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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON:  
THE CONSIDERATION OF THE VIRTUAL ASSET SERVICE PROVIDERS BILL,  
2025 (NATIONAL ASSEMBLY BILLS NO. 15 OF 2025)

VOLUME II

<b>THE NATIONAL ASSEMBLY PAPERS LAID</b>	
DATE: 24 JUN	DAY: TUE
TABLED BY:	HON. KURIA KIMANI, MP, CBS CHAIRPERSON
CLERK-AT-THE-TABLE:	MS. ANN SHIBUKO

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NAIROBI

JUNE, 2025



**Our Ref:**

**23<sup>rd</sup> May 2025**

**Mr. Samuel Njoroge**

Clerk of the National Assembly

Parliament building

P.O Box 41842, 00100

**NAIROBI**

Dear Samuel,

**RE: MEMORANDUM FOR PROPOSALS FOR THE VIRTUAL ASSETS SERVICE PROVIDERS BILL 2025.**

I refer to the notice dated 13<sup>th</sup> May 2025 inviting the public for participation in amendments to the Finance Bill, 2025 and the Virtual Assets Service Providers Bill, 2025.

We attach herein our Memorandum with respect to proposed changes affecting the Virtual Asset Service Providers Bill, 2025 for your consideration.

For additional information or clarification, you can reach us by email at [legal@yellowcard.io](mailto:legal@yellowcard.io), or Telephone number 0786305387.

Thank you for your continued support.

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Yours Faithfully

*Edline E. Murungi*

**Edline E. Murungi**  
Senior Legal Counsel  
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## **EXECUTIVE SUMMARY**

Our proposed amendments are intended to ensure that the Virtual Assets industry remains innovative while still managing risks within the industry.

The proposed regulatory framework is a significant milestone for the industry and our proposals seek to make Kenya a competitive market that nurtures innovation, and avoids over regulation/misregulation. Other nations, such as South Africa with over 300 licenses issued, have already capitalized on this space, while we risk Kenya falling behind. Misregulation or over regulation could lead to the collapse of local startups, the exodus of existing businesses out of Kenya, and exclusion from global standards and opportunities. Our request for amendments is to ensure continued innovation, investment, and that Kenya remains competitive in this ever agile industry.

## **OUR REQUEST**

We request that the National Assembly make the following amendments to the Virtual Assets Service Providers Bill, 2025

1. Expanding the interpretation of Stablecoin;
2. Expanding the interpretation of Virtual Asset;
3. Change of designation Authority to the Virtual Assets Regulatory Authority of Kenya;
4. Clarification on renewal and duration of issuance of the license;
5. Changes in periodic reporting requirements;
6. Clarification on requirements of Fit and proper Persons;
7. Clarification on what constitutes Acquisition and Controlling Interest;
8. Amendment of Penalties and Fines;
9. Inclusion of insurance matters as an area for regulations;
10. Provide for detailed provisions on Issuance of Stablecoins within Kenya;
11. Provide for Tokenisation of Real World Assets (RWA);

**THE VIRTUAL ASSETS SERVICE PROVIDERS BILL, 2025**  
**MEMORANDUM OF PROPOSED AMENDMENTS AND JUSTIFICATIONS**

	<b>The Clause No.</b>	<b>Current Clause</b>	<b>Proposed Amendment</b>	<b>Rationale and Justification</b>
1.	Title	The Virtual Asset Service Providers Bill, 2025	Delete "Service Providers"  Maintain Virtual Assets Bill, 2025	<ul style="list-style-type: none"> <li>For the Bill to cover the usage of Virtual Assets as a whole and not only the service providers for example, it also covers the regulators, the assets and the service providers.</li> <li>Some jurisdictions such as Botswana have adopted this approach and it creates a broader title rather than only the service providers and would apply to other financial service providers that may venture into this industry.</li> </ul>
We request for the Amendment of this Bill by changing the Title to Virtual Assets Bill, 2025.				
2.	Part 1 - Preliminary  2. "Stablecoin"	"stablecoin" means a virtual asset designed to or that aims to have its value fixed or pegged relative to one or more reserve assets,	Define Stablecoins as  "stablecoin" means a virtual asset designed to have its value pegged to a specific reserve asset or a pool of reserve assets such as fiat	<ul style="list-style-type: none"> <li>The current provision excluded a pool of reserves and the virtual currency should be one with legal tender otherwise it takes away the purpose of the stable value.</li> </ul>

		including fiat currency, commodities or other virtual assets, for the primary purpose of maintaining a stable value of the stablecoin	currency, commodity or any other virtual currency with legal tender, for the purpose of maintaining its stable value.	<ul style="list-style-type: none"> <li>Other regulators have gone ahead to specifically state that algorithm-based stablecoins are excluded. An Algorithm-based stablecoin is a stablecoin that purports to maintain a stable value via protocols that provide for the increase or decrease of the supply of the stablecoins in response to changes in demand;</li> </ul>
We request for the amendment of this Bill by expanding the interpretation and definition of "stablecoin" as suggested.				
3	Part 1 - Preliminary 2. "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 purposes and does not include digital representation of fiat currencies, securities and other financial assets	"virtual asset" means a digital representation of value that may be digitally traded, or transferred, and may be used for payment or investment purposes. It also includes digital representation of value that is intended to represent a real-world asset on blockchain or any other technology, whether cryptographically-secured or otherwise, and that may confer rights, obligations, claims, or benefits associated with the underlying real-world asset; or	<ul style="list-style-type: none"> <li>The current provision excludes digital representation of real world assets which are an integral part of virtual assets and also seems to exclude stablecoins which even if they are pegged to a value and do not fluctuate in value are still virtual assets.</li> </ul>

			backed up by assets held as collateral or reserved assets for the purpose of maintaining a stable value	
We request for the amendment of this Bill by expanding the interpretation and definition of “virtual assets” as suggested.				
4.	Part 11- Designation of Regulatory Authority  Clause 6(a) (b) and (c)  First Schedule	The following entities shall be the relevant regulatory authorities for the purposes of this Act (a) the Capital Markets Authority established under section 5 of the Capital Markets Act (b) the Central Bank of Kenya established under Article 231(1) of the Constitution, or (c) any other public body established under a written law that the Cabinet Secretary may, by notice in the Kenya Gazette, designate as such	Delete, “Capital Markets Authority” and “Central Bank of Kenya”  Add... There shall be an Authority called the “Virtual Assets Regulatory Authority of Kenya”  The Virtual Assets Regulatory of Kenya shall be made of expertise from the Capital Markets Authority, the Central Bank, other financial services regulators and virtual Assets Industry experts.	<ul style="list-style-type: none"> <li>• The current provision makes both the Capital Markets Authority and the Central Bank of Kenya as the regulatory Authorities which is going to be very bureaucratic for a start up industry.</li> <li>• Having two regulators is against global standards of innovation and makes it uncertain for the industry players creating an issue of over regulation.</li> <li>• The Virtual Assets Industry falls outside both the Capital Markets and Central bank mandate and while both regulators might have aspects of their mandate to oversee the Virtual Asset industry, it does not fall within traditional finance and therefore a non-bank regulator is the better option. Although still within the financial services industry, it is not traditional finance and therefore introducing a new regulator is the better</li> </ul>

				option for the industry for quick results and better management.
	We request for the amendment of this Bill by appointing the Regulatory Authority as the Virtual Assets Regulatory Authority of Kenya.			

5.	Clause 19(2) Fit and Proper Assessment	Entire Clause 19 (2)	Amendment of the entire clause	<ul style="list-style-type: none"> <li>- The "fit and proper" test and approval requirements could inadvertently create high entry barriers for young, local entrepreneurs who may not have extensive professional track records or prior leadership experience in regulated sectors.</li> <li>- Emerging founders, especially in developing markets, may struggle to meet stringent financial or professional standards, discouraging local innovation and participation in the VASP sector</li> </ul>
	We request for the amendment of the Fit and Proper Assessment to be more inclusive for start ups in the industry.			

6.	Clause 14	A license issued under this Act shall be valid from the date it is issued and shall expire on the 31st December of the year it is issued	Section should be HEADED AS <u>DURATION AND RENEWAL OF A LICENSE</u>  (1) A licence issued under this Act shall be valid from the date it is issued and shall expire on the 31st December of the year it is issued.	<ol style="list-style-type: none"> <li>1. The Clause does not provide for renewal and grace period within which to renew.</li> <li>2. We propose that all licensees have 90 days from the date of expiry of the license to apply for renewal. So all renewals should be granted by 31st March.</li> <li>3. And roll over the ones that are granted in the last 90 days prior to 31 December and considerations for pro rated fees.</li> </ol>
We request for the amendment of this Bill by having a roll over period after licensing date of 31st December as suggested.				
7.	Clause 26(1) (f), (k)	The chief executive officer, appointed or designated under section 31(1) of this Act, shall, in writing notify the relevant regulatory authority where that chief executive officer becomes aware or has reason to believe that	Delete the following from Clause 21(f) "including banking arrangements: and change 21 (k) to "a cyber-security incident that has occurred that leads to significant loss or creates a significant security incident.	<ul style="list-style-type: none"> <li>- Deleting banking arrangement avoids licenses from reporting Day to Day incidents to the regulator. Current banking arrangements can be reported in a quarterly report.</li> <li>- Companies experience many cyber security incidents and it is only significant incidents that should be reported.</li> <li>- This might also bring confusion with the mandate of the Data Protection Office and reporting incidents with that office.</li> </ul>

		(f) there is a material change to the business including change to banking arrangements (k) a Cyber-security incident has occurred		
We request for the amendment of this Bill by deleting clauses that will lead to over reporting of day to day activities as suggested.				
8.	Clause 27(2)(e)	(2) For the purposes of subsection (1), the following changes are material—  “the acquisition of a controlling interest in another company or other entity;”	Clarification of what constitutes acquisition and controlling interest.	<ul style="list-style-type: none"> <li>- In the case of a subsidiary VASP operating in Kenya, where the parent company is undergoing an IPO, does this constitute “material change” and does the relevant local regulator need to be notified for approval?</li> <li>- Is it events only related to the Kenya subsidiary level or also events at the parent level?</li> <li>- We also seek that approval of share transfers should be for instances where there will be a majority controlling interest in the VASP and not for every transfer even the minor small ones.</li> <li>-</li> </ul>
We request for the amendment of this Bill by providing clarity on acquisition and controlling interest as suggested.				

