity or an international organisation where the Regulatory Authority is satisfied that the public sector agency, the supervisory authority, the law enforcement agency, FIU and any comparable overseas entity or the international organisation, as the case may be, has the capacity to protect the confidentiality of the information imparted, in case such a condition of confidentiality is imposed by the Regulatory Authority.

(3) Notwithstanding the Mutual Assistance in Criminal and Related Matters Act and any other enactment, any agreement or arrangement between the Regulatory Authority and an overseas comparable entity may provide that the Regulatory Authority shall provide such assistance to the overseas comparable entity as may be required for the purposes of its investigatory, supervisory and regulatory functions.

(4) In this section –

“FIC” means the Financial Intelligence Centre established under section 7 of the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended;

“public sector agency” includes any Ministry, Government department, local authority or statutory body;

“regulatory body” has the same meaning as in the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended;

“supervisory authorities” has the same meaning as in the Financial Intelligence Act, 2012 (Act No 13 of 2012) as amended.

## **PART 7**

### **SUSPENSION AND SURRENDER OF LICENCE AND REGISTRATION**

#### **Chapter 1: Suspension of Licence and Registration**

##### **Suspension of Licence and Registration**

43. (1) Where the Governor is satisfied on reasonable grounds that it is urgent and necessary to do so –

- (a) for the prevention or mitigation of damage to the integrity of the financial services industry or to any part thereof;
- (b) for the protection of the interest of clients of the virtual asset service provider or issuer of initial token offerings, or of the interest of the public in general; o

- (c) for the protection of the good repute of Namibia as a centre for financial services, he/she may, by notice, suspend the licence of a virtual asset service provider or registration of an issuer of initial token offerings.
- (2) The Governor must, subject to subsection (3), not suspend the licence of a virtual asset service provider or registration of an issuer of initial token offerings under subsection (1) unless he gives the virtual asset service provider or issuer of initial token offerings –
- (a) prior notice of his intention and the reasons for doing so; and
  - (b) an opportunity to make representations on the matter.
- (3) Where the Governor considers that any delay in suspending the licence of a virtual asset service provider or registration of an issuer of initial token offerings may cause prejudice to their clients, the public or any part of the financial services industry, he may suspend the licence or registration with immediate effect and shall give the virtual asset service provider or issuer of initial token offerings the opportunity to make representations as soon as practicable, but not later than 7 days from the date the licence or registration is suspended.
- (4) The suspension of the licence of a virtual asset service provider or registration of an issuer of initial token offerings shall operate as the suspension of the licence or registration or similar permission granted to the agent or representative of the virtual asset service provider or issuer of initial token offerings, as may be applicable.
- (5) Where the licence of a virtual asset service provider or registration of an issuer of initial token offerings is suspended, the virtual asset service provider or issuer of initial token offerings shall cease to carry out the business activities authorised by the licence or registration, but he/she shall remain subject to the obligations of a virtual asset service provider or an issuer of initial token offerings and to the directions of the Regulatory Authority until the suspension of the licence or registration is cancelled.
- (6) A virtual asset service provider or an issuer of initial token offerings whose licence or registration, as the case may be, is suspended may, notwithstanding subsection

(5), continue to carry out such activities as the Governor may authorise and on such conditions as the Governor may determine.

(7) The Governor must give public notice of the suspension of the licence of a virtual asset service provider or registration of an issuer of initial token offerings.

## **Chapter 2: Surrender of Licence and Registration**

### **Surrender of licence and registration**

44. (1) A virtual asset service provider or an issuer of initial token offerings may voluntarily surrender its licence or registration, as the case may be, by giving written notice to the Regulatory Authority, and such surrender shall be irrevocable.

(2) Where the Regulatory Authority approves a surrender of licence or registration under subsection (1), section 45 shall apply.

### **Process following surrender of licence and registration**

45. (1) Where the licence of a virtual asset service provider or registration of an issuer of initial token offerings is voluntarily surrendered, the virtual asset service provider or issuer of initial token offerings shall, where so requested by the Regulatory Authority, not later than 7 days after submitting its written notice of surrender, prepare and submit a written plan to the Regulatory Authority setting out the steps it will follow to cease its business activities.

