

MONTSERAT

VIRTUAL ASSET BUSINESS ACT 2023

No. 10 of 2023

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I ASSENT

Sgd. Sarah Tucker (Mrs.)

GOVERNOR

DATE: 5 October 2023

M O N T S E R R A T

AN ACT TO PROVIDE FOR THE LICENCE OF VIRTUAL ASSET BUSINESS FROM MONTSERRAT AND WITH PERSONS IN MONTSERRAT AND FOR RELATED MATTERS.

BE IT ENACTED by The King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat, and by the authority of the same as follows:—

1 Short title

This Act may be cited as the Virtual Asset Business Act, 2023.

2 Interpretation

(1) In this Act—

“anti-money laundering and counter financing terrorism legislation” means the Proceeds of Crime Act (Cap. 4.04) and subsidiary legislation made under the Proceeds of Crime Act;

“Commission” means the Financial Services Commission established under section 3 of the

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Financial Services Commission Act (Cap. 11.02);

“**client**” includes a potential client;

“**licensee**” means a person licenced under section 8 and holder of a certificate of licence;

“**Minister**” means the Minister with responsibility for finance;

“**Ministry**” means the Ministry with the responsibility for finance;

“**officer**” means—

(a) a chief executive officer, chief operating officer, president, vice president, corporate secretary, treasurer, chief financial officer, chief accountant, chief auditor, chief investment officer, chief compliance officer or chief risk officer;

(b) any other individual designated as an officer by its articles of incorporation or continuance, by-laws or other constituent document, or resolution of the directors or members; or

(c) any other individual who performs functions similar to those performed by a person referred to in paragraph (a), whether or not the individual is formally designated as an officer;

“**person**” includes a sole corporation, a body incorporated or unincorporated, a firm, an association and a partnership;

“**prospectus**” means any document, statement, advertisement or notice that provides information for the purpose of offering to the public and a client, subscription to or purchase of a virtual asset;

“**virtual asset**” means a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment

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purposes and does not include digital representations of fiat currency or security; and

“virtual asset business” means the conduct of one or more of the following activities or operations for or on behalf of another person—

- (a) exchange between a virtual asset and fiat currency;
- (b) exchange between one or more forms of virtual assets;
- (c) transfer of a virtual asset whether or not for value;
- (d) safekeeping or administration of a virtual asset or instruments enabling control over a virtual asset; and
- (e) participating in and provision of financial services related to an issue or sale of a virtual asset;

“virtual service token” means a digital representation of value which is not transferrable or exchangeable with a third party at any time and includes digital tokens whose sole function is to provide access to an application or service or to provide a service or function directly to its owner.

- (2) In this Act, **“person with significant control”** with respect to a virtual asset business means a person who satisfies one or more of the conditions specified in subsection (2).
- (3) The conditions specified for the purposes of subsection (2) are that the person—
 - (a) holds, directly or indirectly, more than 25% of the issued shares in the virtual asset business;
 - (b) is entitled, directly or indirectly, to exercise, or control the exercise of, more than 25% of the voting rights in the virtual asset business;

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- (c) has the right, directly or indirectly, to appoint or remove a majority of the directors of the virtual asset business;
 - (d) has the right to exercise, or actually exercises, significant influence or control over the virtual asset business; or
 - (e) has the right to exercise, or actually exercises, significant influence or control over the activities of a partnership that, by the law under which partnership is governed, is not a corporate body, or a trust and paragraph (a), (b), (c) or (d) apply to—

 - (i) the members of the partnership, or
 - (ii) the trustees of the trust

in the capacity of member of the partnership or trustee.
- (4) For the purposes of this section—
- “**control**” means the power of a person, either alone or with an affiliate or relative or connected or other person, directly or indirectly or by an agreement or otherwise to exert influence over the business and affairs of a virtual asset business and the term “controlling” and “controlling shareholder” shall be construed accordingly;
 - “**fiat currency**” means currency issued by a central bank and is the official legal tender of a country or group of countries;
 - “**security**” has the same meaning as in section 2 of the Securities Act (Cap. 11.01);
- (5) For the purposes of this section, a person is connected to another person—
- (a) where that person is an individual, the person is—

 - (i) the relative of that person;
 - (ii) the trustee of any settlement under which that person has a life interest in possession;

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- (iii) a company of which that person is a director or controlling or significant shareholder;
- (iv) an employee or partner of that person;
- (b) where that person is a company, the person is—
 - (i) a director or controlling shareholder or significant shareholder of that company;
 - (ii) a subsidiary or affiliate of that company;
 - (iii) a director or employee of any such subsidiary or affiliate of that company; or
- (c) where that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in a company or under which they undertake to act together in exercising their voting power in relation to the company, that other person.