9.	Clause 33(1)	<p>"Pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act and section 42A of the Prevention of Terrorism Act, the relevant regulatory authority shall regulate, supervise and enforce compliance for AML/CFT/CPF purposes by all virtual asset service providers.</p> <p>"</p>	<p>Amendment of the Proceeds of Crime and Anti-Money Laundering Act, and the Prevention of Terrorism Act.</p>	<ul style="list-style-type: none"> <li>- Section 33 requires that we refer to POCAMLA for all AML CFT and CPF matters including reporting suspicious transactions/activities (STR/SARs) to the Financial Reporting Center (FRC), however, POCAMLA does not recognize VASPS as reporting institutions.</li> </ul>
<p>We request for the amendment of this Bill by amending the Proceeds of Crime and Anti-Money Laundering Act, and the Prevention of Terrorism Act as suggested.</p>				

10.	Clause 34(2)	<p>Penalties for violations relating to money laundering, terrorism financing.</p> <p>"A person who violates or fails to comply with the provisions of subsection (1) shall be liable to the penalty provided under section 41"</p>	<p>Include penalties for violations related to Money Laundering (ML), Terrorism Financing (TF), and Proliferation Financing (PF), as well as breaches of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) and the Prevention of Terrorism Act (POTA) under Section 41.</p>	<ul style="list-style-type: none"> <li>- The specific penalties related to violations related to ML TF PF were not captured in section 41 as indicated in section 34(2).</li> <li>- Ensure these penalties are harmonized and aligned with those stipulated under these respective laws and regulations.</li> </ul>
<p>We request for the amendment of this Bill by including penalties for violations to Money Laundering (ML), Terrorism Financing (TF), and Proliferation Financing (PF), as well as breaches of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) and the Prevention of Terrorism Act (POTA) under Section 41 as suggested.</p>				
11.	<p>Clause 41(1) (a) and (b); 41(2)(a) and (b); 41(3) (a) and (b)</p>	<p>41. (1) A person who commits an offence under section 28(5) is liable, upon conviction (a) in the case of an individual, to a fine not exceeding three million shillings or to imprisonment for a term not exceeding three years, or to both</p>	<p>To delete current section and Add penalties as:</p> <ul style="list-style-type: none"> <li>- 41(1)(a); Kenya Shillings not exceeding 1,000,000 for individuals</li> <li>- 41(1)(b); Kenya Shillings not exceeding 2,000,000 for a company</li> <li>- 41(2)(a) - Not exceeding 2,000,000 for individuals</li> <li>- 41(2)(b) - Not exceeding 5,000,000 for a company</li> </ul>	<ul style="list-style-type: none"> <li>- To ensure punitive measures but also bear in mind startup industry and allow for growth of the industry. Penalties can be increased as the industry grows.</li> <li>- To ensure global standards and also national standards with other Fintech laws.</li> </ul>

	<p>(b) in the case of a company, to a fine not exceeding five million shillings</p> <p>(2) A person who commits an offence under section 11(8), 35(6), 38(5) or 39(6) is liable, upon conviction</p> <p>(a) in the case of an individual, to a fine not exceeding seven million shillings or to imprisonment for a term not exceeding three years, or to both</p> <p>(b) in the case of a company, to a fine not exceeding twenty million shillings</p> <p>(3) A person who commits an offence under section 9(3), 22(2), 34(2) or 35(7) is liable, upon conviction</p> <p>(a) in the case of an individual, to a fine not exceeding</p>	<ul style="list-style-type: none"> <li>- 41(3)(a) - Not Exceeding 5,000,000 for individuals</li> <li>- 41(3)(b) - not exceeding 7 million for a company.</li> </ul>	
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		ten million shillings or to imprisonment for a term not exceeding five years, or to both (b) in the case of a company, to a fine not exceeding twenty-five million shillings		
We request for the amendment of this Bill by amending the penalties and fines as suggested.				
	<b>NOT INCLUDED IN THE BILL</b>			
1	Issuance of Stablecoins	N/A	<p><b>To Add in the Bill</b></p> <p><b>Issuance of Stablecoins</b></p> <ol style="list-style-type: none"> <li>1. Any legal entity wishing to issue stablecoin within Kenya, or seeking an admission or listing of such stablecoin to be traded on the trading platform operated by a licensed virtual asset exchange in Kenya, seeks approval of the Regulatory Authority</li> <li>2. A stablecoin issuer appoints a qualified asset valuer to demonstrate the reserve asset</li> </ol>	<ul style="list-style-type: none"> <li>- Addition of this clause will ensure proper guidelines for issuance of stable coins in Kenya.</li> </ul>

			<p>underlying the stablecoin and how the stablecoin is pegged to it.</p> <ol style="list-style-type: none"> <li>3. The valuation confirms that stablecoins are 100% collateralized to ensure fully backed reserve assets are maintained at all times, and are to be ring-fenced and not lent out for additional yield. The regulatory authority may issue regulations specifying the conditions under which reserve assets may be invested.</li> <li>4. The independent auditor confirms that the reserve assets are sufficiently liquid to cover in a reasonable and timely manner redemption requests of all outstanding stablecoins.</li> <li>5. Stablecoin issuer provides means for verification of underlying reserve assets.</li> <li>6. Reserve assets are safeguarded by a professional and licensed custodian, and are subject to regular audits</li> <li>7. Reserve assets are segregated from the stablecoin issuer's assets or other creditors of the</li> </ol>	
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			<p>stablecoin issuer to protect stablecoin holders in the event of the issuer's insolvency or bankruptcy.</p> <p>8. The Regulatory Authority's regulations may determine additional requirements for issuance and trading of stablecoins.</p>	
<p>We request for the amendment of this Bill by providing for issuance of stablecoins as suggested.</p>				
2	Tokenisation of Real World Assets	N/A	<p><b>"real-world asset"</b> refers to an asset that exists in the physical or traditional financial world, but which can be represented, tokenized, or traded in digital form on blockchain network</p> <p><b>Tokenisation of Real World Assets</b></p> <p>1. Any legal entity wishing to issue tokens representing real-world assets within Kenya or seeking admission or listing of such tokens to be traded on the trading platform operated by a licensed virtual asset exchange in Kenya, seeks approval from the Regulatory Authority.</p>	

			<ol style="list-style-type: none"> <li>2. A qualified asset valuer properly values the asset underlying a token, and the valuation must be transparent, periodic and regularly updated.</li> <li>3. The valuation confirms that tokens are 100% collateralised, and the underlying assets are to be ring-fenced and not lent out for additional yield.</li> <li>4. Underlying real-world assets are held by a professional and licensed custodian and are subject to regular audits.</li> <li>5. The issuer provides verifiable documentation proving the issuer's ownership of the underlying asset.</li> <li>6. For the purposes of this law, real-world assets eligible for tokenisation do not include sovereign assets, public infrastructure, Personal Identifiable Information, artworks, and any other asset or category of assets that cannot be transparently valued, legally enforced and ethically justified.</li> </ol>	
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			7. The Regulatory Authority may, from time to time, designate real-world assets which are inappropriate or unlawful for tokenisation based on public interest or regulatory risk considerations.	
	We request for the amendment of the Bill by inclusion of provisions on Tokenisation of Real world Assets as suggested.			

**-THE END-**

# CERTIFICATE *of* SIGNATURE

REF NUMBER  
JTVZZ-SJAGH-TMUEZ-EB5LM

DOCUMENT COMPLETED BY ALL PARTIES ON  
25 MAY 2025 21:38:24 UTC

## SIGNER

**EDLINE MURUNGI**

EMAIL  
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## TIMESTAMP

SENT  
25 MAY 2025 21:38:24 UTC

SIGNED  
25 MAY 2025 21:38:24 UTC

## SIGNATURE

*Edline E. Murungi*

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**Memorandum**

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<b>Re:</b>	<b>Memorandum on the Virtual Asset Service Providers Bill, 2025</b>
<b>To:</b>	Departmental Committee on Finance and National Planning
<b>From:</b>	Virtual Assets Chamber
<b>Date:</b>	25th April 2025
<b>Our Contacts</b>	<a href="mailto:policy@virtualassetchamber.com">policy@virtualassetchamber.com</a>

**A. About Us**

The **Virtual Asset Chamber (VAC)** is a dedicated policy think tank that strives to create and maintain a favorable business environment for **Virtual Asset Service Providers (VASPs)**. Recognizing the transformative potential of blockchain and virtual assets, VAC acts as a unified voice for diverse stakeholders in the crypto and digital asset ecosystem.

The Chamber is deeply committed to advocating for balanced policies and regulatory frameworks that foster innovation, protect consumer interests, and ensure compliance with global standards. Through collaboration with policymakers, regulators, and industry players, VAC works to address challenges, highlight opportunities, and create a sustainable ecosystem for virtual assets.

**B. Members and Partners of the Chamber**

We represent a distinguished group of businesses engaged in the virtual asset space, all of whom are actively seeking licensing under the provisions of the Bill. Our members span a broad spectrum of innovative financial services, with an emphasis on global regulatory compliance and advancing the financial ecosystem through blockchain technologies.



