THE VIRTUAL ASSET AND INITIAL TOKEN OFFERINGS SERVICES ACT

FSC Rules made by the Financial Services Commission under sections 20 and 52 of the Virtual Asset and Initial Token Offerings Services Act

PART I – GENERAL PROVISIONS

1. Citation

These rules may be cited as the Virtual Asset and Initial Token Offerings Services (Capital and Other Financial Requirements) Rules.

2. Interpretation

“Act” means the Virtual Asset and Initial Token Offerings Services Act;

“applicable Acts” has the same meaning as in the Act;

“asset” has the same meaning as in the Act;

“Commission” has the same meaning as in the Act;

“fiat currency” has the same meaning as in the Act;

“FSC Rules” has the same meaning as in the Act;

“initial token offerings” or “ITO” has the same meaning as in the Act;

“licence” has the same meaning as in the Act;

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

"Virtual Asset Broker-Dealer” has the same meaning as in the Act;

“Virtual Asset Market Place” has the same meaning as in the Act;

“virtual asset service provider” has the same meaning as in the Act.

3. Scope of the Rules

(1) These rules shall apply to all virtual asset service providers that carry out business in or from Mauritius.

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

PART II – GENERAL REQUIREMENTS

4. The general requirements

(1) A virtual asset service provider must, at all times, have sufficient unimpaired capital and liquidity resources of such nature, amount and quality that results in the capital and liquidity resources of the virtual asset service provider when taken as a whole being adequate, taking into account the nature, scale and complexity of its activities and the risks to which it is or could be exposed.

(2) The matters which are relevant in determining whether a virtual asset service provider has adequate capital and liquidity resources are as follows:

(a) the business carried on, or to be carried on, by the virtual asset service provider;
(b) the risks to the continuity of the services provided by, or to be provided by, the virtual asset service provider, including any outsourced services (including services outsourced to a group entity where applicable);
(c) the liabilities to which the virtual asset service provider is exposed or could be exposed to, including as a result of any failure by any third party; and
(d) the means by which the virtual asset service provider manages and, if the virtual asset service provider is a member of a group, by which other members of the group manage, the occurrence of risk in connection with the virtual asset service provider's business.

(3) When determining its capital adequacy and financial requirements, a virtual asset service provider must also at all times have regard to its risk management assessment (required pursuant to the Virtual Asset and Initial Token Offerings Services (Risk Management) Rules).

PART III – CAPITAL REQUIREMENTS

5. Capital requirement

(1) A virtual asset service provider must, as a minimum, as unimpaired capital and liquidity resources, have at all times the greater of:
(a) the own funds requirement; or
(b) the prudential requirement.
(2) Intangible assets, including goodwill, cannot be used as part of calculating capital and must be deducted prior to determining whether there is sufficient capital for the purposes of paragraph (1).

6. Own funds requirement

(1) The own funds requirement are as follows:

Virtual asset service provider	Amount
Issuer of ITOs	sufficient working capital to be capable of meeting its debts as they fall due.
Virtual Asset Advisory Services	sufficient working capital to be capable of meeting its debts as they fall due.
Virtual Asset Broker-Dealer	2,000,000 Mauritian Rupee.
Virtual Asset Wallet Services	sufficient working capital in fiat currency to continue business for a period of 12 months, based on realistic forecasts for the business in different market conditions (both negative and positive scenarios).
Virtual Asset Custodian	5,000,000 Mauritian Rupee
Virtual Asset Market Place	6,500,000 Mauritian Rupee

(2) In the event that a virtual asset service provider has multiple licences, it shall be subject to the combined capital requirement for each licence held by the virtual asset service provider.

7. The prudential requirement

(1) Virtual asset service providers shall, at all times, have in place prudential safeguards equal to an amount of capital which is at least the higher of the following:
   (a) one quarter of the fixed overheads of the virtual asset service provider over the preceding year, reviewed annually; and
   (b) the financial resources requirements as determined under the Virtual Asset and Initial Token Offerings Services (Risk Management) Rules.

(2) For the first financial year from being licenced, in determining their fixed overheads in accordance with paragraph (1)(a), virtual asset service providers shall use their projected fixed overheads, which should be submitted to the Commission with their application for licence. Projected fixed overheads should be realistic for the business in different market conditions (both negative and positive scenarios).

(3) A virtual asset service provider must not use unaudited interim profits in the calculation of capital unless it has obtained the prior approval of the Commission.

PART IV – FIXED OVERHEADS

8. Calculation of fixed overheads

(1) Virtual asset service providers shall calculate their fixed overheads as:
   (a) the total expenses after distribution of profits to shareholders in their most recent financial statements;
   (b) plus the third party expenses; and
   (c) minus the deductible items.

9. Deductible items

(1) Deductible items are:
   (a) any of the following, if they are fully discretionary:
      i. staff bonuses and other variable remuneration;
      ii. employees', directors', partners' and limited liability partnership members' shares in profits; and
      iii. other appropriations of profits;
   (b) shared commission and fees payable that meet all of the following conditions:
      i. they are directly related to commission and fees receivable;
      ii. the commission and fees receivable are included within total revenue; and
      iii. the payment of the commission and fees payable is contingent on receipt of the commission and fees receivable;
   (c) non-recurring expenses from non-ordinary activities;
   (d) unless paragraph (2) applies, fees, brokerage and other charges paid to Virtual Asset Market Places and Virtual Asset Broker-Dealers for the purposes of executing, registering and clearing transactions, provided that the fees, brokerage and charges are directly passed on and charged to customers;

(e) 80% of the value of any fees, brokerage and other charges, excluding any fees or charges to which paragraph (2) applies, paid to Virtual Asset Market Places and Virtual Asset Broker-Dealers for the purposes of executing, registering and clearing transactions in relation to which:
   i. the virtual asset service provider is dealing on own account; and
   ii. the fees, brokerage or charges have not already been deducted under (d);
(f) interest paid to customers on money held for clients, where there is no obligation of any kind to pay the interest;
(g) taxes where they fall due in relation to the annual profits of the virtual asset service provider;
(h) losses from trading on own account; and
(i) payments related to contract-based profit and loss transfer agreements according to which the virtual asset service provider is obliged to transfer its annual profit to the parent undertaking following the preparation of the virtual asset service provider's annual financial statements.

