



PRIVATE SECTOR CONSULTATION
Guidance Notes (Amendment) – Part IX –
Sector Specific Guidance – Section 1:
Virtual Asset Service Providers –
September 2023

Private Sector Consultation

Amendments to the Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands of August 2023 – Part IX – Sector Specific Guidance – Section 1 – Virtual Asset Service Providers

A. Introduction

1. Section 34(1)(a) of the Monetary Authority Act (2020 Revision) (“MAA”) states that:

After private sector consultation and consultation with the Minister charged with responsibility for Financial Services, the Authority may -

(a) issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees, and any other persons to whom and to the extent that the regulatory laws may apply;

2. Requirements specific to the private sector consultation are outlined in section 4(1) of the MAA as follows:

When this Law requires private sector consultation in relation to a proposed measure -

- a) *the Authority shall give to each private sector association a draft of the proposed measure, together with -*
 - i. *an explanation of the purpose of the proposed measure;*
 - ii. *an explanation of the Authority’s reasons for believing that the proposed measure is compatible with the Authority’s functions and duties under section 6;*
 - iii. *an explanation of the extent to which a corresponding measure has been adopted in a country or territory outside the Islands;*
 - iv. *an estimate of any significant costs of the proposed measure, together with an analysis of the benefits that will arise if the proposed measure is adopted; and*
 - v. *notice that representations about the proposed measure may be made to the Authority within a period specified in the notice (not being less than thirty days or such shorter period as may be permitted by subsection (3)); and*
- b) *before proceeding with the proposed measure, the Authority shall have regard to any representations made by the private sector associations, and shall give a written response, which shall be copied to all the private sector associations.*

3. The Cayman Islands Monetary Authority (“the Authority”) seeks consultation and comment from the private sector associations concerning the proposed amendments to Part IX – Section 1, Sector Specific Guidance for Virtual Asset Service Providers of the Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands of August, 2023. **(Appendix 1).**

B. Background

4. Part XA of the Anti-Money Laundering Regulations (2023 Revision) (“AMLRs”) ¹ – Identification and record-keeping requirements relating to transfers of virtual assets (“Part XA”) came into effect on 1 July 2022. Part XA applies Financial Action Task Force (“FATF”) Recommendation 16 – Wire Transfers based on the cross-border nature of Virtual Assets (“VA”) activities and VASP operations. The Guidance Notes (Amendment) (No. 1), February 2021, which provides sector specific guidance to Virtual Asset Service Providers (“VASPs”) in complying with the AMLRs need to be updated to reflect the commencement and full implementation of Part XA.
5. FATF Recommendation 16 prescribes that originating VASPs must obtain and hold required/accurate originator information along with the required beneficiary information on virtual asset transfers. These requirements apply to VASPs whenever their transactions (in fiat currency or virtual assets) involve: (a) a traditional wire transfer; (b) a virtual asset transfer between a VASP and another obliged entity; or (c) a virtual asset transfer between a VASP and a non-obliged entity. The application of the FATF’s wire transfer requirements (i.e., Recommendation 16) in the virtual asset context is known as the “Travel Rule”.
6. Part XA of the AMLRs contains definitions and provisions related to the identification, verification, production, record-keeping and other relevant obligations relating to transfers of virtual assets, including the Travel Rule requirements for VASPs.
7. The proposed amendments to Part IX – Section 1 on the Sector Specific Guidance for Virtual Asset Service Providers of the Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands – August 2023, seek to include guidance which aligns with Part XA within the AMLRs which commenced with effect on 1 July 2022².

C. International Standards

8. The FATF Recommendations are recognised as the global AML/CFT international standard and it has extended these standards to financial activities involving virtual assets and VASPs.
9. FATF Recommendation 16, also known as the Travel Rule, requires that countries collect identifying information from the originators and beneficiaries of domestic and cross-border wire transfers to create a suitable AML/CFT/CPF audit trail. Given the increasing global use of cryptocurrency, FATF updated the Travel Rule in 2019 to apply to VASPs, such as crypto exchanges and wallets, which subjects them to the same information exchange obligations as conventional financial institutions.
10. FATF’s Travel Rule is a key AML/CFT measure that enables VASPs and financial institutions to, inter alia, carry out effective sanction screening and detect suspicious transactions.

