

S.I. 69 of 2024

VIRTUAL ASSET SERVICE PROVIDERS ACT

(Act 12 of 2024)

Virtual Asset Service Provider (Safekeeping and Management of Client's Assets) Regulations, 2024

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S.I. 69 of 2024**VIRTUAL ASSET SERVICE PROVIDERS ACT***(Act 12 of 2024)***Virtual Asset Service Provider (Safekeeping and Management of Client's Assets) Regulations, 2024**

In exercise of the powers conferred by section 38(2)(f)(ii) of the Virtual Asset Service Providers Act, 2024, the Minister responsible for Finance, in consultation with the Authority, makes the following Regulations —

Citation

1. These Regulations may be cited as the Virtual Asset Service Providers (Safekeeping and Management of Client's Asset) Regulations, 2024.

Interpretation

2. In these Regulations —

“client assets” means any virtual assets owned by a client, including non-fungible tokens, stablecoins, private keys or parts thereof;

“Capital Requirement Regulations” means Virtual Asset Services Providers (Capital and other Financial Requirement) Regulations, 2024;

“holding”, “held”, or to “hold”, means the ability to exercise control over client assets by the use of a private key or other equivalent mechanism;

“insolvency” shall have the same meaning as in the Insolvency Act, 2013;

“private key” means an alphanumeric code used to authorize transactions and prove ownership of a virtual asset;

“sub-custodian” means a party authorised to provide similar virtual asset custodial services as described under Schedule 2 to the Act, in another jurisdiction;

“wallet” means any storage device or mechanism for holding private keys.

Application

3. These Regulations shall apply to all virtual asset service providers authorized to offer custodial services under the First Schedule to the Act.

General principles

4.(1) A licensee shall —

- (a) establish policies, systems and controls for the safekeeping and management of client assets;
- (b) make adequate arrangements to safeguard clients' ownership rights, mitigate the risk of loss or diminution on the value of clients' assets; and
- (c) establish and maintain adequate organizational arrangements for transfer of client assets.

(2) A licensee shall, as part of its policies, procedures and controls for the safekeeping and management of client assets, including the reconciliation of client assets, specify how client assets are protected against loss or misuse and how client assets are segregated so that they are not subject to the claims of the licensee's creditors.

(3) A licensee shall make the policies referred to in subregulation (1)(a) available in summarized form to its clients in electronic format, upon request, no later than 2 working days from the date of receipt of the request.

(4) A licensee who contravenes this regulation shall be subjected to

enforcement action as it deems necessary under the Act, and the Authority may impose an administrative penalty of SCR4,000,000 and an additional SCR50,000 for each day or part of each day, not exceeding twenty days, for which the contravention continues.

Client Agreement

5.(1) A licensee shall ensure that each client for whom they provide custodial services is made aware of and agrees to the terms upon which the services will be provided, before providing any custodial services.

(2) In complying with sub regulation (1), a licensee shall, in the terms, make its clients aware of the following information —

- (a) the licensee's custody policy;
- (b) identity of the legal entity that will be safekeeping and managing client assets, including, if applicable, any authorized sub-custodian;
- (c) nature of the custodial services to be provided;
- (d) extent to which client assets are aggregated or pooled;
- (e) the client's rights with respect to aggregated or pooled assets, and the risks of loss arising from any pooling or aggregating activities;
- (f) how client assets are protected against loss or misuse;
- (g) fees, costs and charges applied for the custodial services; and
- (h) information on the obligations and responsibilities of the licensee with respect to the use of client assets, as well as private keys, including the terms for their restitution, recovery and on the risks involve.

Management and safe-keeping of client assets

6.(1) A licensee shall ensure that the total amount and type of client assets held for clients matches the amounts it has agreed to hold.

(2) Any transfer undertaken of client assets shall be authorised or expressly permitted by the client.

(3) A licensee shall, following the day on which clients' funds, other than client assets, are received, place those funds by the end of the business day, with a bank or financial institution specified in regulation 6(3) of the Capital Requirements Regulations, 2024.

(4) A licensee shall take all necessary measures to ensure that clients' funds, other than client assets, are held in accordance with sub regulation (3) above, are held in an account separate to that is used to hold funds belonging to the licensee.

(5) A licensee shall —

(a) on a segregated basis, in which case the licensee needs to clearly identify and segregate virtual assets belonging to different clients;

(b) on an omnibus basis, in which case the licensee needs to ensure at all times that the total amount and type of virtual assets held for clients matches the amounts it has agreed to hold, and that the licensee shall be able to, at all times know the amount and type of virtual assets being held for each clients.

(6) A licensee shall have adequate arrangements in place to safeguard the ownership rights of clients over their client assets and prevent the use of those assets for their own account.

(7) A licensee shall not use client assets for its own account or the account of any other person or client of the licensee, unless —

- (a) the client has given explicit prior consent to the use of the client assets on specified terms; and
- (b) the use of that client's assets is restricted to the specified terms to which the client consents.

(8) For the purposes of sub regulation (10), the consent provided by the client shall be recorded and retained, showing the date and time at which the consent was given.

(9) A licensee shall take appropriate measures to prevent the unauthorized use of client assets for its own account or the account of any other person.

(10) A licensee shall maintain records where it uses client assets for its own account, recording in real time —

- (a) details of the client from whom the client assets have been obtained, including the wallet address and transaction hashes; and
- (b) the amount and value of client assets obtained as at the time the assets were used by the licensee.

(11) A licensee shall have procedures in place to ensure that clients have a means by which to access their client assets.

(12) Where a person acts in contravention with this regulation, the Authority shall take such enforcement action as it deems necessary under the Act and may impose an administrative penalty of SCR2,000,000 and an additional SCR25,000 for each day or part of each day **not exceeding thirty days**, for which the contravention continues.