3. Application

This Act applies to any person who whether before or after the commencement of this Act offers or operates in or from Montserrat virtual asset business.

4. Requirement for licence

- (1) Subject to section 6(2)(b), a person shall not offer or operate in or from Montserrat virtual asset business without being licensed under this Act.
- (2) A person who, prior to the commencement of this Act, was offering or operating virtual asset business and continues to offer or operate virtual asset business shall apply for a licence under section 6.
- (3) An individual shall not carry on, or purport to carry on, in or from within Montserrat virtual asset service as a business or in the course of business.
- (4) For the purposes of subsection (3), a person purports to carry on virtual asset business where the person —

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- (a)* uses one or more words that connote virtual asset business either in English or in any other language, in the description or title under which the person carries on business;
- (b)* makes a representation in a document or makes a representation in any other manner that the person is carrying on virtual asset business; or
- (c)* otherwise holds out as carrying on virtual asset business.

5. Registers

- (1)** The Commission shall maintain a register of registered and suspended licensees which shall provide—
 - (a)* the name and address of the licensee;
 - (b)* the registration number of the licensee, if any;
 - (c)* the type of virtual asset business the licensee conducts;
 - (d)* the date of licence;
 - (e)* the status of licence;
 - (f)* the status of licensee;
 - (g)* the date of suspension if status of licence is suspended; and
 - (h)* any other information the Commission may require.
- (2)** The Commission shall maintain a register of licensees whose registrations have been revoked which shall provide details of the revocation, including the—
 - (a)* name of the former licensee; and
 - (b)* date of revocation of licence.
- (3)** The Commission shall maintain a register of the issue or sale of virtual assets which shall provide the—
 - (a)* name and address of the licensee responsible for the issue or sale;
 - (b)* description of the virtual asset;

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- (c)* date of approval of the prospectus related to the issue or sale;
 - (d)* date of the publication of the prospectus; and
 - (e)* date the issue or offer for sale ends.
- (4)** The registers shall be made available to the public and published on the website of the Commission or the Ministry.

6. Application for licence

- (1)** A person who wishes to offer or operate virtual asset business shall apply to the Commission for a licence.
- (2)** A person who, prior to the commencement of this Act, offered or operated and wishes to continue offering or operating virtual asset business—
- (a)* shall apply to the Commission for a licence; and
 - (b)* may continue the virtual asset business for sixty days from the commencement of this Act.
- (3)** A person shall make an application for a licence in writing and provide the following—
- (a)* the applicant’s full name;
 - (b)* the address of the registered office of the applicant;
 - (c)* if the applicant is an individual, the applicant’s date of birth and residential address;
 - (d)* the address of the place of business of the person in Montserrat;
 - (e)* the registration number of the applicant, if any;
 - (f)* if the applicant is licensed to provide a virtual asset business or a related service in any other jurisdiction, proof of such licence;
 - (g)* a statement setting out the nature and scope of the virtual asset business including but not limited to the date operations commenced, name of application and website address where the person conducts virtual asset business from or intends to conduct virtual asset

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- business from and the name of any other country where the person offers or intends to offer virtual asset business;
- (h)* particulars of the management and any person authorised to represent the applicant;
 - (i)* the name and address of any affiliated company within and outside of Montserrat;
 - (j)* the names and address of directors, and persons with significant control;
 - (k)* information as to how the applicant meets anti-money laundering or combatting of terrorist financing obligations under—
 - (i)* the Proceeds of Crime Act (Cap. 4.04);
 - (ii)* the Anti-money Laundering and Terrorist Financing Regulations (Cap. 4.04);
 - (iii)* the Anti-money Laundering and Terrorist Financing Regulations (Cap. 4.04);
 - (iv)* any other subsidiary legislation made under the Proceeds of Crime Act (Cap. 4.04); and
 - (v)* any other law applicable to the combatting of money laundering and terrorist financing; and
 - (l)* any other information the Commission may reasonably require for the purpose of determining the application.
- (4)** An application shall be accompanied by—
- (a)* proof of payment of the application fee prescribed in Schedule 1;
 - (b)* copy of a government issued identification for any director, officer and person authorised to represent the applicant;
 - (c)* certified copies of the instruments by which the person is constituted or established; and
 - (d)* proof of licence to do business in Montserrat.