¹ On 12 January 2023, the [Anti-Money Laundering Regulations \(2023 Revision\)](#) were published and replaced the 2020 Revision. The Anti-Money Laundering Regulations (2023 Revision) are a consolidation of previous amendments, including Anti-Money Laundering (Amendment) (No. 2) Regulations, 2020, made 22nd May 2020, which included Part XA – Identification and record-keeping requirements relating to transfers of virtual assets.

² The amendment to Part IX – Section 1 of Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands – August 2023, cited as Guidance Notes (Amendment) – Virtual Asset Service Providers – September 2023 as seen in **Appendix 1**, will replace Guidance Notes (Amendment) – Virtual Assets Service Providers – February 2021”.

11. In October 2021, FATF released updated guidance³ to the public and private sectors on the implementation of the Travel Rule to be applied to both VASPs and other financial institutions when they send or receive VA transfers on behalf of a customer, including private wallets, non-fungible tokens and decentralised finance (“DeFi”).
12. The proposed amendments captured in Guidance Notes (Amendment) – Virtual Asset Service Providers – September 2023 will provide regulatory guidance specific to the implementation of Part XA thus aligning the jurisdiction with the international standards as set by FATF.

D. Summary of Significant Proposed Amendments

13. **Table 1** highlights the main changes being proposed to the sector specific guidance for VASPs.

Table 1: Proposed Amendments to VASP sector specific GNs

Sections		Proposed Amendments
A.	Overview	<p>This section has been modified to reference the most recent revisions of the Virtual Asset (Service Providers) Act (2022 Revision) and the Anti-Money Laundering Regulations (2023 Revision) and updated to include the provision of “proliferation financing” where omitted in reference to “AML/CFT”.</p> <p>Additionally, a new paragraph was inserted to give further examples of activities that fall under the definition of a virtual asset service to cater to the evolving nature of the virtual asset space.</p>
B.	Scope	A paragraph was created to clarify the role of decentralised finance (“DeFi”) applications in its classification of a virtual asset service as it relates to VASP under the FATF standards.
C.	Factors that give rise to Money Laundering, Terrorist Financing and Proliferation Financing Risks	<p>This section was modified where applicable to include the provision of “proliferation financing” where omitted in reference to “AML/CFT”.</p> <p>Additionally, the wording of the opening sentences in paragraphs 9 and 10, which cover higher-risk and low-risk classification factors for consideration by VASPs, was restructured to avoid the interpretation of the specified list of factors as being exhaustive.</p>
D.	Risk Management	There were no material amendments made to these sections.
E.	Customer Due Diligence	
F.	Related measures for CDD	
G.	Record keeping	
H.	Implementation of Targeted Financial Sanctions	

³ [Updated Guidance for a Risk-Based Approach – Virtual Assets and Virtual Asset Service Providers](#)