Systems and controls to safe-keep client assets

7.(1) A licensee shall ensure that technology used for the purpose of holding client assets is reliable, resilient and compatible with the client assets being held.

(2) A licensee, in complying with sub regulation (1) shall have regard to —

- (a) the impact of the software architecture of the wallets used to hold client assets and the interoperability of systems used to hold them; and
- (b) the systems' ability to ensure that security measures for access and use of private and public keys, hot and cold wallets storage, password protection and encryption, are reliable and effective.

(3) Where a person acts in contravention with this regulation, the Authority shall take such enforcement action as it deems necessary under the Act and may impose an administrative penalty of SCR2,000,000 and an additional SCR25,000 for each day or part of each day not exceeding thirty days, for which the contravention continues.

Protection from third party claims

8.(1) A licensee shall not grant any security interest, lien or right of set-off to another person over any client assets unless it applies directly to the clearing or settlement of such obligations as owed directly by the client to whom such security interest, lien or right of set-off claim is against.

(2) A licensee shall maintain records of any security interest, lien or right of set-off which it applies under sub regulation (1), including any court order, legal proceeding or similar records served upon the licensee, the amount and nature of the client assets and the date upon which the obligation was applied.

(3) Where a person acts in contravention with this regulation, the Authority shall take such enforcement action as it deems necessary under the Act and may impose an administrative penalty of SCR2,000,000 and an additional SCR25,000 for each day or part of each day, not exceeding thirty days, for which the contravention continues.

Sub custodian arrangements within the same group

9.(1) Subject to requirements described in sub regulation (3) below, a licensee may deposit client assets with a sub-custodian for safe-keeping.

(2) A licensee may engage a sub-custodian to hold client assets provided that —

- (a) the sub-custodian is a member of the group of legal entities of which the licensee is a member;
- (b) the sub-custodial arrangements are governed by way of a formal documented agreement;
- (c) the sub-custodian has controls equivalent to those required under the Act and this regulation for the safekeeping and segregation of client assets; and
- (d) the sub-custodian indemnifies the licensee for any losses arising from the theft or loss of client assets it holds on behalf of the licensee.

(3) A licensee who intends on using a sub-custodian to fulfil its obligations under this regulation shall notify the Authority in accordance with section 9(2)(a) of the Act.

Sub-custodian arrangements within external party

10.(1) Subject to requirements described in sub regulation (2) below, a licensee may deposit client assets with a sub-custodian who is not part of the same group.

(2) A licensee may engage a sub-custodian who is not part of the same group to hold client assets, provided that —

- (a) the sub-custodial arrangement is governed by way of a formal documented agreement;
- (b) the sub-custodian has controls equivalent to those required under the Act and this Regulation for the safekeeping and segregation of client assets;
- (c) the sub-custodian is subject to equivalent legal requirements in the jurisdiction where it is licensed as a custodian;

- (d) the sub-custodian is subject to money laundering and terrorist financing prevention requirements equivalent to those of Seychelles;
- (e) the sub-custodian indemnifies the licensee for any losses arising from the theft or loss of client assets it holds on behalf of the licensee.

(3) A licensee who intends on using a sub-custodian who is not part of the same group, to fulfil its obligations under this regulation shall notify the Authority in accordance with section 9(2)(a) of the Act.

(4) Further to sub regulation (1), in deciding whether to enter into a sub-custodial arrangement with a custodian who is not part of the same group, the licensee shall take into account the following factors —

- (a) the expertise and market reputation of the sub-custodian;
- (b) the arrangements, systems, controls, and technology used by the sub-custodian for the holding and safekeeping of client assets;
- (c) the financial status and soundness of the sub-custodian; and
- (d) any legal requirements that could adversely affect clients' rights over their assets.

(5) A licensee shall take the necessary steps to ensure that any client assets deposited with the sub-custodian are identifiable separately from the assets belonging to the sub-custodian or any of its other clients.

(6) Further to sub regulation 10(2)(a), the licensee shall ensure that the agreement shall, at a minimum, set out —

- (a) the binding terms of the arrangement between the licensee and sub-custodian;

- (b) the respective obligations of both parties vis a vis the business relationship;
- (c) the level or nature of control to be had over the client assets in question;
- (d) the reporting obligations to be met and or any other statutory instruments or such other publication as may come into force from time to time;
- (e) the associated fees payable for the sub custodial services; and
- (f) the measures that the sub-custodian has in place to protect the client assets in the event of insolvency.

(7) Where a person acts in contravention of this regulation, the Authority shall take such enforcement action as it deems necessary under the Act and may impose an administrative penalty of SCR3,000,000 and an additional SCR50,000 for each day or part of each day, **not exceeding thirty days**, for which the contravention continues.

Records and accounts

11.(1) In fulfilling its obligations under regulations 4(1), 4(2), 5, 6, 9(2)(b), 10(2)(a) and 10(6), the licensee shall ensure that it maintains accurate and up to date records that are accessible from its office in the Seychelles.

(2) A licensee shall make accessible at its office in Seychelles a register to be known as the register of positions, and enter in it the following information as appropriate to the relevant client —

- (a) the name of the client;
- (b) the clients' rights to its assets;
- (c) any movement of client asset with reference to instructions received from the client.

(3) A licensee shall use the register of positions to track, record transactions and ownership of client's assets and reconcile the client assets on a client-by-client basis to resolve any discrepancies with consideration to be had to relevant off-chain and on-chain records.

MADE this 5th day of September, 2024.

**NAADIR HASSAN
MINISTER FOR FINANCE,
NATIONAL PLANNING AND TRADE**