- a. **Cryptocurrency Exchanges:** These platforms facilitate the purchase, sale, and trade of cryptocurrencies, with several of our members already licensed in over 18 jurisdictions globally. Their operations ensure regulatory compliance and uphold the integrity of digital asset markets across multiple geographies.
- b. **On-Ramp and Off-Ramp Providers:** These businesses, akin to Forex bureaus but for virtual assets, play a crucial role in bridging the gap between cryptocurrency and local fiat currencies. Many of our members are already licensed in 18+ jurisdictions and serve as the primary conduits for converting cryptocurrencies (e.g., Bitcoin) into local currencies, such as the Kenyan Shilling.
- c. **Stablecoin Issuers:** Our members involved in the issuance of local and USD-pegged stablecoins bring a high degree of financial stability to the market. These stablecoins are pegged to real assets, such as the Kenyan Shilling (KES) or the US Dollar, offering transactional parity with mobile money or traditional banking systems. Many of our members already operate globally and are licensed in top jurisdictions, including those under the European Markets in Crypto-Assets (MiCA) Regulations.
- d. **Custodial Solutions:** Our Chamber includes companies that provide secure software infrastructure for the storage and management of virtual assets. These services are vital for both individual and institutional users seeking to safeguard their digital assets.
- e. **Virtual Asset Payment Solutions Providers:** These companies are integral to enabling seamless transactions using virtual assets in everyday commerce.
- f. **Asset Managers:** Our members are at the forefront of managing virtual asset portfolios, applying sophisticated strategies to optimize returns while adhering to the highest standards of governance and compliance.
- g. **Tokenization:** Our members are exploring innovative ways to fractionalize ownership of tangible assets, such as real estate and commodities, through blockchain technology. This novel approach allows for greater liquidity and democratizes access to asset ownership.

### C. Track Record and Stakeholder Engagement

Our ethos is grounded in collaboration and dialogue. As part of our ongoing commitment to advancing the sector, we have engaged with key stakeholders and policymakers on multiple occasions:



- a. **Departmental Committee on Finance and National Planning:** We have had several productive engagements with this Committee throughout 2023 and 2024 to ensure the regulatory landscape supports sustainable growth in the digital asset sector.
- b. **Capital Markets Authority (CMA):** Through the CMA's sandbox initiative, we have successfully onboarded several of our members. Additionally, we have organized and participated in numerous stakeholder workshops to foster better understanding and regulatory clarity.
- c. **Central Bank of Kenya (CBK):** The CBK has been a steadfast ally in addressing key concerns raised by our members, particularly around the VASP Bill. Their support has been instrumental in driving regulatory progress, especially in the areas of consumer protection.
- d. **National Treasury:** We continue to engage with the Treasury to ensure that financial policies remain aligned with the emerging needs of the virtual asset sector while safeguarding national economic interests.
- e. **Kenya Revenue Authority (KRA):** Our Chamber has worked closely with KRA on tax-related issues, striving for clear guidelines on the taxation of virtual assets to ensure fair and efficient revenue collection.
- f. **Financial Reporting Centre (FRC):** The FRC has been an essential partner in tackling anti-money laundering (AML) challenges within the sector. Our discussions with them are focused on developing robust frameworks to mitigate financial crime.
- g. **Ministry of ICT:** Our partnership with the Ministry of ICT is geared towards innovation, job creation, and the attraction of Foreign Direct Investment (FDI) into Kenya's burgeoning digital asset space.
- h. **United Nations Office on Drugs and Crime (UNODC):** The UNODC has been a strong advocate for addressing AML issues, providing valuable insights and support in shaping policies that ensure compliance with international best practices.

#### **D. Commitments to Education, Understanding, and Empowerment**

We are unwavering in our commitment to advancing financial literacy, promoting consumer protection, and empowering stakeholders within the virtual asset ecosystem. To this end, we collaborate with a range of partners to facilitate education and awareness initiatives, including:

- **Workshops, Webinars, and Conferences:** We regularly organize events in collaboration with key stakeholders to foster knowledge-sharing and build a deeper understanding of the virtual asset landscape.
- **Blockchain Education Hubs:** In collaboration with various stakeholders, we are finalizing plans to roll out educational and scam awareness programs to protect the youth from falling victim to digital asset scams. We aim to reach over 250 hubs, spreading awareness and empowering the next generation of



digital asset users.

- **Attracting Foreign Direct Investment into Kenya:** We support the development of blockchain incubation hubs in Nairobi, positioning Kenya as a key player in the global blockchain ecosystem. Our discussions with international institutions are focused on attracting capital and expertise to invest in promising local startups.

NOTABLE PROPOSITIONS FROM THE VIRTUAL ASSET CHAMBER ON THE VASP BILL, 2025

S/No	Clause & Subclause	Provisions of the Clause*	Proposed Revision**	Rationale for the revision/ Recommendation
	<b>Section 4</b>	<p>Objects of the Act</p> <p>The main object of this Act is to provide for the legislative framework to license and regulate the activities of virtual asset service providers in and from Kenya.</p>	<p>This is a very relevant provision as it will help define parameters. We commend this inclusion.</p>	<p>Kenyan consumers have lost millions of dollars to crypto scams and related fraud activities with the most recent example being CBEX. It is important to have strong consumer protection mechanisms.</p>
	<b>Section 6</b>	<p>Regulatory Authorities</p> <p>6. The following entities shall be the relevant regulatory authorities for the purposes of this Act —</p> <p>(a) the Capital Markets Authority established under section 5 of the Capital Markets Act;</p> <p>(b) the Central Bank of Kenya established under Article 231(1) of the Constitution; or</p> <p>(c) any other public body established under a written law that the Cabinet Secretary may, by notice in the Kenya Gazette, designate as such.</p>	<p>6. Establishment of a joint Virtual Asset Regulatory Authority</p> <p>1. There shall be a joint regulatory authority called the Virtual Asset Regulatory Authority (VARA)</p> <p>2. The joint regulatory authority shall be made up of:</p> <p>(a) Capital Markets Authority established under Section 5 of the Capital Markets Act;</p> <p>(b) the Central Bank of Kenya established under Article 231(1) of the Constitution; or</p> <p>(c) any other public body established under a written law that the Cabinet Secretary may, by</p>	<p>This provision seeks to create a centralized, harmonized, and efficient regulatory focal point, a “one-stop-shop”, for all matters relating to virtual assets. This is anchored in:</p> <p><b>1. Streamlined Regulatory Engagement and Ease of Doing Business.</b> By consolidating the regulatory interface into a single authority, the provision eliminates fragmented oversight and regulatory arbitrage.</p> <p><b>2. Preservation of Institutional Mandates and Promotion of Joint Oversight.</b> The provision preserves the constitutional and statutory mandates of the CBK and CMA while enabling them to coordinate and pool their regulatory powers and expertise in a structured and cooperative framework. The joint VARA does not usurp existing authorities but fosters a collaborative mechanism through which cross-cutting regulatory concerns can be addressed with coherence and effectiveness.</p> <p><b>3. Optimized Use of Technical and Institutional Resources.</b> The regulation of virtual assets demands substantial technical input, continuous market</p>

			<p>notice in the Kenya Gazette, designate as such.”</p>	<p>surveillance, and dynamic policy responses. Joint regulation through VARA will enable the sharing of institutional resources, infrastructure, and technical know-how, thereby reducing duplicative efforts, enhancing operational efficiency, and allowing for quicker policy implementation and regulatory adaptation.</p> <p><b>4. Joint Capacity Building and Knowledge Sharing.</b> Given the nascent and highly technical nature of virtual assets, there is a recognized capacity gap within traditional regulatory institutions. The establishment of VARA provides a platform for inter-agency capacity building, thus accelerating the learning curve and ensuring that regulators can respond to emerging risks and innovations with informed judgment.</p> <p><b>5. Adaptive Governance through Ministerial Designation.</b> The inclusion of a mechanism for the Cabinet Secretary to designate additional public bodies via Gazette notice ensures regulatory adaptability, allowing the Authority’s composition to evolve in response to emerging developments, sectoral overlaps, or the creation of new public institutions relevant to virtual asset regulation.</p> <p><b>6. Protection of Institutional Integrity and Insulation from Sectoral Backlash.</b> The establishment of VARA as a distinct joint regulatory body provides an institutional buffer between participating regulators and the operational issues, controversies, or potential crises arising from the virtual asset space. This structural separation protects the integrity, reputation, and functional focus of the CBK and CMA, ensuring they are not directly</p>
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				embroiled in sector-specific disputes or backlash that may accompany the evolution of virtual asset markets.
	<b>Section 48</b>	1 year moratorium	This is a great provision that reflects a progressive approach.	The inclusion of a one-year moratorium period upon the commencement of this Act is a prudent transitional measure designed to facilitate an orderly shift from an unregulated to a regulated virtual asset environment.
	<b>Section 25(h)</b>	<i>"Every virtual assets service provider shall at all times - open and operate a bank account in Kenya for the purposes of this Act"</i>	<b>Replace 'shall' with 'may' as follows:</b>  <i>"Every virtual assets service provider <u>may</u> - open and operate a bank account in Kenya for the purposes of this Act"</i>	Crypto companies have for the past 10 years been unable to access banking services due to an existing CBK cautionary notice restricting them from accessing banking services - we wish to celebrate this legislation as a win that would open up such integration
	<b>Section 11(2)</b>	(2) The relevant regulatory authority , in relation to an application received under subsection (1), either -	"(2) The relevant regulatory authority , in relation to an application received under subsection (1), <u>within 90 Days</u> , either -"	<p>The proposed insertion of a specific timeline—"within 90 days"—into subsection (2) is intended to align the licensing framework for Virtual Asset Service Providers with established regulatory best practices.</p> <p>It is a common feature of licensing regimes for regulators to provide a clear timeframe within which applicants can expect feedback on the status of their applications. This approach is exemplified in Regulation 5(1) of the Digital Credit Providers Regulations, 2021, which imposes a 60-day window for the Central Bank of Kenya to make a determination on a licensing application.</p> <p>Depending on the type of license, the time period may vary but a minimum period of 90 days response is a good place to start.</p>