(2) The deducted amounts in paragraphs (1)(d) and (1)(e) must not include fees and other charges necessary to maintain membership of, or otherwise meet loss-sharing financial obligations to Virtual Asset Market Places.

10. Third party expenses

(1) A virtual asset service provider must add any fixed expenses that have been incurred on its behalf by a third party to the virtual asset service provider's total expenditure for the purposes of the calculation of fixed overheads.
(2) A virtual asset service provider is not required to add fixed expenses incurred on its behalf by a third party to the virtual asset service provider's expenditure if the expenses are already included in the figures resulting from the calculation of fixed overheads.
(3) Where a breakdown of the third party's expenses is available, the virtual asset service provider must add to the virtual asset service provider's total expenditure the share of the third party's expenses incurred on behalf of the virtual asset service provider.
(4) Where a breakdown of the third party's expenses is not available, the virtual asset service provider must:
   (a) add to the virtual asset service provider's total expenditure the share of the third party's expenses incurred on behalf of the virtual asset service provider as projected in the virtual asset service provider's business plan; or
   (b) if the virtual asset service provider does not have a business plan that projects the third party's expenses, reasonably estimate the share of those expenses that are attributable to the virtual asset service provider's business and add that estimated share of expenses to the virtual asset service provider's total expenditure.

11. Accounts used to determine fixed overheads

(1) For the purposes of the calculating the fixed overheads, a virtual asset service provider must use the figures in its most recent:
   (a) audited annual financial statements; or
   (b) unaudited annual financial statements, where audited financial statements are not yet due.

(2) If a virtual asset service provider has used unaudited annual financial statements in accordance with paragraph (1)(b) and audited annual financial statements subsequently become available, the virtual asset service provider must update its calculation of fixed overheads using the audited figures.

(3) Where the financial statements in paragraph (1) do not cover a 12-month period, the virtual asset service provider must:

    (a) divide the amounts included in those statements by the number of months the financial statements cover; and

    (b) multiply the result of the calculation in subparagraph (a) by 12 to produce an equivalent annual amount.

Where a virtual asset service provider does not yet have financial statements, the virtual asset service provider shall instead use the projected fixed overheads included in their projections for the first 12 months' of service provision, as submitted with their application for licence.

12. Accuracy of Books & Records

(1) A virtual asset service provider must maintain adequate systems and controls to ensure the integrity and accuracy of its books and records. This includes, but is not limited to, maintaining records of accounts and corresponding information which must be provided to the Commission upon request.

(2) Virtual asset service providers must ensure their books, records and accounts comply with internationally recognised accounting standards as applicable.

PART IV – MATERIAL CHANGE TO PROJECTED RELEVANT EXPENDITURE DURING THE YEAR

13. Increases in expenditure

(1) This rule applies where there:

    (c) is an increase of 30% or more in the virtual asset service provider's projected relevant expenditure for the current year; or

    (d) would be an increase of 100,000,000 Mauritian Rupee (or equivalent amount in another fiat currency) or more in the virtual asset service provider's fixed overheads requirement based on projected relevant expenditure for the current year.

(2) Where this rule applies, a virtual asset service provider must:

    (a) immediately recalculate its fixed overheads requirement in relation to the projected relevant expenditure, taking into account the increase in paragraph (1);

    (b) immediately substitute the revised fixed overheads requirement that results from the calculation in subparagraph (a) for the virtual asset service provider's original fixed overheads requirement; and

    (c) immediately recalculate its basic liquid assets requirement using the revised fixed overheads requirement in subparagraph (b) and substitute the updated amount for its original basic liquid assets requirement.

14. Decreases in expenditure

(1) This rule applies where there:

(a) is a decrease of 30% or more in the virtual asset service provider’s projected relevant expenditure for the current year; or

(b) would be a decrease of 100,000,000 Mauritian Rupee (or equivalent amount in another fiat currency) or more in the virtual asset service provider’s fixed overheads requirement based on projected relevant expenditure for the current year.

(2) Where this rule applies, a virtual asset service provider may recalculate its fixed overheads requirement in relation to the projected relevant expenditure, taking into account the decrease in paragraph (1), so long as the virtual asset service provider can demonstrate that one of the conditions in paragraph (1)(a) or (b) is met and the projected reduction in the virtual asset service provider’s relevant expenditure is a reasonable projection.

15. Known changes in expenditure

(1) A virtual asset service provider that is planning to implement a material change to its business expenditure should calculate the anticipated impact of that change on its fixed overheads requirement (and its own funds requirement) before executing the relevant change, and make sure that it can meet its projected future obligations before making the relevant change.

(2) Examples of planned changes may include:

(a) starting or ceasing a major business line;

(b) acquiring or disposing of a major business; or

(c) undertaking a significant investment, upgrade or restructuring programme.

16. Commencement

These rules shall come into operation on **[DATE]**.

Made by the Financial Services Commission on **[DATE]**.