(2) The plan required under subsection (1) shall contain the following information –

- (a) the person who will manage the cessation of business activities of the virtual asset service provider or issuer of initial token offerings;
- (b) the length of time required to cease business activities;
- (c) the manner in which client files will be closed and secured;
- (d) client notification procedures;
- (e) client transfer procedures, where applicable; and
- (f) such other information as the Regulatory Body may, in the circumstances, require.

- (3) Upon the Regulatory Authority’s approval of a plan submitted by the virtual asset service provider or issuer of initial token offerings, the Regulatory Authority –
- (a) shall supervise the execution of the plan; and
  - (b) may give directions to the virtual asset service provider or issuer of initial token offerings to protect the interest of investors or purchasers, which the virtual asset service provider or issuer of initial token offerings shall comply with.

## **PART 8**

### **WINDING UP, DISSOLUTION OR APPOINTMENT OF ADMINISTRATOR**

#### **Winding up or dissolution**

46. Where the Regulatory Authority revokes a licence or registration, it may apply to the Court for the virtual asset service provider or issuer of initial token offerings to be wound up or dissolved, as the case may be.

#### **Appointment of Administrator**

47. The Regulatory Authority may, in accordance with section ...of the Financial Institutions and Markets Act, 2021 and with such modifications, adaptations and exceptions as may be necessary to bring them in conformity with this Act, appoint a person as an administrator in relation to the whole or part of the business activities of a virtual asset service provider or an issuer of initial token offerings whose licence or registration, as the case may be, has been suspended, revoked or surrendered, or where the Regulatory Authority considers that the conditions of its licence or registration are no longer met.

## **PART 9**

### **DISCIPLINARY PROCEEDINGS AND ADMINISTRATIVE SANCTION**

#### **Disciplinary proceedings**

48. (1) Notwithstanding the powers of the Governor to suspend a licence under section 43, where the Governor has reasonable cause to believe that a virtual asset service provider or an issuer of initial token offerings –

- (a) has been convicted by a Court of law for an offence under this Act or under the applicable Acts;
- (b) has failed to comply with any direction or order issued under this Act or any condition of the licence or registration, as the case may be;
- (c) is carrying out its business activities in a manner which threatens the integrity of the financial system of Namibia or is contrary or detrimental to the interest of the public;
- (d) no longer fulfils any condition or criterion specified under this Act in respect of the licence or registration;
- (e) no longer carries out the business activities for which it is licensed or registered;
- (f) has failed to commence its business activities within 6 months from the date on which it is licensed or registered, as the case may be; or
- (g) is not a fit and proper person, he/she may refer the matter to the Enforcement Committee for such action as the Enforcement Committee may deem appropriate.

(2) Where a matter is referred under subsection (1) and the Enforcement Committee intends to impose an administrative sanction under section 49 against a virtual asset service provider or an issuer of initial token offerings, sections ...to .... Of the Financial Institutions and Markets Act, 2021 shall apply with such modifications, adaptations and exceptions as may be necessary to bring them in conformity with this Act.

### **Administrative sanction**

49. (1) The Regulatory Authority may, with respect to a present or past virtual asset service provider or issuer of initial token offerings or any person who is a present or past officer, partner, shareholder, or controller of the virtual asset service provider or issuer of initial token offerings, as the case may be –
- (a) issue a private warning;
  - (b) issue a public censure;
  - (c) disqualify the virtual asset service provider or issuer of initial token offerings to be licensed or registered under this Act for a specified period;

- (d) in the case of an officer of the virtual asset service provider or issuer of initial token offerings, disqualify the officer from a specified office or position in the virtual asset service provider or issuer of initial token offerings for a specified period;
- (e) impose an administrative penalty;
- (f) revoke the licence of the virtual asset service provider or the registration of the issuer of initial token offerings.

## **PART 10**

### **OFFENCES AND COMPOUNDING OF OFFENCES**

#### **Offences**

50. (1) A virtual asset service provider or an issuer of initial token offerings that contravenes this Act commits an offence and is liable to a fine not exceeding N\$ 10 million or imprisonment for a period not exceeding 5 years, or to both such a fine and such imprisonment.

(2) Any person who –

- (a) wilfully makes any misrepresentation in any document required to be filed or submitted under this Act;
- (b) wilfully makes any statement or gives any information required for the purposes of this Act which he knows to be materially false or misleading;  
or
- (c) knowingly fails to disclose any fact or information required to be disclosed for the purposes of this Act, commits an offence and is liable to a fine not exceeding N\$ 10 million or imprisonment for a period not exceeding 5 years, or to both such a fine and such imprisonment.