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- (5) A false or misleading declaration made in an application or false or misleading documents submitted in support of an application shall—
 - (a) render an application void; and
 - (b) prohibit the person from making another application.
- (6) A person who, prior to the commencement of this Act, was operating virtual asset business and does not make an application for a licence under subsection (2) shall cease to operate that virtual asset business.

7. Grant and refusal of application for licence

- (1) The Commission shall on receipt of an application made under section 6 cause a review of the application and consider whether to grant or refuse to grant licence.
- (2) The Commission shall not grant licence unless the Commission is satisfied that the—
 - (a) person is a fit and proper person to be engaged in virtual asset business;
 - (b) application meets the requirements of section 6 and the application fee prescribed in Schedule 1 has been paid;
 - (c) requirements of this Act and anti-money laundering and counter financing terrorism legislation have been complied with; and
 - (d) person is able to fulfil the obligations of a licensee under this Act and anti-money laundering and counter financing terrorism legislation.
- (3) The Commission may request further information or documents from a person for the purpose of considering whether to approve or refuse licence.
- (4) The Commission shall notify the person of the approval or refusal of the application for licence in writing.
- (5) If an application for a licence is not granted or is withdrawn, the person shall cease to operate the virtual

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asset business within fourteen days of the date of withdrawal or the receipt of notice of refusal from the Commission.

- (6) Despite section 6(2)(b), the Commission may, in the public interest, order a person to cease offering or operating virtual asset business until an application made for a licence is determined.
- (7) For the purposes of this section in considering whether a person is fit and proper, the Commission shall have regard to—
- (a) the financial status or solvency of the person or any officer, executive, significant shareholder, director or management of the person;
 - (b) competency and capability, having regard to the type of virtual asset business the person intends to be involved in;
 - (c) the reputation, integrity, and probity of—
 - (i) the person, if the person is an individual; or
 - (ii) any officer, executive, significant shareholder, director or management, if the person is a company;
 - (d) whether the interests of a client of the person are or are likely to be in any way threatened by any director, officer or significant shareholder of the person holding his position;
 - (f) whether a person or any director, officer, or significant shareholder of the person is engaged in any business practices or conducted himself in a manner that would appear to be improper, deceitful or otherwise discredit the business practice of the person;
 - (g) whether the individual has a criminal background;
 - (h) in the case of any other person, whether its director, officer or person with significant control of the person has a criminal background.

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8. Certificate of licence and renewal

- (1) If the Commission approves an application under section 7, the person shall pay the licence fee prescribed in Schedule 1.
- (2) The Commission upon being satisfied that the licence fee has been paid shall—
 - (a) register the licensee in the register for a period of one year; and
 - (b) issue a certificate of licence in the form as set out in Schedule 2.
- (3) For each year a licensee continues to offer or operate virtual asset business, the licensee shall renew licence by paying the licence fee.
- (4) The Commission shall issue a certificate of licence for each renewal of licence in accordance with subsection (3).

9. Requirements of a licensee

- (1) A licensee shall place in escrow, with an authorised agent, a registered trust company or with an entity whose business is the provision of trust or custodial services, assets to discharge financial obligations to clients of the licensee and such assets shall be equivalent to six percent of the total value of client funds held by licensee.
- (2) Subject to requirements of section 6, a licensee shall not undertake any changes in the business of the licensee, including—
 - (a) the names of any director, officer or person with significant control;
 - (b) the nature and scope of the virtual asset business; and
 - (c) the address and contact information of the registered office and any other place of business within and outside the jurisdiction of Montserrat,without the prior approval of the Commission.