Sections		Proposed Amendments
I.	Internal and SAR Reporting Procedures	<p>Paragraph 8 was inserted in accordance with Regulation 49M of Part XA of the AMLRs (2023 Revision) whereby VASPs that control both the originating and beneficiary VASP must consider the information from both to determine whether to file a SAR.</p> <p>Additionally, Paragraph 9 was inserted in accordance with Regulation 49I of Part XA of the AMLRs (2023 Revision) whereby the beneficiaries must consider incomplete information about the originator as a factor in its assessment and related reporting of suspicious transfers of virtual assets.</p>
J.	Identification and Record Keeping for Virtual Asset Transfers	<p>Paragraph 4 was inserted in accordance with Regulation 49N of Part XA of the AMLRs (2023 Revision) where there is a minimum period of 5 years for an intermediary VASP to keep record(s) of all information received from the originating VASP and/or intermediary should technical limitations, including interoperability issues, prevent the required exchange of information related to the transfer of virtual assets.</p>
K.	Transfers of Virtual Assets	<p>A new section was created in accordance with Regulations 49C(2), 49D(2), 49C(4) and 49C(5) of Part XA of the AMLRs (2023 Revision) which aims to provide guidance to the originating VASP on the collection, record and verification of all the relevant documents and data involved in the transfers of virtual assets to a beneficiary.</p>
L.	Batch File Transfers of Virtual Assets	<p>A new section was created in accordance with Regulations 49F(1) and 49F(2) of Part XA of the AMLRs (2023 Revision). It lists the requirements for batch file transfers of virtual assets from a single originator where the transfers of virtual assets are bundled together in addition to the required beneficiary information.</p>
M.	Obligations of a Beneficiary VASP	<p>A new section was created in accordance with Regulation 49G of Part XA of the AMLRs (2023 Revision) which emphasises the importance of having effective procedures in place to detect whether the system the beneficiary VASP is using to effect a transfer of virtual assets does in fact obtain the required information under the new regulations in accordance with those regulations.</p>
N.	Transfers of Virtual Assets with Missing or Incomplete Information about the Originator	<p>A new section was created in accordance with Regulation 49H (1) – (5) of Part XA of the AMLRs (2023 Revision) which aims to provide guidance on the responsibility of the originating VASPs to have all required information and systems in place to detect</p>

Sections		Proposed Amendments
		missing required information on the originator and beneficiary when seeking to execute transfers of virtual assets.
O.	Requirements for Intermediary VASPs	A new section was created in accordance with Regulations 49O, 49J and 49K(a)(b) of Part XA of the AMLRs (2023 Revision) which speaks to the requirements for intermediary VASPs to have documented risk-based policies and procedures to determine when to execute, reject or suspend a transfer of virtual assets that have incomplete/missing information on the originator and beneficiary. Further, guidance states that where an intermediary VASP participates in the transfer of virtual assets, all information received on the originator and the beneficiary that accompany a transfer of virtual assets is kept with the transfer of virtual assets.
P.	Obligation of a VASP to comply with requirements	A new section was created in accordance with Regulation 49L of Part XA of the AMLRs (2023 Revision) which states that VASPs must comply with all relevant requirements in the countries in which they operate, either directly or through their agents.

E. Cost and Benefit Analysis

14. **Table 2** provides a summary of the estimated costs and benefits of the proposed amendments.

Table 2 – Estimated Costs and Benefits of Proposed Measures

	Costs	Benefits
CIMA	Administrative costs associated with: <ul style="list-style-type: none"> - amending the sector specific guidance for VASPs; - conducting industry consultation; - staff training relating to the implementation of the Travel Rule; and - costs of monitoring compliance with relevant updates on regulatory measures. 	Enhances, clarifies and supports the Authority's regulatory stance on the identification and record-keeping requirements relating to the transfers of virtual assets while achieving CIMA's mandate as set out in the MAA to monitor compliance with the AMLRs. There is also potential for an improvement in FSP's compliance in this area.
Cayman Islands	There is the possibility of increased financial burden to the operating VASPs to be in compliance.	The amendments to the guidance notes aim to provide regulatory guidance specific to the commencement and implementation of Part XA and will: <ul style="list-style-type: none"> - aid the prevention of the misuse of crypto assets to facilitate, fund and hide criminal activities and launder proceeds as the traceability