	<b>Section 12(k)</b>	12 (k) if the applicant is already operating in a regulated sector, a no-objection shall be required from the relevant regulator.	Delete this requirement	VASPs often operate in multiple jurisdictions. Requiring no-objection letters from each regulator would create unnecessary delays and administrative burdens, especially where no formal process exists to issue such letters. This does not add meaningful oversight in Kenya. Instead, require disclosure of existing licenses and any regulatory actions, allowing local authorities to assess suitability without undue hurdles.
	<b>Section 14</b>	A license issued under this Act shall be valid from the date it is issued and shall expire on the 31st December of the year it is issued.	"A license issued under this Act shall be valid from the date it is issued and shall expire after 12 months from the date issued."	<b>Recommendation:</b> Remove the license's definite calendar month expiry date and use a time period format where, unlike a fixed date like 31 December, the license should expire instead after 12 months <b>from the date of issuance</b> .  Requiring licenses to be renewed on the 31st December of the year it is issued may create unnecessary administrative burdens for both the regulator and the VASPs. Extending the validity period to 12 months allows VASPs to focus on compliance and operations rather than frequent renewals, while still enabling regulators to maintain oversight through periodic reporting and compliance checks similar to requirements under the Data Protection Act.
	<b>Section 21(1)</b>	21. (1) Subject to subsection (2) and section 19, the business and affairs of a licensee shall be managed by at least three directors of the board of whom at least three shall be natural persons; Provided that a director shall not serve in more than two boards of a licensee under this Act.	Delete "Provided that a director shall not serve in more than two boards of a licensee under this Act."  "21. (1) Subject to subsection (2) and section 19, the business and affairs of a licensee shall be managed by at least three directors of the board of whom at least three shall be natural persons"	The restriction allowing directors to serve on only two VASP boards may unduly limit access to experienced professionals and stifle growth, particularly for startups. Some investors may have an interest in more than two VASPs and would need directorship as a consideration for their investments. Some innovators may also have various VASP services they want to roll out to market. Therefore restricting one director to once licensed VASP potentially inhibits both investment appetite and innovation.

	<b>Section 27(2)(l)</b>	(2) For the purposes of subsection (1), the following changes are material; (l) a change in the target market.	Delete this from the bill	This is inconsistent with lean startup approaches that encourage experimentation, iteration and pivoting as start-ups seek product market fit. The section therefore increases the difficulty of doing business.
	<b>Section 28(1)</b>	(1) No shares in a licensee shall be issued and no issued shares shall be voluntarily transferred or disposed of, without the approval of the relevant regulatory authority.	(1) No shares in a licensee shall be issued, and no issued shares representing at least ten percent (10%) of the total issued share capital of the licensee shall be voluntarily transferred or otherwise disposed of, whether in a single transaction or a series of related transactions, without the prior written approval of the relevant regulatory authority.	Introduce a threshold for the percentage of shares that require reporting, such as transfers exceeding 10% of issued shares.  Requiring approval for all share transfers creates unnecessary administrative burdens. A threshold ensures that only significant ownership changes are subject to regulatory scrutiny, aligning with practices in other regulated industries.
	<b>Section 31(1),(2), (3)</b>	A virtual asset service provider who intends to appoint or designate a person as a chief executive officer, shall apply to the relevant regulatory authority for its approval.	Strike off this entire clause 31 from the bill.	This provision imposes undue administrative burdens by requiring regulatory approval for internal leadership decisions. Companies should retain the autonomy to appoint their chief executive officers, subject to existing fit-and-proper criteria.  Whereas it may be important to have a senior manager in Kenya, some CEOs have already been appointed and oversee operations across multiple countries.
	<b>Section 33(2)(a)</b>	<b>Section 33(2):</b> In carrying out its AML/CFT/CPF mandate, the relevant regulatory authority shall:  (a) Vet significant shareholders, beneficial owners, directors, senior officers of a virtual asset service provider;	Delete 33(2)(a): Remove the requirement to vet significant shareholders.  Delete 33(2)(c): Remove the requirement for off site surveillance.	<b>For Removing 33(2)(a) – Vetting Significant Shareholders</b>  <ul style="list-style-type: none"> <li>• <b>Impractical for Global Structures:</b> Many VASPs are part of international corporate groups with complex and changing shareholder compositions, making local vetting of all significant shareholders administratively burdensome and impractical.</li> </ul>

		(c) Conduct offsite surveillance.		<ul style="list-style-type: none"> <li>• <b>Regulatory Focus Should Be Local:</b> Vetting should prioritize <b>locally responsible persons</b> (e.g., directors, senior officers) who directly oversee operations and compliance in Kenya.</li> <li>• <b>Redundant in Presence of Beneficial Ownership Disclosures:</b> Existing obligations under AML laws already require disclosure of beneficial ownership, which regulators can act on if needed.</li> </ul> <p><b>For Removing 33(2)(c) – Off Site Surveillance</b></p> <ul style="list-style-type: none"> <li>• <b>Overly Prescriptive</b> with no clear definition or boundaries on what off site surveillance entails.</li> </ul>
	Section 35(1)	"A person shall not issue or purport to issue a virtual asset offering, in or from Kenya, or seek an admission of such asset to trading on a virtual asset trading platform unless that issuance is approved under this Act or any other relevant law."	<p><b>Strike out Section 35(1):</b></p> <p><b>Replace with:</b></p> <p>"A virtual asset trading platform shall establish and maintain rules and procedures governing the listing, suspension, and delisting of virtual assets. Such rules may be made available to the regulator upon request and include due diligence, risk assessment, and disclosure requirements proportionate to the nature of the virtual asset."</p>	<p>Exchanges already manage listing risks through robust internal vetting, continuous monitoring, and liquidity assessments.</p> <p>A principles-based approach avoids overly prescriptive regulation and gives room for innovation. This aligns with global best practices, where exchanges self-regulate under clear accountability frameworks.</p> <p>Requiring regulatory approval for each token would impose an unmanageable administrative burden, given the thousands of tokens in circulation, it is neither practical nor efficient for the regulator to review every listing.</p>

	<p><b>Section 35(2), (3) and (4)</b></p>	<p>35(2): "...a natural person shall not be eligible to <b>promote</b> or issue a virtual asset offering..."</p> <p>35(3): "...desiring to issue or <b>promote</b> a virtual asset offering..."</p> <p>35(4): "...shall not issue or <b>promote</b> a virtual asset offering... unless..."</p>	<p>Remove all references to the word "promote" from Section 35.</p>	<p><b>Overly Broad and Ambiguous</b></p> <ul style="list-style-type: none"> <li>• The term "promote" is vague and could unintentionally capture a wide range of lawful marketing, advertising, or communication activities related to virtual assets.</li> <li>• It could be interpreted to include media reporting, analyst commentary, education campaigns, or even investor discussions on social media, creating unnecessary legal uncertainty.</li> </ul> <p><b>Disproportionate Restrictions on Individuals</b></p> <ul style="list-style-type: none"> <li>• Prohibiting natural persons from "promoting" virtual asset offerings (as in 35(2)) could bar founders, developers, or early-stage innovators from discussing or sharing information about their own projects.</li> <li>• This stifles innovation and limits early-stage ecosystem growth.</li> </ul> <p><b>Existing Laws Already Cover Misleading Promotion</b></p> <ul style="list-style-type: none"> <li>• Kenya's existing consumer protection and anti-fraud laws already prohibit deceptive or misleading marketing, including in the financial sector.</li> <li>• There's no need to duplicate or extend prohibitions under this Bill, especially with ambiguous language.</li> </ul> <p><b>Focus Should Be on the Issuance and Listing Process</b></p> <p>Regulatory attention should remain on the formal issuance and listing of virtual assets, not general promotional activity, which can be managed under</p>
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				<p>standard advertising and disclosure rules.</p> <p><b>Global Norms Do Not Criminalize Promotion</b></p> <ul style="list-style-type: none"> <li>Major jurisdictions regulate <b>how</b> virtual assets are promoted (e.g., via disclosure requirements or risk warnings), not <b>whether</b> they can be promoted at all.</li> <li>A complete ban on promotion is out of step with global best practices and could chill legitimate industry activity.</li> </ul>
	<b>Sections 40 &amp; 41 on enforcement</b>	The Bill provides for fines up to 10 million per infraction and prison time of up to 5 years for violators.	Reduce the monetary penalties and jail time to align with penalties for similar infractions in other financial sectors.	<p>The penalties are disproportionately high compared to those imposed on other financial institutions. For instance, operating a payment service provider without a license attracts a fine of 500,000 KES or a three-year prison term. Excessive penalties discourage innovation and the growth of the virtual asset sector.</p> <p><b>Recommendation:</b></p> <p>Reduce the monetary penalties and jail time to align with penalties for similar infractions in other financial sectors such as the payments service providers and banking sector.</p>
	<b>FIRST SCHEDULE</b>	Virtual Asset Services	Introduce Unified licence regime as new category -  <b>Unified Virtual Asset Service Provider Licence</b>	<p><b>Rationale</b></p> <ul style="list-style-type: none"> <li>Many VASPs perform multiple activities across the value chain (e.g., custody, exchange, payments).</li> </ul>