(3) Any person who destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any document, information stored on a computer or other device or other thing that the person knows or ought reasonably to know is relevant to the Regulatory Authority commits an offence and is liable to a fine not exceeding N\$ 10 million or imprisonment for a period not exceeding 5 years, or to both such a fine and such imprisonment.

- (4) Any person who otherwise contravenes this Act commits an offence and is liable to a fine not exceeding N\$ 10 million or imprisonment for a period not exceeding 5 years, or to both such a fine and such imprisonment.
- (5) Where an offence has been committed by a company, every director and every person who, at the time of the commission of the offence, was concerned in the senior management of the corporate body or was purporting to act in that capacity, shall also commit the like offence, unless he/she proves that the offence was committed without his knowledge or consent and that he took all reasonable steps to prevent the commission of the offence.

### **Compounding of offences**

**(1) The Regulatory Authority may, with the consent of the Prosecutor General, compound any offence committed by a person where the person agrees, in writing, to pay such amount not exceeding the maximum penalty specified for the offence as may be acceptable to the Commission.**

**(2) An agreement under subsection (1) shall be in writing and signed on behalf of the Commission and by the person agreeing to the compounding.**

**(3) Every agreement to compound an offence shall be final and conclusive and on payment of the agreed amount, no further action shall be taken, with respect to the offence compounded, against the person who agreed to the compounding.**

**(4) Where the Office of the Prosecutor General does not give his/her consent to compound an offence or a person does not agree to compound an offence, the Regulatory Authority may, with the consent of the Office of the Prosecutor General, refer the case to the Namibian Police for legal proceedings.**

**(5) The Regulatory Authority may cause to be published, in such form and manner as it deems appropriate, a public notice specifying the particulars of the amount agreed upon under subsection (1).**

## **PART 11 MISCELLANEOUS**

## **Rules**

51. (1) The Regulatory Authority may make such Rules as it thinks fit for the purposes of this Act.

(2) Rules made under subsection (1) may provide for –

(a) the taking of fees and levying of charges;

(b) prudential standards in respect of –

- (i) disclosure to clients;
- (ii) risk management;
- (iii) custody of client assets;
- (iv) cybersecurity;
- (v) financial reporting; and
- (vi) statutory returns;

(c) any other matter falling under the purview of this Act.

(3) Any Rules made under subsection (1) shall not require the approval of the Minister and shall be published in the Gazette.

## **Regulations**

52. (1) The Minister may make such regulations as he/she thinks fit for the purposes of this Act.

(2) Regulations made under subsection (1) may provide –

(a) for the amendment of the Schedules;

(b) that any person who contravenes them commits an offence and is liable to a fine not exceeding N\$ 10 million or imprisonment for a period not exceeding 5 years, or to both such a fine and such imprisonment.

## **Transitional provisions**

53. (1) Where, on the commencement of this Act, a person is carrying out the business activities of a virtual asset service provider or of issuing initial token offerings, he/she shall make an application, not later than 3 months after the commencement of this Act, to be licensed as a virtual asset service provider or for registration as an issuer of initial token offerings, as the case may be, under this Act.

- (2) A person referred to in subsection (1) may continue to carry out its business activities until –
- (a) its application is declined or withdrawn; or
  - (b) it is licensed as a virtual asset service provider or is registered as an issuer of initial token offerings, as the case may be, under this Act.

### **Risk-based Approach**

54. (1) A supervisory authority shall, in fulfilling its obligation to effectively monitor reporting persons, use a risk-based approach.

- (2) A supervisory authority shall, in applying a risk-based approach to supervision, ensure that it –
- (a) has a clear understanding of the risks of money laundering, terrorist financing and proliferation financing at national level;
  - (b) has an on-site and off-site access to all relevant information on the specific domestic and international risks associated with customers, products and services of the relevant reporting person it supervises; and
  - (c) bases the frequency and intensity of on-site and off-site supervision on –
    - (i) the money laundering, terrorist financing and proliferation financing risks, and the policies internal controls and procedures associated with the business activities of a reporting person, as identified by the supervisory authority's assessment of its risk profile;
    - (ii) the risks of money laundering, terrorist financing and proliferation financing in Namibia as identified within any information that is made available to the supervisory authority; and
    - (iii) the characteristics of the reporting person, in particular the diversity and number of such institutions and the degree of discretion allowed to a reporting person under the risk-based approach.