	Costs	Benefits
		<p>requirement as now extended to crypto-asset transfers;</p> <ul style="list-style-type: none"> - enhance the compliance of the jurisdiction with FATF standards, particularly as it relates to Recommendation 16 and aligns the Cayman Islands with other jurisdictions that have the Travel Rule in effect; and - align the jurisdiction with the international standards as it pertains to the requirements for the Travel Rule as guided by FATF.
Regulated Entities	<p>Staff training on the requirements needed in relation to the transfers of virtual assets including the Travel Rule requirements for VASPs.</p> <p>Administrative and infrastructure costs of implementing technologies for detecting system deficiencies in the required information to effect a transfer of virtual assets.</p>	<p>The proposed amendments will:</p> <ul style="list-style-type: none"> - provide greater clarity on the amendments that came into effect in July 2022; - better align regulated entities in the Cayman Islands with international best practices and standards relating to the application of the FATF’s wire transfer requirements in the virtual asset context known as the “Travel Rule”; and - better mitigate ML/TF/PF risks relating to wire transfers among VASPs.

F. Consultation Feedback and Comments

15. Before proceeding with the proposed measure, the Authority shall have regard to any representations made by the private sector associations only. Feedback submitted by individuals, entities, or other bodies, unless acting on behalf of private sector associations, will not be accepted by the Authority. Representations from private sector associations must be submitted as a consolidated document, and a listing of the entities which provided feedback should be included. Private sector associations should ensure that conflicting positions are resolved prior to submission to the Authority. Where positions conflict within or across associations, the Authority will consider all available information in taking a decision, which will be at its sole discretion.
16. To ensure that all responses are given due consideration, it is important that private sector associations make clear reference to the sections of the measure being commented on, and that responses are unambiguous, clearly articulated and based on fact. The consultation process is not designed to address complaints or grievances. Feedback of this nature should be submitted through the established complaints process.
17. In cases where the feedback proposes to change a policy position of the Authority or substantially amend any requirement of the draft measure, information to support the position of the association must be provided. The table below provides an

example of the Authority’s expectation with regard to feedback for the proposed measure.

Reference	Example of a Helpful Comment	Examples of Comments needing more Support
Rule 4.2 ⁴	<p>In Rule 4.2 the current text omits the fair value measurement of liabilities. Also, as defined it is not asymmetrical with the Market Price definition and thus scenarios exists that fall into neither category.</p> <p>Suggested wording: <i>Hard-to-Value Securities means an asset or liability for which there is no Market Price which is required to be measured at fair value pursuant to 5.2</i></p>	<ul style="list-style-type: none"> × This is not what is done in other jurisdictions. × I don’t think we should do this. × CIMA is not considering the position of the experts.

18. All feedback submitted by private sector associations will be given due consideration, nevertheless, the decision to adopt any feedback provided into a proposed measure will be at the sole discretion of the Authority.

G. Notice of Representations

19. The Authority seeks consultation through written comments and representations from the private sector associations concerning the proposed amendments to Part IX – Section 1, Sector Specific Guidance for Virtual Asset Service Providers of the Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands of August 2023:

Guidance Notes (Amendment) – Part IX – Sector Specific Guidance – Section 1: Virtual Asset Service Providers – September 2023

20. The Authority must receive representations by 1700hrs on **October 5, 2023**. Representations received after this deadline may not be considered and will not form part of the collated written response provided to private sector associations.
21. Comments and representations must be addressed to⁵:

The Managing Director
 Cayman Islands Monetary Authority
 P.O. Box 10052
 SIX, Cricket Square
 Grand Cayman KY1-1001
 Cayman Islands
 Tel: 345-949-7089
 Fax: 345-946-5611
 Email:
consultation@cima.ky
 and copied to charissaevelyn@cima.ky

⁴ This example is not reflective of the content of the proposed measure.

⁵ Where the private sector association or industry stakeholder has no comments or representations on the proposed measure, it is recommended that the Authority be informed of this fact.

22. The Authority shall have due regard to any representation made by the private sector associations and industry stakeholders. The Authority shall provide a written response collating the feedback received and the Authority's position on this feedback. This response shall be copied to all relevant private sector associations only.



SIX, Cricket Square
PO Box 10052
Grand Cayman KY1 - 1001
CAYMAN ISLANDS

General Office: 345-949-7089

www.cima.ky