



# **An overview of the regulation of virtual assets in Guernsey**

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# Contents

<b>1. Virtual asset laws and regulations in Guernsey</b>	<b>3</b>
What is considered a virtual asset in Guernsey?	3
What are the relevant laws and regulations?	3
Who do such laws and regulations apply to?	4
Who are the relevant regulatory authorities in relation to virtual assets in Guernsey?	4
What are the penalties for breaches of virtual asset laws and regulations in Guernsey?	5
<b>2. Regulation of virtual assets and offerings of virtual assets in Guernsey</b>	<b>5</b>
Are virtual assets classified as 'securities' or other regulated financial instruments in Guernsey?	5
Are stablecoins and NFTs regulated in Guernsey?	5
Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in Guernsey?	5
Are there any restrictions on issuing or publicly offering virtual assets in Guernsey?	6
Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in Guernsey?	6
<b>3. Regulation of VASPs in Guernsey</b>	<b>7</b>
Are VASPs operating in Guernsey subject to regulation?	7
Are VASPs providing virtual asset services from offshore to persons in Guernsey subject to regulation in Guernsey?	7
What are the main requirements for obtaining licensing / registration as a VASP in Guernsey?	7
What are the main ongoing requirements for VASPs regulated in Guernsey?	8
What are the main restrictions on VASPs in Guernsey?	8
What are the main information that VASPs have to make available to its customers?	9
What market misconduct legislation/regulations apply to virtual assets?	10
<b>4. Regulation of other crypto-related activities in Guernsey</b>	<b>10</b>
Are managers of crypto funds regulated in Guernsey?	10
Are distributors of virtual asset funds regulated in Guernsey?	10
Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Guernsey?	11
<b>5. Other relevant regulatory information</b>	<b>11</b>
Are there any upcoming regulatory developments in respect of crypto-related activity in Guernsey?	11
Has there been any notable events in Guernsey that has prompted regulatory change recently?	11
<b>6. Pending litigation and judgments related to virtual assets in Guernsey (if any)</b>	<b>12</b>
<b>7. Government outlook on virtual assets and crypto-related activities in Guernsey</b>	<b>12</b>
<b>8. Advantages of setting up a VASP in Guernsey</b>	<b>12</b>

# 1. Virtual asset laws and regulations in Guernsey

In 2014, the Guernsey Financial Services Commission (**GFSC**) published its first guidance on the regulation of virtual assets, which outlined an approach to the supervision of businesses involved in virtual asset activities. This guidance established that virtual assets would be treated as a form of “property” under Guernsey law, and that businesses engaging in virtual asset activities would be subject to the island’s existing financial services regulations.

In 2018, the Commission published updated guidance that provided more detailed requirements for businesses operating in the virtual asset space, including measures related to AML/CFT compliance, consumer protection, and market integrity.

Despite these early regulatory efforts, it became clear that a more comprehensive legislative framework was needed to effectively regulate the growing virtual asset industry in Guernsey. This led to the development of the Lending, Credit and Finance (Bailiwick of Guernsey) Law 2022 (**LCF Law**), which was introduced in July 2023 and established a dedicated licensing regime for virtual asset service providers (**VASPs**).

The LCF Law built upon the GFSC’s previous guidance, introducing a range of new requirements and restrictions for VASPs operating in Guernsey. This included the need for VASPs to obtain a Part III VASP License, comply with enhanced regulatory substance requirements, and adhere to restrictions on the types of virtual assets they can deal with.

Finally, the Regulations require Licensees to be transparent about the environmental impact of their virtual asset activities to comply with Guernsey’s international commitment to reaching net-zero emissions by 2050.

## **What is considered a virtual asset in Guernsey?**

In Guernsey, a virtual asset is defined under the LCF Law as a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes. However, virtual assets do not include digital representations of fiat currencies (i.e., cash) or general securities or derivatives (e.g., shares, debentures, bonds, loans, etc.) and other financial assets.

However, virtual assets do not include things like gift cards, loyalty points, or digital items used only in online games. The definition of virtual assets in Guernsey is intentionally broad to cover new products and services that may emerge in the future. This approach aligns with international standards set by the Financial Action Task Force (**FATF**) and ensures that all virtual asset activities are appropriately regulated.