			<p>(1) A person may apply for a unified licence to conduct one or more virtual asset services under this Act.</p> <p>(2) A unified licence shall authorise the licensee to offer multiple virtual asset services, including but not limited to:</p> <ul style="list-style-type: none"> <li>(a) custody and safekeeping of virtual assets;</li> <li>(b) operation of a virtual asset trading platform;</li> <li>(c) exchange between virtual assets and fiat currency;</li> <li>(d) transfer or settlement of virtual assets on behalf of others.</li> </ul> <p>(3) The Authority may impose conditions or limitations within the unified licence based on the applicant's risk profile, operational capacity, and compliance history.</p>	<ul style="list-style-type: none"> <li>• Requiring a separate licence for each service is duplicative and inefficient.</li> <li>• A unified licence, similar to how a banking licence operates, would streamline oversight while maintaining appropriate regulatory safeguards.</li> <li>• This approach reduces compliance complexity and supports innovation, especially for global or full-stack VASPs.</li> </ul>
<b>NEW PROPOSED SECTIONS</b>				
	<b>New Proposed Section</b>	<b>Rationale</b>	<b>New Proposed Provisions</b>	

	<p><b>Insert a new Part VII - (Foreign Licensed Stablecoin Issuer)</b></p>	<p><b>Rationale:</b></p> <p>Our overall sentiment is that Kenya should adopt a policy of mutual recognition and regulatory equivalence, recognizing trusted foreign frameworks, so that foreign stablecoin issuers don't have to comply with very different rules in every country they operate in.</p> <p>The Central Bank's mandate is to regulate the issuance of Kenya Shillings. With regard to fiat and bond-backed stablecoins, the Central Bank of Kenya (CBK) is likely to focus its oversight mainly on KES-backed stablecoins, it's important to include clear legal recognition for stablecoins backed by other major fiat currencies like the USD, EUR and other G8 currencies, especially when they are already licensed in well-regulated markets e.g stablecoins already licensed under European Union (EU) <i>Markets in Crypto Assets (MiCA)</i> Regulations.</p> <p><b>Key benefits of this approach include:</b></p> <ol style="list-style-type: none"> <li><b>Participation by Trusted International Issuers:</b> By recognizing foreign currency stablecoins already licensed in well-regulated jurisdictions, Kenya becomes a more attractive market for global issuers. This reduces entry barriers and encourages responsible actors to participate without needing to duplicate compliance processes already satisfied elsewhere.</li> <li><b>Promotes Financial Stability and Consumer Protection:</b> Through alignment with global standards, such as reserve backing, clear redemption rights, and transparency in operations, Kenya can ensure that only high-integrity stablecoins operate in its market. This safeguards consumers while maintaining systemic financial resilience.</li> <li><b>Strengthen Kenya's Global Positioning in Digital Finance:</b> Taking a progressive, cooperative approach boosts Kenya's credibility as a leader in digital asset regulation across emerging markets. It sends a strong signal that Kenya is open for business, interoperable with major financial systems, and committed to responsible innovation.</li> </ol>	<p><b>Add the below definitions Interpretation Section</b></p> <p><i>"Recognized Jurisdiction" means any foreign jurisdiction whose regulatory framework for Virtual Assets Service Providers has been deemed equivalent by the Relevant Authority in accordance with Part VII herein.</i></p> <p><i>"Reserve Assets" means the financial instruments held to back a stablecoin, including cash, cash equivalents, and government bonds denominated in the reference currency.</i></p> <p style="text-align: center;"><b>PART VII (NEW PART)</b> <b>FOREIGN LICENSED STABLECOIN ISSUERS</b></p>	<p><b>Foreign Licensed Stablecoin Issuers</b></p>
			<p><b>36. Recognition of Foreign-Issued Stablecoins</b></p> <p>(1) <i>The Relevant Authority may recognize a stablecoin where—</i></p> <ol style="list-style-type: none"> <li><i>the stablecoin is backed by a currency other than the Kenyan shilling;</i></li> <li><i>the issuer of the stablecoin is licensed in a Recognized Jurisdiction; and</i></li> <li><i>the stablecoin is backed by reserve assets which—</i> <ol style="list-style-type: none"> <li><i>meet the prudential standards prescribed by the regulatory authority of the Recognized Jurisdiction; and</i></li> <li><i>satisfy the reserve requirements set by the Relevant Authority.</i></li> </ol> </li> </ol> <p>(2) <i>Where the requirements under subsection (1) are met to the satisfaction of the Relevant Authority, the Relevant Authority shall issue a letter of no objection to the foreign licensed issuer of the stablecoin.</i></p>	

		<p>4. <b>Creates a Pathway for Future Reciprocity:</b> By recognizing non-KES stablecoins today, Kenya lays the groundwork for its own KES-backed stablecoins to be accepted abroad. This fosters fair access and positions Kenyan financial products for international scalability.</p> <p><b>We thus recommend the following:</b></p> <p>a. <b>Introduce Framework for Recognition Foreign Currency Stablecoins already licensed elsewhere:</b> We propose provisions that allow recognition (not licensing) of USD, EUR, and other foreign currency-backed stablecoins to circulate locally. This shows openness and fairness, making it more likely that other countries will also allow future KES-backed stablecoins in their markets. This kind of two-way access is already allowed under both the EU's MiCA regulation and proposed U.S. stablecoin laws.</p> <p>b. <b>Foreign Licensed Stablecoin Issuers May Hold Reserves Where They're Licensed:</b> Stablecoin issuers should be allowed to hold their reserves in the countries where they are already licensed and issuing stablecoins, as long as those reserves meet Kenya's standards. This avoids forcing issuers to split up or duplicate their reserves unnecessarily, making operations more efficient and safer.</p>	<p>37 (1) <i>The Relevant Authority shall, by notice in the Gazette, publish a list of jurisdictions whose legal and regulatory frameworks for stablecoin issuance and reserve management are deemed Recognized Jurisdictions in Kenya.</i></p> <p>(2) <i>In determining a Recognized Jurisdiction, the Relevant Authority shall consider—</i></p> <p>(a) <i>alignment with global standards;</i></p> <p>(b) <i>transparency and reserve management requirements under the Recognized Jurisdiction's framework;</i></p> <p>(c) <i>supervisory and enforcement capabilities of the foreign regulator; and</i></p> <p>(d) <i>participation in international financial cooperation agreements.</i></p> <p>(3) <i>The list of Recognized Jurisdictions shall be subject to periodic review and may be amended or revoked by notice of the Central Bank.</i></p>	<p><b>Recognized Jurisdictions for Foreign Licensed Stablecoin Issuers</b></p>
			<p>38 (1) <i>A Foreign Licensed Stablecoin Issuers shall be permitted to maintain Reserve Assets in the Recognized Jurisdiction of its primary license, provided that—</i></p> <p>(a) <i>the Reserve Assets have met the criteria prescribed the Recognized Jurisdiction; and</i></p> <p>(2) <i>The Relevant Authority may require third-party attestation or audit reports verifying such compliance prior to approval of such Foreign Licensed Stablecoin Issuers.</i></p>	<p><b>Reserve Assets Held by Foreign Licensed Stablecoin Issuers</b></p>