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- (3) A licensee shall not appoint—
- (a) senior officer or trustee; or
 - (b) an anti-money laundering compliance officer,
- without the prior approval of the Commission.
- (4) A licensee shall submit to the Commission quarterly reports setting out—
- (a) the number of accounts held by the licensee;
 - (b) the value of the accounts held by the licensee;
 - (c) a statement of the assets held in escrow; and
 - (d) any other information as may be prescribed by regulations made under section 19,
- no later than one month after the end of the quarter.
- (5) A licensee shall prepare accounts annually and submit audited financial statements to the Commission within six months of the end of the licensee’s financial year.
- (6) A licensee shall comply with the requirements of anti-money laundering and counter financing terrorism legislation and institute procedures to ensure that accounting records and business operations systems comply with the anti-money laundering and counter financing terrorism legislation.
- (7) A licensee shall implement and maintain policies for the virtual asset business—
- (a) to ensure that the collection, storage, use and disclosure of personal information of a client is—
 - (i) legitimate and for purposes related to the business of the licensee;
 - (ii) protected from unauthorised access; and
 - (iii) kept confidential; and
 - (b) to protect the operations of the licensee and personal information collected and stored by the licensee from cyber threats.

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- (8) A licensee shall communicate—
- (a) information regarding the virtual asset business;
 - (b) information relating to consumer protection; and
 - (c) any updates or changes to the information under paragraphs (a) and (b)
- in a complete, comprehensible, balanced and coherent manner, so a client can evaluate the features, costs and risks of the virtual asset business the licensee offers or operates.
- (9) A licensee who fails to comply with a requirement imposed by subsection (2), (3), (4) or (5) is liable to an administrative penalty of \$5,000.

10. Transfer of virtual assets

- (1) When performing a transfer of virtual assets, a licensee shall collect and maintain information on the beneficiary and originator of the transfer in accordance with the anti-money laundering and counter financing terrorism legislation and any additional information specified by the Commission, for all transfers performed and comply with any other requirements outlined therein and the records shall –
- (a) be made available, at the request of the Commission or any competent authority, through its registered office; and
 - (b) where a request for information is made under paragraph (a), be provided within forty-eight hours of receipt of the request.
- (2) When performing a transfer of virtual assets, a licensee shall comply with Part 9 of the Anti-Money Laundering and Terrorist Financing Code (Cap. 4.04) in respect of all transactions carried out by the licensee.

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11. Prospectus for issue or sale of a virtual asset

- (1) A licensee shall not participate in or provide financial services related to the issue or offer for sale of a virtual asset without—
 - (a) submitting a prospectus to the Commission for review at least fourteen days before the proposed date of its publication;
 - (b) a statement of no objection to the prospectus by the Commission; and
 - (c) issuing the prospectus prior to the issue or offer for sale.
- (2) A prospectus shall be prepared in accordance with the requirements in Schedule 3 and submitted to the Commission for review no less than fourteen days before the proposed date of its publication.
- (3) The Commission may provide a statement of no objection to a prospectus if it complies with the requirements of this Act.
- (4) A prospectus shall be valid for a period not exceeding twelve months from the date the statement of no objection was provided by the Commission.
- (5) A client shall have the right to withdraw purchase of or subscription to an issue or offer for sale, in addition to any other remedy, where a prospectus contains a misrepresentation or false information.
- (6) A client shall exercise the right under subsection (5) as soon as practicable, but no later than fourteen days after the misrepresentation or false information came to the knowledge of that person.
- (7) A licensee is liable to pay compensation to a person who relied on a prospectus containing a misrepresentation or false information to purchase or subscribe to an issue or offer for sale and suffers loss as a result.