## **What are the relevant laws and regulations?**

- i. The Electronic Transactions (Guernsey) Law, 2000 (**ET Law**) - This law provides a legal framework for electronic transactions in Guernsey, including the use of electronic signatures and the recognition of electronic records. The ET Law may be relevant to virtual asset activities that involve electronic transactions. For example, it may provide a legal basis for the use of smart contracts in virtual asset transactions.
- ii. The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 (**Fiduciaries Law**) - This law regulates fiduciary activities in Guernsey, including the administration of virtual assets. Any person carrying out fiduciary activities in or from Guernsey must be licensed by the GFSC under this law. In 2014, the GFSC issued guidance on the application of the Fiduciaries Law to virtual currencies, clarifying that virtual currency exchanges and other virtual currency-related activities may fall within the scope of the Fiduciaries Law and may require licensing by the GFSC.
- iii. The Anti-Money Laundering and Countering Financing of Terrorism (Bailiwick of Guernsey) Law, 2008 (**AML/CFT Law**) - This law sets out the requirements for preventing money laundering and terrorist financing in Guernsey. VASPs are subject to the AML/CFT Law and must comply with its requirements, including conducting customer due diligence, monitoring transactions, and reporting suspicious activity. In 2018, the GFSC issued guidance on the application of the AML/CFT Law to virtual asset activities, providing clarification on the AML/CFT requirements for VASPs and setting out the GFSC’s expectations for AML/CFT compliance.

- iv. The Protection of Investors (Bailiwick of Guernsey) Law, 1987 (**POI Law**) - This law regulates investment business in Guernsey. Any person carrying out investment business in or from Guernsey must be licensed by the GFSC under this law. Depending on the nature of the virtual assets involved, certain activities related to virtual assets may be considered investment business and subject to the POI Law. For example, the issuance of security tokens may be considered investment business and may require licensing by the GFSC.
- v. Guidance Note on the Regulation of Virtual Currencies (2014) and Guidance Note on the Regulation of Virtual Assets (2018): These guidance notes issued by the GFSC shows the Commission's approach to the supervision of businesses involved in virtual asset activities. The 2014 guidance established that virtual assets would be treated as a form of "property" under Guernsey law. The 2018 guidance provided more detailed requirements for businesses operating in the virtual asset space, including measures related to AML/CFT compliance, consumer protection, and market integrity.
- vi. The Data Protection (Bailiwick of Guernsey) Law, 2017 (**Data Protection Law**) - This law regulates the processing of personal data in Guernsey. VASPs that process personal data in the course of their activities must comply with the Data Protection Law, including obtaining valid consent for the processing of personal data and implementing appropriate security measures to protect personal data. For example, VASPs may need to obtain consent from customers to collect and process their personal data for KYC/AML purposes.
- vii. The GFSC's Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing (**the Handbook**) - This handbook provides guidance on the AML/CFT requirements for financial services businesses in Guernsey, including VASPs. The Handbook sets out the GFSC's expectations for AML/CFT compliance, including customer due diligence, ongoing monitoring, and suspicious activity reporting. The Handbook is regularly updated to reflect changes in the regulatory landscape, and VASPs should ensure that they are familiar with the latest version.
- viii. LCF Law: This law came into effect on July 1, 2023, establishes a licensing regime for VASPs in Guernsey. It requires VASPs to obtain a Part III VASP Licence from the GFSC unless they qualify for an exemption. The law introduces regulatory substance requirements for VASPs, such as having a physical presence in Guernsey and maintaining a minimum level of assets and liabilities. It also imposes restrictions on the types of virtual assets that VASPs are permitted to deal with, prohibiting those that aim to obscure the parties or flow of the assets.

### **Who do such laws and regulations apply to?**

LCF law explains that virtual assets laws and regulations apply to persons and entities carrying on or offering virtual asset services, or providing business by way of business from within Guernsey or any other location.

This means that if a person is offering virtual asset services while situated in Guernsey or they offer services to Guernsey residents, including through online means, they will be subject to relevant laws and regulations concerning virtual assets. Any Bailiwick bodies holding themselves as willing to carry on these services will also be subject to these requirements. These regulations apply under the authority of and following the specified conditions of a Part III VASP license. These conditions can include provisions relating to the types of services that may be provided, protection of customers and clients, reporting obligations, and more.