	<p><b>Insert a new Part IX - (License Passporting)</b></p>	<p><b>What Is License Passporting?</b></p> <p>License passporting refers to a regulatory mechanism that allows a financial service provider, licensed in one jurisdiction to operate in another, without needing to obtain a new license in the second jurisdiction.</p> <p>This is typically allowed under frameworks where jurisdictions have mutual recognition or regulatory equivalence agreements, meaning they trust each other's regulatory standards to be sufficiently aligned.</p> <p>In the context of VASPs, license passporting would enable a VASP or a stablecoin issuer licensed in a well-regulated country (e.g. under the EU's MiCA framework, or South Africa's FSCA) to operate in Kenya with limited additional licensing requirements, subject to certain local compliance obligations (e.g. Licensing Fees, AML/CFT, Tax, or consumer protection laws).</p> <p><b>Key Benefits of License Passporting include:</b></p> <p>Positions Kenya as the 'Silicon Savannah' of Regulated Digital Finance:</p> <ol style="list-style-type: none"> <li><b>Supports the African Continental Free Trade Area (AfCFTA) and PAPSS Integration:</b> A passporting framework complements AfCFTA goals by reducing regulatory barriers to intra-African digital trade and cross-border payments. It also aligns with the Pan-African Payment and Settlement System (PAPSS), enabling smoother currency interoperability and financial inclusion across member states.</li> <li><b>License passporting reinforces Kenya's position as the Silicon Savannah, home of innovation:</b> By offering a clear, efficient pathway for international firms to operate across Africa via Kenya, the country can consolidate its role as a launchpad for regulated innovation—amplifying its reputation as the continent's "Silicon Savannah." Simply, any products launched in Kenya will be able to seamlessly scale through Passporting Partner Countries without needing to obtain a full license there.</li> <li><b>Encourages Participation by High-Quality Global Issuers:</b> By reducing duplicative licensing requirements, Kenya opens the door for reputable international stablecoin and fintech providers to operate in the region, expanding access to trusted financial tools for businesses and consumers.</li> <li><b>Accelerates Innovation and Access to Digital Capital:</b> With easier market entry, firms can rapidly deploy innovative solutions for payments, lending, remittances, and savings, addressing local financial needs and enhancing digital infrastructure across East Africa and beyond.</li> </ol>	<p><b>Add the below definitions Interpretation Section:</b></p> <p><i>"Passporting" means the right of a foreign-licensed Virtual Asset Service Provider or Stablecoin Issuer to provide services within Kenya without obtaining a separate domestic license, subject to recognition of its foreign license under Part IX of this Act.</i></p> <p style="text-align: center;"><b>PART IX (NEW PART) LICENSE PASSPORTABILITY</b></p> <p><b>43 (1)</b> A Virtual Asset Service Provider shall be eligible for passporting under this Act if—</p> <ol style="list-style-type: none"> <li>It is duly licensed or authorized in a <i>Recognized Jurisdiction</i>; and</li> <li>It submits a passporting notification to the designated authority in the prescribed form; and</li> <li>It agrees to comply with the applicable provisions of this Act, including all obligations of a license-holder under this Act.</li> <li>Appoint a local representative or establish a local point of contact for supervisory correspondence;</li> <li>Provide such additional information as may be prescribed by the Authority, including documentation of compliance with applicable Kenyan standards.</li> </ol> <p><b>(2)</b> The Relevant Authority, <i>may, by notice in the Gazette, publish a list of jurisdictions deemed to be Recognized Jurisdictions</i> for the purposes of this section.</p>	<p style="text-align: center;"><i>Passportability Eligibility</i></p>
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	<p><b>Insert new section under Miscellaneous provisions. (Appointment of Compliance Officer)</b></p>	<p><b>Rationale for Appointment of Compliance Officer</b></p> <p>The introduction of a Compliance Officer for VASPs serves as a critical safeguard in ensuring oversight, risk management, and adherence to regulatory obligations within an evolving sector.</p> <ol style="list-style-type: none"> <li>A dedicated Compliance Officer ensures that each licensee actively implements and monitors compliance frameworks aligned with national and international standards, including obligations under the Proceeds of Crime and Anti-Money Laundering Act and the Prevention of Terrorism Act.</li> <li>Alignment with Best Practices Globally, jurisdictions regulating virtual assets, including the EU, Singapore, and the UK, require VASPs to maintain compliance functions, often under the oversight of qualified personnel. Including this requirement ensures Kenya's regulatory framework remains internationally competitive and FATF-compliant.</li> </ol>	<p><b>48A. Appointment of Compliance Officer</b></p> <p><b>(1)</b> A licensee shall appoint a Compliance Officer, who shall possess such qualifications or certifications as may be prescribed or recognised by the relevant regulatory authority.</p> <p><b>(2)</b> The Compliance Officer shall—</p> <ol style="list-style-type: none"> <li>be responsible for ensuring the licensee's compliance with the provisions of this Act and all applicable laws, including but not limited to the Proceeds of Crime and Anti-Money Laundering Act, the Prevention of Terrorism Act, and the Data Protection Act;</li> <li>oversee the implementation and effectiveness of internal compliance policies and procedures.</li> </ol>	<p><b>Appointment of Compliance Officer</b></p>



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Our Ref SWI/GEN  
Your Ref TBA  
Date 25 April 2025

*② Mr. Benjamin Mlageti, HoD*

*Pls bring to the attention of the  
Dept. Comm. on Finance.*

*DM 28/04/2025*

*ISDNC*

*g  
25/4*

Office of the Clerk of the National Assembly  
Main Parliament Buildings  
P.O Box 41842-00100  
Nairobi

Attn: Mr. Samuel Njoroge, CBS



via email: [cna@parliament.go.ke](mailto:cna@parliament.go.ke)

Dear Sirs,

**Re: Comments on the Virtual Asset Service Providers Bill, 2025**

Pursuant to your notice for comments dated 11 April 2025 by the Clerk of the National Assembly on the Virtual Asset Service Providers Bill, 2025 (the **Bill**) which was published on 8 April 2025, we have set out our comments below.

Anjarwalla & Khanna LLP (the **Firm**) has a policy to contribute to the development of legislation in Kenya and to encourage the advancement of the rule of law. The Firm is grateful for the opportunity to share its views and has set out detailed comments on the Bill.

**1 Detailed Comments**

Section	Comment/Observation	Recommendation
Section 3(1)	Restricts VASPs to companies registered under Companies Act, excluding other legal entities.	Expand eligibility to include partnerships/LLPs meeting capitalization requirements.
Section 6	This provision designates multiple regulatory authorities to operationalise the Act. The Schedule of Virtual Asset Services indicates the "Responsible Relevant Regulatory Authority" for	We recommend the establishment of clear inter-agency regulatory authority, such as a Joint Virtual Assets Regulatory Authority to mitigate potential jurisdictional overlap and confusion.

Section	Comment/Observation	Recommendation
	<p>each type of service. For several categories, both the Central Bank of Kenya and the Capital Markets Authority are listed. This explicit dual designation for certain services raises concerns about potential regulatory overlap. Moreover, the provision in section 6(c) allows the Cabinet Secretary to designate "any other body" as a regulatory authority which further compounds the risk of fragmentation and unclear lines of responsibility.</p>	
<p><b>Section 14</b></p>	<p>This section provides that a licence issued under this Act is valid only until 31st December of the year it is issued which could potentially create administrative inefficiencies for both VASPs and regulatory authorities.</p>	<p>Consider introducing rolling licence expiry dates based on the date of issuance of the licence to the VASPS.</p>
<p><b>Section 23</b></p>	<p>The current drafting of section 23(1) states that "<i>A virtual asset service provider shall at all times maintain its business in a financially sound condition by complying with such capital, solvency and insurance requirements as may be prescribed</i>". The phrase "<i>as may be prescribed</i>" indicates that the specifics will be detailed in future regulations, leaving the primary legislation without concrete guidance on these crucial aspects. It does not give stakeholders the ability to comment on this crucial aspect of the proposed law. Furthermore, the Bill does not currently differentiate capital and solvency obligations based on the diverse risk profiles of the virtual asset services listed in the Schedule. For instance, the risks associated with a "Virtual Asset Wallet Provider" differ significantly from those of a "Virtual Assets investment advisor".</p>	<p>Our recommendation is for these crucial details to be provided before the Bill is passed as they are important considerations for stakeholders intending to engage in virtual assets services business.</p> <p>Introduce risk-weighted capital requirements. This approach would link the required capital to the specific risks inherent in a VASP's activities.</p> <p>Provide for mandatory liquidity coverage ratios. This would require VASPs to maintain a sufficient amount of highly liquid assets to meet short-term obligations, thereby bolstering their resilience to market stress and ensuring the ability to meet client withdrawals.</p>
<p><b>Section 27(1)(b)</b></p>	<p>This provision requires the relevant authority to notify the licensee in writing that it has no objection to a material change, but does not provide a timeframe for this notification.</p>	<p>Stipulate a reasonable timeframe within which the relevant regulatory authority must respond to a notification of a material</p>

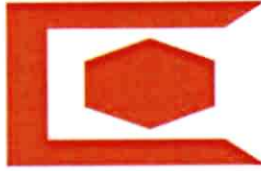
Section	Comment/Observation	Recommendation
		change. If no response is received within this timeframe, the change could be deemed approved.
<b>Section 28 (1)</b>	<p>The provision deals with approvals for share transfers.</p> <p>Requiring prior approval from the relevant regulatory authority for any and all voluntary transfers or disposals of shares in a licensee may not be necessary if (1) it does not result in a changes in ownership of the licensee, for instance, if it relates to transfers between existing shareholders who will already have been vetted at the time of licensing; and (2) the changes in ownership are not significant, for instance, transfers or disposals of 10% or less of the shareholding</p>	<p>Allow for voluntary transfers and disposals between existing shareholders, save when it results in a change in control of the licensee.</p> <p>Introduce thresholds for significant ownership changes (e.g., exceeding a certain percentage) that require prior approval, while allowing smaller transfers with notification to the regulatory authority.</p>
<b>Section 44</b>	This provision grants the relevant regulatory authority the power to require online or automated real-time read-only access to client transaction records.	While important for oversight, the Bill should be passed only when the regulatory authorities have implemented appropriate data protection and security measures that will safeguard this sensitive information.
<b>Section 46</b>	This provision provides for the passing of future regulations to deal with matters that could be of significant import to licensees. These regulations will be passed without proper participation or consultation with stakeholders.	We would recommend that the matters to be included in the Regulations be the subject of this proposed Act to ensure mandatory public participation and consultation on all significant matters touching on the virtual assets services business.

## 2 Conclusion

2.1 We trust that the above comments on the Bill and recommendations are helpful. Please contact us should you require any clarification.

Yours faithfully,

**Shellomith W. Irungu**  
for and on behalf of Anjarwalla & Khanna LLP



**CREDENCE AFRICA**  
**EXPERTISE. DELIVERED**

Date: 26<sup>th</sup> May 2025

The Clerk of the National Assembly  
Office of the Clerk  
Main Parliament Buildings  
Nairobi, Kenya

**Attention: S. Njoroge**

**Re: Submission on The Virtual Asset Service Providers Bill, 2025**

We refer to the above subject matter and your public notice dated 11<sup>th</sup> April 2025, inviting the public to submit their comments on the Virtual Asset Service Providers Bill 2025.

Please see annexed to this letter a schedule, setting out our comments and proposals relating to the Bill. Should you require any clarifications, please do not hesitate to contact us at [admin@credence.africa](mailto:admin@credence.africa) or at +254 719 468240.