12. Powers of the Commission regarding a prospectus

- (1) The Commission may waive the inclusion of certain information required for a prospectus if the Commission considers that—
- (a) disclosure of this information would be contrary to the public interest;
 - (b) the disclosure of such information would be seriously prejudicial to the licensee, provided that the omission of such information is not likely to mislead the public as to facts and circumstances essential for an informed assessment of the licensee or virtual asset; or
 - (c) the information is not essential to influence the assessment of the financial position and prospects of the licensee or virtual asset.
- (2) The Commission shall have the power to—
- (a) order an amendment to include information in addition to the requirements in Schedule 3, prior or subsequent to the provision of a statement of no objection to a prospectus;
 - (b) suspend an issue or offer for sale where an order for amendment is made subsequent to the provision of a statement of no objection to a prospectus, pursuant to paragraph (a);
 - (c) suspend or cancel an issue or offer for sale of a virtual asset if in the public interest; and
 - (d) issue a notice advising the public of any order made under paragraph (a) or (b).
- (3) The Commission is not liable to any action for damages suffered as a result of any prospectus for which the Commission provided a statement of no objection.

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13. Amendment to a prospectus

- (1) The licensee shall submit to the Commission any proposed amendment to a prospectus for a statement of no objection by the Commission.
- (2) The licensee shall immediately upon receiving the statement of no objection under subsection (1)—
 - (a) issue the amendment to the prospectus and state any implication the amendment will have on a client; and
 - (b) issue a notice of the amendment to any person who purchased or subscribed to an issue or offer for sale.
- (3) A person who purchased or subscribed to an issue or offer for sale prior to an amendment to a prospectus, shall have the right to withdraw the purchase or subscription within fourteen days of the date the notice was issued to that person.
- (4) A licensee who fails to comply with a requirement imposed by subsection (2) is liable to an administrative penalty of \$5,000.

14. General powers of the Commission

- (1) The Commission may by notice in writing to a licensee or director, officer or significant shareholder of a licensee, require information to be provided to the Commission within the time and in the form as may be specified in the notice for the purpose of determining compliance with this Act.
- (2) The Commission shall have the power to examine or cause an examination of a licensee for the purposes of determining if a licensee is complying with this Act.
- (3) For the purposes of examining the licensee, the Commission shall have—
 - (a) full access to the registered office or place of business of a licensee, and to the books and records relating to its business;

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- (b) the right to call upon, to furnish any information and explanation the Commission may consider necessary,—

 - (i) any director, officer or any other employee of the licensee; or
 - (ii) any other person with information regarding the licensee.
- (4) The Commission shall take steps as it considers appropriate to—

 - (a) cooperate with any local or foreign supervisory/regulatory authority or law enforcement authority in relation to the development and implementation of policies to counter money laundering and terrorist financing;
 - (b) coordinate activities to counter money laundering and terrorist financing with any local or foreign supervisory authority or law enforcement authority;
 - (c) cooperate with any local or foreign supervisory authority or law enforcement authority as necessary for the for the performance of duties and the exercise of its powers.
- (5) Where the Commission intends to share confidential information in accordance with subsection (4), the Commission shall enter into an agreement with the other authority to provide for the maintenance of the confidentiality of the information and use of the information only for the purposes for which the information is being disclosed.

15. Fees

- (1) Any fee paid in accordance with this Act is non-refundable.
- (2) The licence fee prescribed in Schedule 1 is for the period January 1 to December 31 of a year.
- (3) The fee for renewal of a licence shall be the same as the licence fee.

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- (4) Fees under this Act shall be payable to the Commission.
- (5) If a licensee does not pay the fee for renewal of a licence on or before January 31 of the year of renewal, the licensee shall, on renewal, pay the late fee prescribed in Schedule 1.

16. Revocation and suspension of licence

- (1) The Commission may if necessary suspend a licence after giving ten days' written notice of the suspension to the licensee, if the licensee—
 - (a) has contravened a provision of this Act;
 - (b) has been licensed pursuant to an application where a false declaration was made;
 - (c) ceases to operate or offer virtual asset business in excess of ninety days;
 - (d) made a request for revocation or suspension to the Commission;
 - (e) enters liquidation, is wound up or otherwise dissolved;
 - (f) is no longer a fit and proper person to be a licensee;
 - (g) is conducting business in manner that is detrimental to the public interest or clients;
 - (h) misrepresents or provides false information in a prospectus
 - (i) has failed to pay the licence fee within 180 days of the due date for payment of the licence fee; or
 - (j) is convicted of an offence.
- (2) If the licensee fails to rectify the issue which caused the suspension under subsection (1) within thirty days of the suspension, the Commission shall revoke the licence.
- (3) Despite subsections (1) and (2), the Commission may revoke or suspend a licence without notice if it is in the public interest or to protect clients.