### **Who are the relevant regulatory authorities in relation to virtual assets in Guernsey?**

The relevant regulatory authority for virtual assets in Guernsey is the GFSC. The GFSC is responsible for the regulation and supervision of financial services businesses in Guernsey, including VASPs, under the authority of the Bailiwick of Guernsey's law.

The GFSC has the power to grant or refuse VASP licenses, impose conditions on VASP licenses, and take appropriate action to enforce regulations. These actions include the power to carry out inspections, investigations, and to impose sanctions, such as fines or revocation of licenses, if VASPs do not comply with established regulations.

Additionally, in accordance with Guernsey's law, the Guernsey Financial Intelligence Service (**GFIS**) is responsible for overseeing anti-money laundering, counter-terrorism financing, and other financial crime matters in the Bailiwick. The GFIS works with the GFSC and other regulatory bodies to ensure the compliance of VASPs with international standards, best practices, and statutory requirements.

## **What are the penalties for breaches of virtual asset laws and regulations in Guernsey?**

According to The LCF Law, section 77 states that a person who contravenes any provision regarding the prohibition of business of unlicensed virtual asset service providers is guilty of an offence. Here, the offences can include any violation of provisions of The LCF law and other regulatory laws related to virtual assets. For instance, an offence could be providing virtual asset services without being registered, or not disclosing necessary information to the authorities. Other possible offences may include fraudulent conduct or dishonesty connected to virtual asset services.

The maximum penalty varies depending on the offence committed. For example, the maximum penalty for an offence may be imprisonment for up to 7 years and/or a fine. The court can also order the seizure and forfeiture of any property used in connection with the offence.

Furthermore, according to the VASP regulations introduced by the GFSC in 2020, any individual who is a director, partner, or senior officer of a Guernsey entity providing virtual asset services without being registered under the VASP Act may face penalties of up to US\$100,000 in fines and/or up to five years of imprisonment if they are found to have acquiesced in the commission of the offense.

## **2. Regulation of virtual assets and offerings of virtual assets in Guernsey**

### **Are virtual assets classified as 'securities' or other regulated financial instruments in Guernsey?**

In Guernsey, virtual assets are not classified as securities under the existing regulatory framework. The GFSC has a distinct regulatory approach to virtual assets, which are defined as digital representations of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. This definition does not include digital representations of fiat currencies or general securities and derivatives.

The GFSC adopts a principles-based approach and assesses each case on its own merits. If a virtual asset falls within the scope of existing regulations, the relevant regulatory requirements would apply. For instance, if a virtual asset is considered a security, it would fall under the scope of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended.

However, not all virtual assets are considered securities or other regulated financial instruments. Utility tokens, for example, may not fall within the scope of existing regulations if they solely provide access to a product or service and do not confer any ownership rights or expectations of profit.

### **Are stablecoins and NFTs regulated in Guernsey?**

Stablecoins and NFTs are not explicitly mentioned but are considered virtual assets under the LCF Law in Guernsey. Specifically, Part III, section 17 of the LCF Law regulates VASPs, which includes Guernsey-based businesses that offer virtual asset-related services.

If a stablecoin or NFT service is provided in or from within Guernsey, it is likely to be subject to Guernsey's regulatory regime under the LCF Law 2022. This means that the business or individual providing these services may need to obtain a Part III VASP License unless they fall under one of the exemptions specified under the Law.

### **Are decentralised finance (DeFi) activities (e.g. lending virtual assets) regulated in Guernsey?**

The regulation of DeFi activities, particularly those conducted by VASPs, falls under the purview of the LCF Law. Part III of this legislation specifically addresses VASPs, defining them as entities engaged in various services related to virtual assets, such as exchanging them for fiat currencies, facilitating exchanges between different virtual assets, transferring virtual assets, safeguarding virtual assets, and participating in financial services concerning the issuance or sale of virtual assets.

The law provides for the expansion of this definition by the Policy and Resources Committee of the States of Guernsey. A Part III VASP License is mandatory unless an exemption is applicable under the Lending, Credit, and Finance Law or the "Notice with respect to the disapplication of the requirement to hold a license under section 40 of the LCF Law" (the LCF Notice).

This regulatory framework necessitates that businesses engaging in activities governed by the LCF Law obtain a license, barring any exemptions. Furthermore, any VASP falling within the scope of regulation will also be subject to Guernsey's AML/CFT regime.