Yours Faithfully,

Muthoni Njoroge  
**For and on behalf of Credence Africa**

**CREDESCENCE AFRICA**

**VIRTUAL ASSET SERVICE PROVIDER COMMENTS FOR SUBMISSION TO THE PARLIAMENTARY COMMITTEE**

**PART 1**

<b>CLAUSE</b>	<b>PROVISION</b>	<b>PROPOSAL</b>	<b>RATIONAL/JUSTIFICATION</b>
2	competent authority” means a relevant regulatory authority or any other body designated as such by the Cabinet Secretary by notice in the Gazette	<p>Amend the definition of “<b>competent authority</b>” to read as follows:</p> <p>“Competent authority” means the Central Bank of Kenya, the Capital Markets Authority, the Competition Authority of Kenya, the Office of the Data Protection Commissioner, the Communications Authority of Kenya, or any other body designated as such by the Cabinet Secretary by notice in the Gazette.”</p>	<p>The current definition of “competent authority” is overly narrow and limited to financial oversight bodies. However, the nature of virtual asset markets demands a cross-sectoral regulatory perimeter. Issues of market conduct, data protection, and digital communications infrastructure intersect directly with how Virtual Asset Service Providers (VASPs) operate in Kenya. Recognizing additional regulators within the statutory definition enhances legal clarity, closes enforcement gaps, and strengthens inter-agency coordination.</p> <p style="text-align: center;"><b>1. Competition Authority of Kenya (CAK)</b></p> <p>VASPs increasingly operate as digital platforms, marketplaces, and product ecosystems—especially in the case of utility tokens and token-gated access models. This raises key concerns under consumer protection and competition law, including:</p> <ul style="list-style-type: none"> <li>• Misleading or exaggerated claims about token value or use</li> <li>• Referral-based growth models that border on pyramid schemes</li> <li>• Market distortions caused by abuse of dominance in token ecosystems</li> </ul> <p>The CAK holds statutory responsibility under the Competition Act and the Consumer Protection Act to address such conduct. It also plays a critical role in supervising business practices that affect pricing, access, and consumer choice. As tokens evolve into</p>

			<p>mainstream consumer-facing products, the CAK must be included as a competent authority to ensure non-financial market harms especially those impacting retail users are properly addressed within the VASP framework.</p> <p><b>2. Office of the Data Protection Commissioner (ODPC)</b></p> <p>VASPs collect and process extensive volumes of <b>personal and sensitive data</b> including biometric identifiers, transactional metadata, and behavioral profiles during onboarding, wallet creation, transaction execution, and AML/KYC compliance. In many cases, third-party tools embedded in crypto platforms track users' activities through blockchain analytics or off-chain behavioral surveillance.</p> <p>ODPC oversight is essential to uphold the rights guaranteed under the <b>Data Protection Act, 2019</b>, particularly regarding:</p> <ul style="list-style-type: none"><li>• Lawful basis for data processing during user onboarding</li><li>• Consent mechanisms, data minimization, and transparency obligations</li><li>• Regulation of algorithmic profiling and risk-scoring tools</li><li>• Compliance with data localization and cross-border transfer rules</li></ul> <p>Virtual assets are increasingly linked to personal identity and digital profiling. Without the explicit inclusion of ODPC, users are left vulnerable to data exploitation and regulators lack clarity on jurisdictional authority. Moreover, aligning with global data protection standards (such as the EU</p>
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			<p>GDPR) enhances Kenya’s credibility and interoperability in digital markets.</p> <p><b>3. Communications Authority</b></p> <p>VASPs rely heavily on communications infrastructure to onboard users, send alerts, advertise products, and conduct customer engagement. Key areas where CAKOM's mandate applies include:</p> <ul style="list-style-type: none"><li>• Use of telecommunications networks for SMS alerts, USSD codes, and two-factor authentication</li><li>• Crypto promotions sent via mobile marketing or in-app messaging</li><li>• Internet-based platforms and content used to advertise, onboard, and interact with users</li></ul> <p>As crypto adoption grows via mobile-based apps, telco-linked wallets, and multi-channel digital outreach, the Communications Authority becomes vital in ensuring compliance with the Kenya Information and Communications Act, including rules on:</p> <ul style="list-style-type: none"><li>• Consumer protection in digital financial advertising</li><li>• Oversight of telco partnerships or co-branded wallet services</li><li>• Mitigation of risks associated with misinformation, fraud, and phishing via digital communications</li></ul> <p>VASPs are not just financial services; they are technology-enabled products deployed through Kenya’s digital infrastructure. Including CAKOM as a competent authority ensures the regulatory framework encompasses the full delivery pipeline of VASP</p>
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			<p>services especially critical in a market where mobile access is the primary gateway for digital finance.</p> <p><b>4. Strengthening Institutional Clarity and Legal Certainty</b></p> <p>Leaving these key regulators to be added later via Gazette notice introduces legal ambiguity and weakens Kenya’s ability to act decisively and in a coordinated fashion across agencies. Clearly listing them in the principal legislation from the outset:</p> <ul style="list-style-type: none"> <li>• Avoids regulatory turf wars or delays in enforcement</li> <li>• Sends a clear signal to industry stakeholders about compliance expectations</li> <li>• Supports whole-of-government regulation of a complex and rapidly evolving market</li> </ul> <p>This amendment ensures the Bill reflects the real-world intersection of finance, consumer rights, data governance, and digital infrastructure. This positions Kenya’s VASP regulatory regime as not only credible, but also resilient, adaptive, and fully aligned with the demands of a digital-first economy.</p>
2	<p>“e-money” has the meaning assigned to it under regulation 2 of the National Payment Systems Regulations, 2014;</p> <p>“<b>stablecoin</b>” means a virtual asset designed to or that aims to have its value fixed or pegged relative to one or more reserve assets,</p>	<p><b>PROPOSAL</b></p> <p>1. <b>Delete the current definition of “e-money”</b> Remove the existing reference to "e-money" as defined under the National Payment Systems Regulations, 2014. This definition is outdated, unused elsewhere in the Bill, and conceptually incompatible with the</p>	<p><b>RATIONALE / JUSTIFICATION</b></p> <p>1. <b>The Current “e-money” Definition Is Outdated and Misaligned with Crypto Architecture</b> The existing definition of “e-money,” adapted from traditional mobile money or prepaid card systems, assumes a centralized issuer, redemption in fiat, and electronic or magnetic storage. These assumptions do not apply to crypto-assets, which often operate without an</p>