(2) The assessment by a supervisory authority of the money laundering, terrorist financing and proliferation financing risk profile of a reporting person, including the risks of non-compliance, shall be reviewed both periodically and when there are major events or developments in their management and operations.

## **FIRST SCHEDULE**

### **CLASS OF VIRTUAL ASSET SERVICE PROVIDER LICENSE**

**Class of License**

**Business Activities**

<p style="text-align: center;"><b>Class “M”</b></p> <p><b>Virtual Asset Broker-Dealer</b></p>	<p>Any virtual asset service provider that conducts one or more of the following business activities –</p> <p>Exchange between virtual assets and fiat currencies; or</p>
<p style="text-align: center;"><b>Class “O”</b></p> <p><b>Virtual Asset Wallet Services</b></p>	<p>Exchange between one or more forms of virtual assets</p> <p>Transfer of Virtual Assets</p>
<p style="text-align: center;"><b>Class “R”</b></p> <p><b>Virtual Asset Custodian</b></p>	<p>Safekeeping of virtual assets or instruments enabling control over virtual assets</p>
<p style="text-align: center;"><b>Class “I”</b></p> <p><b>Virtual Asset Advisory Services</b></p>	<p>Administration of virtual assets or instruments enabling control over virtual assets</p> <p>Participation in and provision of financial services related to an issuer’s offer and/or sale of virtual assets</p>
<p style="text-align: center;"><b>Class “S”</b></p> <p><b>Virtual Asset Market Place</b></p>	<p>A virtual asset exchange</p>

## SECOND SCHEDULE

### ANCILLARY SERVICES AND PRODUCTS

1. Supply of logistics and technical assistance services
2. Manufacture of hardware and engineering of software services
3. Network and telecommunication services

4. Information technology services in respect to the creation, encryption, digital transfer of virtual assets
5. Services to hardware wallet manufacturers or non-custodial wallets
6. Validation, nodes operation and mining services
7. Services provided by a banking institution in terms of the Banking Institutions Act, 1998 (Act No 02 of 1998) as amended
8. Any other services which, as prescribed in the Rules, do not engage in or facilitate any of the business activities of virtual asset service providers, on behalf of their clients.

### **THIRD SCHEDULE**

#### **MATTERS TO BE SPECIFIED IN WHITE PAPER**

An issuer of initial token offerings shall ensure that the white paper contains such information that would enable the purchaser or investor to make an informed assessment of the virtual token before subscribing to the virtual token, including the following –

- (a) brief description of the directors, senior management, key personnel and advisers of the issuer of initial token offerings, including name, designation, nationality, address, professional qualifications and related experience;
- (b) the objective or purpose of the initial token offerings (ITO), including detailed information on the ITO project to be managed and operated by the issuer of initial token offerings;
- (c) the key characteristics of the virtual token;
- (d) detailed description of the sustainability and scalability of the ITO project;
- (e) the business plan of the issuer of initial token offerings;
- (f) the targeted amount to be raised through the ITO project, and subsequent use and application of the proceeds thereafter illustrated in a scheduled timeline for drawdown and utilisation of proceeds (schedule of proceeds);
- (g) any rights, conditions or functions attached to the virtual token, including any specific rights attributed to a token holder;
- (h) discussion on the determination of the accounting and the valuation treatments for the virtual token, including all valuation methodology and reasonable presumptions adopted in such calculation;
- (i) associated challenges and risks as well as mitigating measures thereof;
- (j) information in respect to the distribution of the virtual tokens and where applicable, the distribution policy of the issuer of initial token offerings;
- (k) a technical description of the protocol, platform or application of the virtual token, as the case may be, and the associated benefits of the technology;
- (l) details of the consensus algorithm, where applicable;
- (m) any applicable taxes and soft/hard cap for the offerings;
- (n) information about any person(s) underwriting or guaranteeing the offer;
- (o) any restrictions on the free transferability of the virtual tokens being offered;
- (p) methods of payment;
- (q) details of refund mechanism if the soft cap for the offerings is not reached;
- (r) details of smart contract(s), if any, deployed by the issuer of initial token offerings and the auditor who performed an audit on it/them;
- (s) description of the anti-money laundering procedures of the issuer of initial token offerings;
- (t) intellectual property rights associated with the offerings and protection thereof;
- (u) audited financial statements of the issuer of initial token offerings;