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- (4) The notice under subsections (1) and (2) shall specify the reasons for the revocation or suspension.

17. Offences and penalties

- (1) A person commits an offence if that person—
- (a) directly or indirectly makes a false or misleading declaration or omits to disclose a material fact for the purpose of gaining or retaining a client;
 - (b) directly or indirectly makes a false declaration in an application for licence;
 - (c) offers or operates virtual asset business in or from Montserrat without being licensed under this Act; or
 - (d) otherwise contravenes a provision of this Act for which a penalty is not provided.
- (2) A person who commits an offence under this Act is liable on summary conviction to a fine of \$10,000 or two years' imprisonment or to both.
- (3) Where an administrative penalty is levied on a licensee, the licensee shall not also be liable to an offence under this Act.
- (4) An administrative penalty levied on a licensee may be recovered as a civil debt by the Commission.

18. Power to amend Schedules

The Governor acting on the advice of Cabinet may on the recommendation of the Commission, by Order published in the *Gazette*, amend the Schedules.

19. Regulations

- (1) The Governor acting on the advice of Cabinet may on the recommendation of the Commission make regulations to give effect to the provisions of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for—

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- (a)* records to be kept by the Commission;
- (b)* reports to be made to the Commission;
- (c)* forms necessary for the administration of this Act;
- (d)* the policies, procedures and systems for identifying, monitoring and controlling such risks as the Commission shall specify;
- (e)* capital and liquidity requirements;
- (f)* the information a licensee shall provide to a client;
and
- (g)* any other matter required for the efficient administration of this Act.

20. Guidelines

- (1)** The Commission shall issue guidelines as it considers necessary to give the effect to the provisions of this Act.
- (2)** Without limiting the generality of subsection (1), the guidelines may provide for—
 - (a)* policies, practices and procedures for evaluating financial soundness of licensees;
 - (b)* corporate governance;
 - (c)* disclosure; and
 - (d)* compliance with anti-money laundering and counter financing terrorism legislation.

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SCHEDULE 1

(Sections 6, 8, 15)

FEEES

PARTICULARS	FEE
Application Fee	\$4,000
Licence Fee	\$12,000
Late fee	\$100 for each day late on the payment of the licence fee

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SCHEDULE 2
(Section 8)

CERTIFICATE OF LICENCE

VIRTUAL ASSET BUSINESS ACT (Cap.)

CERTIFICATE OF LICENCE

FOR [YEAR]

No. []

.....carrying on business under
the name of of
..... is licensed under the Virtual Asset
Business Act to carry on virtual asset business within and/or from
Montserrat.

Licensed on this day of..... [Year]

.....

Commissioner
Financial Services Commission

SCHEDULE 3

(Section 11)

REQUIREMENTS FOR A PROSPECTUS

A prospectus shall be in English and include the following —

- (a) background of licensee and business the licensee responsible for publishing the prospectus is involved in, including but not limited to financial information, and identity of any officer, executive, significant shareholder, director or management.
- (b) description of the virtual asset the prospectus is concerned with, including but not limited to the functionality, characteristics and purpose.
- (c) the date, which is to be taken as the date of the publishing of the prospectus, unless otherwise stated in the prospectus.
- (d) the date the issue or sale ends.
- (e) the amount and currency of the issue or sale and the payment terms for subscription or purchase.
- (f) purpose of the issue or sale.
- (g) financial information of the licensee including but not limited to financial statements and past financial performance of the virtual asset.
- (h) financial projections for the virtual asset and the issue or sale including but not limited to minimum and maximum targets for the issue or sale and use of the proceeds of the issue or sale.
- (i) any risks or restrictions associated with the licensee, virtual asset or virtual asset business the prospectus is concerned with.

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- (j) measures for the protection of data and safeguards against cyber threats.
- (k) purchaser's rights in relation to the offer or sale.
- (l) signature of an authorised person on behalf of the licensee.

Sgd. Charliena M. L. White (Miss.)

SPEAKER

Passed by the Legislative Assembly this 29th day of September, 2023.

Sgd. Dr. Judith Baker

CLERK OF THE LEGISLATIVE ASSEMBLY