### **Are there any restrictions on issuing or publicly offering virtual assets in Guernsey?**

Yes, there are restrictions on issuing or publicly offering virtual assets in Guernsey. The LCF Law regulates VASPs and sets out specific requirements for the issuance and public offering of virtual assets. The following are the key restrictions and requirements:

- i. **Licensing requirement:** Any entity providing virtual asset services in or from within Guernsey must obtain a Part III VASP License from the GFSC.
- ii. **Retail customer ban:** VASPs in Guernsey are only permitted to provide services to institutional and wholesale counterparties, excluding retail investors.
- iii. **Definition of virtual assets:** The LCF Law defines virtual assets as digital representations of value that can be digitally traded, transferred, and used for payment or investment purposes. This definition excludes digital representations of fiat currencies, general securities and derivatives, and other financial assets.
- iv. **Public offering restrictions:** The GFSC has not explicitly stated restrictions on public offerings of virtual assets in Guernsey. However, the licensing requirements and the ban on retail customer services suggest that public offerings of virtual assets may be limited to institutional investors or wholesale counterparties.
- v. **AML/CFT compliance:** The LCF Law aligns Guernsey with FATF guidance on virtual assets, ensuring that all VASP activities are subject to the jurisdiction's AML/CFT regime.
- vi. **Functional approach to regulation:** The GFSC takes a functional approach to determining whether VASP activities are carried out, focusing on the real and economic effect of the potential Licensee's business model and activities.
- vii. **No exemption for firms licensed in other jurisdictions:** The GFSC does not recognise equivalence of licensing. This means that even if a firm is licensed for VASP activities in another jurisdiction, it must also obtain a licence under the LCF Law if it provides such services in or from within Guernsey.

Failure to comply with these restrictions and requirements may result in severe penalties, including fines and imprisonment.

### **Are there any exemptions to the restrictions on issuing or publicly offering of virtual assets in Guernsey?**

Yes, there are exemptions to the restrictions on issuing or publicly offering of virtual assets in Guernsey. The LCF Law provides exemptions from the licensing requirement for certain activities such as where:

- i. the business in question is provided only to customers of the main activity of the person carrying on the business and is not offered to the public;
- ii. the services offered are in connection with the administration or management of VASPs that hold a Part III VASP License or are exempted from such licensing requirement;
- iii. the virtual assets are traded by an authorised or registered collective investment scheme, pursuant to the Protection of Investors (Bailiwick of Guernsey) Law 2020 (**Pol Law**); or
- iv. the Policy and Resources Committee of the States of Guernsey specifies regulations granting exemptions under Section 21(1) of the LCF Law. However, to date, there are no such exemptions available.

There is no exemption for firms licensed under regulatory laws in other jurisdictions. The GFSC does not recognise equivalence of licensing, meaning that even if a firm is licensed for VASP activities elsewhere, it must also obtain a licence under the LCF Law if providing services within or from Guernsey.

### 3. Regulation of VASPs in Guernsey

#### **Are VASPs operating in Guernsey subject to regulation?**

According to Chapter 18 of the Handbook on Countering Financial Crime and Terrorist Financing (The handbook) issued by the Guernsey Financial Services Commission, the VASPs that provide or carry out exchange, transfer, safe-keeping, administration, custody, issue, offer, sale, distribution, trading and other activities in connection with virtual assets must register to obtain a Part III VASP licence under the LCF Law.

VASPs must comply with Schedule 3 to the Law and the rules and guidance of this Handbook to detect, prevent and mitigate against money laundering (**ML**) and terrorist financing (**TF**) risks associated with virtual assets. They should implement a risk-based approach, conduct customer due diligence (**CDD**) and enhanced CDD, obtain, hold and submit required originator and beneficiary information associated with the transfers of virtual assets, and have appropriate policies, procedures and controls in place.

VASPs must also adhere to the rules and guidance for correspondent banking and report suspicious transactions and breaches. As of July 1, 2023, specified businesses in Guernsey that have business relationships or occasional transactions involving virtual assets must follow the guidance set out for VASPs as well. The Handbook also provides example risk factors specific to virtual assets that should be considered by VASPs and specified businesses.

#### **Are VASPs providing virtual asset services from offshore to persons in Guernsey subject to regulation in Guernsey?**

Yes, VASPs providing virtual asset services from offshore to persons in Guernsey are subject to regulation in Guernsey under the LCF Law. All businesses that carry on VASP activities in or from within Guernsey and all Guernsey businesses that carry on VASP activities anywhere in the world will need a Part III VASP License unless an exemption applies. It is important to note that the outsourcing of VASP activities to a third party may, under certain circumstances, still require a Part III VASP License.

#### **What are the main requirements for obtaining licensing / registration as a VASP in Guernsey?**

VASPs seeking to operate in Guernsey are required to obtain a Part III VASP License from the GFSC. The following are the main requirements for obtaining licensing/registration as a VASP in Guernsey:

- i. Scope of VASP Activities: VASPs in Guernsey must obtain a license for activities such as exchanging between virtual assets and fiat currencies, exchanging between different forms of virtual assets, transferring virtual assets, safe-keeping and/or administration of virtual assets, and participating in financial services related to the offer and sale of virtual assets.
- ii. Application: VASPs must submit an application for a Part III VASP License to the GFSC along with the prescribed fee. The application must include information regarding the VASP's financial commitments, business activities, and other relevant information.
- iii. Assessment: The GFSC will assess the application based on the minimum criteria for LCF Law, and any other relevant factors. The GFSC may grant or refuse the application for a license and may impose certain conditions that the VASP must comply with upon granting the license.
- iv. Compliance with AML/CFT regime: VASPs in Guernsey are required to adhere to the AML/CFT regime, aligning with FATF guidance on virtual assets.
- v. Regulatory substance requirements: VASPs must comply with enhanced regulatory substance requirements, and services related to VASP activities cannot be outsourced without the consent of the GFSC.
- vi. Financial resources and liquidity requirements: Licensees are subject to financial resources and liquidity requirements agreed upon with the GFSC at the time of licensing, tailored to the nature of the VASP business and its risk profile.
- vii. Corporate governance and management responsibilities: VASPs must meet certain corporate governance and management responsibilities common to all licensed persons under the LCF Law, reflecting requirements under other regulatory laws.
- viii. Physical presence: VASPs must have a physical presence in Guernsey and appoint a local representative.

- ix. Insurance: VASPs must have appropriate insurance coverage in place.
- x. Fee structure: VASPs must have a clear and transparent fee structure and provide customers with adequate disclosures regarding the risks associated with virtual assets.
- xi. Complaints handling: VASPs must have a complaint handling procedure in place and be a member of a dispute resolution scheme.
- xii. Market abuse and insider trading: VASPs must have appropriate policies and procedures in place to prevent market abuse and insider trading.
- xiii. Ongoing reporting: VASPs must comply with any ongoing reporting requirements and cooperate with the GFSC in relation to any investigations or inquiries.

### **What are the main ongoing requirements for VASPs regulated in Guernsey?**

The main ongoing requirements for VASPs regulated in Guernsey are as follows:

- i. VASPs must comply with AML/CFT regulations under the anti-money laundering legislation in Guernsey, which now applies to such firms under the LCF Law.
- ii. All VASP activities carried out within Guernsey are subject to enhanced regulatory substance requirements and none of the services connected to the VASP may be outsourced to another jurisdiction without GFSC consent.
- iii. Licensees will be subject to liquidity and financial resources requirements which are agreed with the GFSC at the time of licensing, and will be required to have adequate internal controls in place.
- iv. Examples of additional conditions that may be imposed on a licensee could include the following: periodic reporting requirements, additional capital requirements, business restrictions, and others, depending on the nature and scale of the activities carried out.
- v. VASPs are required to provide an Environmental Assessment, undertaken by the VASP as well as an independent expert regarding the environmental impact/ carbon emission from their use of consensus mechanisms, and details of their findings must be disclosed to the public annually.
- vi. Licensed VASPs in Guernsey are only permitted to provide VASP services to institutional and wholesale counterparties and are not allowed to provide VASP services to the retail public, including individuals that are regarded as high-net-worth individuals or those that would qualify as professional or sophisticated investors.

Licensees are prohibited from dealing in or trading virtual assets that aim to obscure the parties to the transaction or the flow of assets.

### **What are the main restrictions on VASPs in Guernsey?**

The main restrictions on VASPs in Guernsey are:

- i. Retail customer ban: VASPs are only permitted to provide services to institutional and wholesale counterparties and are not allowed to provide services to retail customers, including high net worth individuals or professional/sophisticated investors.
- ii. Prohibition on obscuring transactions: VASPs are prohibited from dealing in, trading in, or offering virtual assets or services that aim to obscure the parties to the transaction or the flow of assets.
- iii. Enhanced regulatory substance requirements: All VASP activities carried out within Guernsey are subject to enhanced regulatory substance requirements, including maintaining a physical presence and sufficient staff and infrastructure.
- iv. Outsourcing restrictions: VASPs cannot outsource any services connected to their VASP activities to another jurisdiction without the prior consent of the GFSC.



- v. Liquidity and financial resources requirements: VASPs must maintain liquidity and financial resources agreed upon at the time of licensing.
- vi. Environmental impact reporting: VASPs must publish annual information about the environmental impact of consensus mechanisms of each virtual asset, including carbon emissions and resource consumption.
- vii. Safekeeping of virtual assets: If a VASP takes custody of customers' virtual assets, these must be recorded in the customer's name or their nominee's name, and the VASP cannot use these assets for lending or its own account without written consent.

### **What are the main information that VASPs have to make available to its customers?**

VASPs operating in Guernsey are required to provide certain information to their customers to ensure transparency, compliance with regulatory requirements, and to maintain customer trust and confidence. The following are the main information that VASPs have to make available to their customers:

- i. Customer identification information: VASPs are required to provide information on the customer's name and further identifiers, such as physical addresses, dates of birth, and identification numbers, as part of the customer identification process.
- ii. Information on virtual asset services: VASPs must disclose details about the virtual asset services they offer, including information on exchanges between different forms of virtual assets or between virtual assets and fiat currencies, transfers of virtual assets, safekeeping and administration of virtual assets, and other related activities.
- iii. Policies, procedures, and controls: VASPs should have appropriate policies, procedures, and controls in place to identify, understand, assess, and mitigate money laundering and terrorist financing risks associated with virtual asset activities. This includes having mechanisms to identify and report suspicious transactions, take freezing actions, and prohibit transactions with designated persons and entities.
- iv. Record-keeping: VASPs are required to securely and confidentially transmit information relating to the payment originator and the beneficiary when facilitating transactions. They must also maintain records associated with the transfers of virtual assets to identify and report suspicious transactions.
- v. Terms and conditions: VASPs must provide their customers with clear and concise terms and conditions that outline the services they offer, fees and charges, and any other relevant information.
- vi. Risks disclosure: VASPs must provide their customers with adequate disclosures regarding the risks associated with virtual assets, including market volatility, cybersecurity risks, and the potential for fraud.
- vii. Fees and charges: VASPs must provide their customers with a clear and transparent fee structure that outlines all fees and charges associated with their services.
- viii. Privacy policy: VASPs must provide their customers with a privacy policy that outlines how their personal information will be collected, used, and protected.
- ix. Complaints handling: VASPs must provide their customers with a complaint handling procedure that outlines how complaints can be made and how they will be handled.
- x. AML/CFT policy: VASPs must provide their customers with information regarding their AML/CFT policy and procedures, including customer due diligence requirements and suspicious activity reporting.
- xi. Business continuity plan: VASPs must provide their customers with information regarding their business continuity plan, which outlines how they will maintain operations in the event of a disruption or disaster.
- xii. Insurance coverage: VASPs must provide their customers with information regarding their insurance coverage, including any coverage for losses due to cyber-attacks or other incidents.
- xiii. Conflict of interest policy: VASPs must provide their customers with information regarding their conflict-of-interest policy, which outlines how they will manage and disclose any potential conflicts of interest.

- xiv. **Marketing materials:** VASPs must ensure that any marketing materials they provide to their customers are accurate, clear, and not misleading.

### **What market misconduct legislation/regulations apply to virtual assets?**

Virtual asset market misconduct in Guernsey is regulated by several key pieces of legislation and regulations, primarily the LCF Law. The LCF Law regulates VASPs and brings Guernsey in line with international standards issued by the FATF.

Under the LCF Law, VASPs are required to comply with the Bailiwick's AML/CFT regime. The LCF Law also imposes certain prohibitions and requirements on VASPs, such as:

- i. Prohibition from dealing in, trading in, or offering virtual assets or services that aim to obscure the parties to the transaction or the flow of assets;
- ii. prohibition from providing VASP services to retail customers, including high net worth individuals or professional/sophisticated investors;
- iii. enhanced regulatory substance requirements for all VASP activities carried out within Guernsey;
- iv. restrictions on outsourcing VASP activities to other jurisdictions without GFSC consent;
- v. liquidity and financial resources requirements agreed upon at the time of licensing.

The GFSC takes a functional approach to determining whether VASP activities are carried out, focusing on the real and economic effect of the potential Licensee's business model and activities. This approach ensures that emerging products and services are appropriately aligned with FATF guidance on virtual assets.

In addition to the LCF Law, other market misconduct legislation and regulations that apply to virtual assets in Guernsey include the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Protection of Investors (Bailiwick of Guernsey) Law, 1987. These laws and regulations aim to prevent and detect misconduct in financial markets, including insider dealing, market manipulation, and the dissemination of false or misleading information in relation to virtual assets.

## **4. Regulation of other crypto-related activities in Guernsey**

### **Are managers of crypto funds regulated in Guernsey?**

Yes, managers of crypto funds are regulated in Guernsey if they are carrying out activities that fall within the definition of a VASP under the LCF Law. The law requires that businesses that offer VASP services, including the management of crypto funds, must obtain a Part III VASP license from the GFSC, unless an exemption applies.

In addition, managers of crypto funds are also regulated under the PoI Law. The PoI Law requires managers of crypto funds to be licensed by the GFSC to conduct certain investment business activities in or from within Guernsey related to collective investment schemes and controlled investments. Managers of crypto funds must ensure that the fund is either authorised or registered by the GFSC under the rules applicable to the specific class of fund.

Licensees will be subject to liquidity and financial resources requirements, which are agreed with the GFSC at the time of licensing, and they will be required to have adequate internal controls in place. The GFSC oversees the compliance of managers of crypto funds with the PoI Law, ensuring adherence to regulatory requirements and investor protection.

### **Are distributors of virtual asset funds regulated in Guernsey?**

Yes, distributors of virtual asset funds are regulated in Guernsey under the PoI Law and LCF Law.

Distributors must be licensed by the GFSC to conduct investment business activities related to collective investment schemes and controlled investments in or from within Guernsey. They must also ensure that the virtual asset fund they are distributing is either authorised or registered by the GFSC.

Authorised funds undergo a substantive review by the GFSC, while registered funds are approved following a representation by a Guernsey licensed administrator. Every open-ended Guernsey fund, including virtual asset funds, must appoint a Guernsey licensed custodian or trustee to safeguard the fund's assets.

If regulated as a VASP, distributors must comply with certain AML/CFT and regulatory requirements, such as implementing internal controls, policies, and procedures to manage risks effectively and undergoing annual audits. The GFSC oversees the compliance of distributors with the relevant laws and regulations, ensuring adherence to regulatory requirements and investor protection.

### **Are there requirements for intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Guernsey?**

Yes, intermediaries seeking to provide trading in virtual assets for clients or advise clients on virtual assets in Guernsey must be licensed by GFSC to conduct investment business activities related to virtual assets in or from within Guernsey. They are only permitted to provide virtual asset services to institutional and wholesale counterparties, and are prohibited from dealing in, trading in, or offering virtual assets or services that aim to obscure the parties to the transaction or the flow of assets.

Intermediaries must comply with Guernsey's AML/CFT regime, maintain liquidity and financial resources agreed upon at the time of licensing, and adhere to enhanced regulatory substance requirements, including maintaining a physical presence and sufficient staff and infrastructure. Outsourcing of any services connected to virtual asset activities to another jurisdiction requires prior consent of the GFSC. Non-compliance with these requirements may result in fines, imprisonment, or removal of directors or officers.

## **5. Other relevant regulatory information**

### **Are there any upcoming regulatory developments in respect of crypto-related activity in Guernsey?**

Upcoming regulatory developments in Guernsey regarding crypto-related activities are anticipated to address the evolving landscape of virtual assets and innovative finance. These developments may include:

- i. Introduction of Regulations for Emerging Crypto Products: Guernsey may introduce specific regulations to address new crypto products and services, such as Security Token Offerings (**STOs**) or Decentralised Autonomous Organisations (**DAOs**), reflecting the jurisdiction's commitment to staying abreast of technological advancements in the crypto space.
- ii. Alignment with Global Standards: Guernsey actively engages in international discussions on crypto regulations and is likely to introduce changes to align with emerging global standards set by organisations like the FATF. This alignment could involve stricter AML/CFT requirements and tailored rules for ICOs.
- iii. Focus on Environmental Impact Reporting: VASPs will be required to publish annual information about the environmental impact of consensus mechanisms of each virtual asset, including carbon emissions and resource consumption. This regulatory requirement aims to enhance transparency and accountability in the virtual asset sector, reflecting Guernsey's commitment to sustainability and responsible practices in the crypto industry.

### **Has there been any notable events in Guernsey that has prompted regulatory change recently?**

Guernsey has recently made some important changes to its regulations regarding financial services. These changes were made to bring the virtual assets regulations in line with international standards and to make them more consistent across different areas of finance.

The GFSC, which oversees the financial industry, has introduced new rules and guidelines for various types of financial activities. For example, there are now new rules for how funds are managed and sold, as well as new guidelines for how businesses should conduct themselves.

In addition, the GFSC has created new categories of roles for people who work in the financial industry. These roles, such as 'vetted supervised role' and 'approved supervised role', are designed to standardise the terminology used across different areas of finance.

The GFSC has also increased its power to enforce these new rules and regulations. It can now issue directions to businesses or individuals who are not following the rules, and it has greater authority to protect the public interest and the reputation of Guernsey as a financial center.

## **6. Pending litigation and judgments related to virtual assets in Guernsey (if any)**

There are currently no pending litigations or judgments in Guernsey.

## **7. Government outlook on virtual assets and crypto-related activities in Guernsey**

The government of Guernsey has adopted a progressive yet cautious approach towards virtual assets and crypto-related activities.

The LCF Law regulates VASPs in Guernsey, providing a comprehensive regulatory framework to ensure that virtual assets and virtual asset-related activities are conducted in a safe and transparent manner. The regulatory approach is forward-looking, with the GFSC taking a functional approach to determine if VASP activities are carried out, focusing on the real and economic effect of the business model.

However, the government has also imposed certain restrictions to mitigate risks associated with virtual assets. For instance, VASPs are prohibited from dealing in, trading in, or offering virtual assets or services that aim to obscure parties or the flow of assets. They can only provide services to institutional and wholesale counterparties, not retail customers. VASPs must also comply with Guernsey's AML/CFT regime and are subject to ongoing supervision by the GFSC.

Furthermore, Guernsey is positioning itself as a leading jurisdiction for responsible and compliant virtual asset activities by implementing a regulatory framework that prioritizes consumer protection, environmental sustainability, and alignment with international standards. VASPs are required to publish annual information on the environmental impact of consensus mechanisms used, including carbon emissions and resource consumption, reflecting Guernsey's focus on sustainability.

## **8. Advantages of setting up a VASP in Guernsey**

Guernsey offers several advantages for those interested in setting up a VASP in the jurisdiction. One of the key benefits is the highly respected regulatory environment, with the GFSC responsible for regulating all financial activities in Guernsey, including the regulation of VASPs. The GFSC is known for its thoroughness in regulatory procedures, promoting sound and stable financial practices. This provides businesses with a high level of legal certainty when conducting virtual asset-related activities in the jurisdiction.

Another advantage of setting up a VASP in Guernsey is its strategic location between the UK and continental Europe, making it an ideal location for businesses looking to tap into both European and UK markets. The jurisdiction also has a stable political environment, which is widely regarded as being conducive to business, and a highly developed infrastructure with modern telecommunications, high-speed internet access, and other amenities attractive to businesses.

Guernsey has a comprehensive legal system based on the English common law system, providing businesses with a high level of legal certainty. The Guernsey courts are well-regarded for their impartiality, efficiency, and accessibility, and there is a wealth of experienced legal professionals available to offer advice and assistance to businesses operating in the jurisdiction.

Additionally, Guernsey has a competitive tax environment, with no capital gains tax, inheritance tax, or VAT, making it an attractive location for businesses seeking to establish a VASP and conduct virtual asset-related activities in a tax-efficient manner.

## Disclaimer

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