<p>including <i>fiat</i> currency, commodities, or other virtual assets, for the primary purpose of maintaining a stable value of the stablecoin;</p>	<p>operational and technological realities of modern crypto-assets.</p> <p>2. <b>Introduce a new definition for “e-money token”</b> Insert the following definition into Clause 2:</p> <p style="padding-left: 40px;"><b>“e-money token”</b> means a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency and is intended primarily as a means of payment.</p> <p>3. <b>Replace the definition of “stablecoin” with “asset-referenced token”</b> Reframe the terminology and adopt a broader, functionally inclusive definition that accommodates both fiat-pegged and multi-asset pegged digital assets. Insert the following definition into Clause 2:</p> <p style="padding-left: 40px;"><b>“Asset-referenced token”</b> means a crypto-asset that aims to maintain a stable value by referencing one or more assets, including fiat currencies, commodities, or other crypto-assets, and that may use reserves, algorithms, or other mechanisms to maintain that value.</p>	<p>issuer, are held via distributed ledger systems, and are not redeemable in conventional legal tender. As such, the definition is structurally incompatible with the decentralized and programmable nature of digital assets.</p> <p>2. <b>It Is Unused in the Bill and Creates Potential for Regulatory Misinterpretation</b> The term “e-money” appears nowhere else in the Bill. Its presence serves no operative function and risks creating confusion among regulators or drafters—particularly as digital payment and asset technologies increasingly converge. Removing it prevents misapplication in future subsidiary legislation and avoids conflict with existing financial sector laws, including those governing mobile money.</p> <p>3. <b>Legacy Terminology Obscures Blockchain-Based Storage Models</b> Language such as “electronically or magnetically stored” presumes outdated architecture rooted in banking databases or mobile wallets. Crypto-assets are stored and transferred on blockchain systems, which rely on public-private key infrastructure and consensus mechanisms. The current language fails to capture how blockchain works, thereby introducing legal uncertainty as to whether crypto holdings qualify as “stored value.”</p> <p>4. <b>Redemption Model Embedded in Traditional e-money Does Not Apply to Crypto</b> Under the traditional e-money model, users deposit fiat and receive e-money in return, creating a legal claim on the issuer. Most crypto-assets, including widely used stablecoins, are not redeemable in this way. Some use algorithmic mechanisms, while others are collateralized by offshore assets.</p>
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			<p>These models do not fit into the one-to-one redemption framework assumed in the current definition and thus fall outside its scope—despite being economically significant and widely used.</p> <p>5. <b>Narrow Scope Fails to Capture Emerging Asset-Referenced and Hybrid Tokens</b> The definition is too limited to account for tokens that reference non-fiat assets such as gold, carbon credits, real estate, or even baskets of digital currencies. These asset-referenced tokens are increasingly used in cross-border payments, remittances, and investment. Regulating them under the same outdated e-money definition would either exclude them or incorrectly classify them, weakening regulatory oversight and limiting the ability to apply fit-for-purpose safeguards.</p> <p>6. <b>Programmability of Digital Assets Is Not Reflected</b> Today’s crypto-assets are programmable instruments capable of automating payments, controlling access, enforcing contracts, or managing investment rights. They are not passive stored value but active financial tools embedded in smart contracts or decentralized applications. A definition that does not reflect programmability risks applying static regulation to dynamic instruments, creating compliance gaps and stifling innovation.</p> <p>7. <b>Replacing “Stablecoin” with “Asset-Referenced Token” Ensures Functional and Legal Precision</b> The term “stablecoin” is too generic and colloquial. Not all such assets are “coins,” and the term does not distinguish between fiat-pegged, commodity-backed, or algorithmic models. A more appropriate term is “asset-referenced token,” which covers any crypto-</p>
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			<p>asset that seeks value stability by referencing other assets—be it fiat currency, gold, or crypto. This term allows for differentiated regulation and supports risk-based supervision of distinct product types.</p> <p>8. <b>“E-money Token” Accurately Captures Fiat-Pegged Crypto for Payments</b>  “E-money token” should be introduced to refer specifically to crypto-assets designed to mirror the value of one official fiat currency and used primarily for payment purposes. This definition provides clarity for applying rules around licensing, redemption, AML/CFT compliance, and capital requirements to a clearly defined class of payment instruments in the crypto ecosystem.</p> <p>9. <b>Strengthens Legal Clarity, Supervisory Tools, and Consumer Protection</b>  By introducing clear and forward-looking definitions like “e-money token” and “asset-referenced token,” regulators can tailor rules based on function rather than outdated legal forms. This supports Kenya’s ability to oversee next-generation financial technologies, address systemic risks, and protect consumers engaging with digital assets across payment, savings, and investment use cases.</p> <p>10. <b>Future-Proofs the Legal Framework for Innovation and Global Alignment</b>  Removing the legacy “e-money” definition and introducing these crypto-native terms ensures the Bill reflects how the digital asset market actually works. It enables Kenya to establish a legal framework that is forward-compatible with emerging token structures, interoperable with global standards, and</p>
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			adaptable to new innovations without requiring constant legislative overhaul.						
2	<p><b>Custodial wallet provider</b>” as: “a person providing custodial wallet services under this Act”;</p> <p>“<b>Custodial wallet</b>” as: “a wallet in which the private keys to the subject’s virtual assets are held and managed by a third party for proof of ownership and facilitation of transactions.”</p>	<p><b>1. Revised Definitions for Clause 2 (Interpretation)</b></p> <p>“<b>Custodial wallet provider</b>” Means any natural or legal person that provides safekeeping, administration, or control services in relation to virtual assets on behalf of third parties. This includes private key custody, delegated transaction authority, multi-signature access, escrow-based conditional control, or smart contract-based access management.</p> <p>“<b>Custodial wallet</b>” Means any digital wallet, platform, or contract-based arrangement where virtual assets are stored or made accessible under the control of a third party, whether through key custody, conditional locks, delegated execution rights, or governance protocols.</p> <p><b>2. Proposed Additions to the First Schedule (Virtual Asset Services)</b></p> <table border="1"> <thead> <tr> <th>Type</th> <th>Function</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td><b>Custodial Wallet Services</b></td> <td>Key custody</td> <td>Holding and securing private keys on behalf of users for the purpose of enabling safekeeping, access, or recovery of virtual assets.</td> </tr> </tbody> </table>	Type	Function	Description	<b>Custodial Wallet Services</b>	Key custody	Holding and securing private keys on behalf of users for the purpose of enabling safekeeping, access, or recovery of virtual assets.	<p><b>RATIONALE AND JUSTIFICATION</b></p> <p><b>1. Revising the Definition of “Custodial Wallet Provider” and “Custodial Wallet” (Clause 2 – Interpretation)</b></p> <p>1.1 The current definitions rely on a narrow understanding of custody that is based exclusively on the possession and management of private keys. This model originates from traditional finance where physical possession or key control equates to asset control. However, it does not sufficiently address the realities of how virtual assets function in modern financial ecosystems.</p> <p>1.2 In digital environments, control over virtual assets is often exercised through functional authority rather than direct key possession. Service providers may execute transactions through smart contracts, governance roles within decentralized protocols, or platform-level permissions that allow them to enable, block, or redirect user assets. These arrangements introduce custodial risk, even when the service provider does not physically control the key.</p> <p>1.3 The definition must be expanded to reflect a broader and more accurate understanding of custody, one that is based on functional control, delegated authority, and the capacity to influence asset transfer or access. This ensures that the law captures the full range of actors who present risk to users and markets, improves regulatory reach, and strengthens consumer protection.</p>
Type	Function	Description							
<b>Custodial Wallet Services</b>	Key custody	Holding and securing private keys on behalf of users for the purpose of enabling safekeeping, access, or recovery of virtual assets.							

		<p><b>Escrow Services</b></p> <p>Conditional custody</p> <p><b>Administrative Control</b></p> <p>Transaction execution</p> <p><b>Delegated Access Platforms</b></p> <p>Smart contract control</p>	<p>Temporarily holding or restricting transfer of virtual assets based on predetermined conditions, contractual terms, or smart contract triggers.</p> <p>Authorizing, managing, or initiating transactions on behalf of users, including delegated signing authority without holding private keys directly.</p> <p>Operating platforms or protocols that control user asset access through governance rights, multi-signature schemes, time-locks, or protocol-level key control.</p>	<p><b>2. Disaggregating Virtual Asset Services in the First Schedule</b></p> <p>2.1 The current structure of the Bill combines multiple functions under the general category of custodial services, without distinguishing between key safekeeping, escrow management, delegated transaction execution, or smart contract-based access control. This aggregation fails to reflect material differences in service delivery, user interaction, and regulatory exposure.</p> <p>2.2 These services vary not only in how they operate technically but also in how they allocate responsibility, define legal relationships, and manage risk. An escrow provider does not have the same obligations as a wallet custodian, and a platform administrator who governs smart contracts performs a function distinct from a delegated transaction signer. Each role creates different legal, operational, and financial risks.</p> <p>2.3 By disaggregating these services into four clearly defined categories—Custodial Wallet Services, Escrow Services, Administrative Control, and Delegated Access Platforms—the Bill can assign more appropriate licensing obligations, tailor compliance expectations, and align regulatory supervision with actual risk. This also promotes legal certainty, supports innovation, and prevents regulatory overreach or underreach.</p> <p><b>3. Aligning with FATF’s Functional Approach to Regulating Virtual Asset Service Providers</b></p> <p>3.1 FATF Recommendation 15 requires jurisdictions to regulate entities that perform safekeeping, administration, or control over virtual assets or the</p>
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			<p>tools that enable access to them. This includes actors who do not hold private keys but still facilitate asset transfer, impose transactional restrictions, or execute programmatic logic that impacts users' financial exposure.</p> <p>3.2 Excluding actors such as escrow agents, delegated signers, or smart contract administrators creates regulatory gaps. These roles are critical in decentralized finance, token issuance, and digital marketplaces, where conditional logic and contract automation are central to how assets are handled. If these actors are not brought within the regulatory perimeter, they remain beyond the reach of compliance, enforcement, or investor protection.</p> <p>3.3 Kenya's framework should adopt a risk-based, function-driven definition of regulated activity. This would include any entity that can influence the safekeeping, access, or movement of virtual assets, even when it lacks direct key control. Doing so not only aligns with global regulatory expectations but also prepares the country to supervise emerging technologies that are already reshaping how virtual assets are issued, held, and transacted.</p>
			<p><b>4. Assigning Regulatory Oversight Based on Functional Risk Exposure</b></p> <p>4.1 Each service function introduces a specific type of regulatory risk and should therefore fall under the authority of the regulator best positioned to supervise it. Attempting to place all supervisory duties under a single authority would create blind spots and dilute enforcement capability.</p>

			<p>4.2 Custodial wallet services, where client assets are stored or safeguarded, raise prudential and operational risks. These are aligned with the mandate of the Central Bank of Kenya, which already oversees financial institutions with similar responsibilities.</p> <p>4.3 Escrow services may relate to payment systems or capital market instruments. Where escrow is used for token issuance or investor settlements, the Capital Markets Authority should be the lead regulator. Where escrow supports transaction settlement or remittances, the Central Bank has jurisdiction.</p> <p>4.4 Administrative control functions, where a service provider initiates or approves transactions on behalf of users, carry market conduct and investor risk. These should be supervised by the Capital Markets Authority. Where such control involves data profiling, algorithmic decision-making, or access delegation based on personal identifiers, the Office of the Data Protection Commissioner must also be involved.</p> <p>4.5 Delegated access platforms, such as those that run decentralized applications or manage protocol-level smart contracts, introduce systemic infrastructure risk. These platforms should be subject to joint oversight by the Capital Markets Authority, the Office of the Data Protection Commissioner, and the Communications Authority of Kenya, which is best placed to regulate digital infrastructure and telecom-based wallets.</p> <p>4.6 No single regulator currently has the full mandate, tools, or expertise to oversee all four categories. A shared supervisory model is therefore required to ensure comprehensive oversight, avoid jurisdictional</p>
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			<p>fragmentation, and enable proactive enforcement across the virtual asset sector.</p> <p><b>5. Establishing an Umbrella Definition Supported by Specific Service Classifications</b></p> <p>5.1 The Bill should incorporate a general definition of custodial services as any activity involving the safekeeping, control, conditional holding, or delegated access to virtual assets on behalf of another party. This creates a high-level legal anchor for oversight and licensing.</p> <p>5.2 Within the First Schedule, the law should enumerate specific regulated functions under this umbrella that is custodial wallets, escrow services, administrative control, and delegated access platforms. This two-tier structure provides clarity for both legal interpretation and regulatory implementation.</p> <p>5.3 It also future-proofs the legal framework. By organizing around functional activity rather than legacy institutional models, the law can respond quickly to innovations in tokenization, automated financial contracts, and multi-party governance systems without needing constant amendment.</p> <p><b>6. Strategic Opportunity to Position Kenya as a Modern Digital Asset Regulator</b></p> <p>6.1 A legal framework that combines multiple service categories under a generic definition risks creating enforcement uncertainty, regulatory inefficiency, and weak investor safeguards. It also leaves room for high-risk operators to avoid accountability by exploiting definitional loopholes.</p>
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			<p>6.2 By adopting a function-based, risk-informed, and regulator-aligned classification of virtual asset services, Kenya can set a new standard in digital asset oversight across the continent. This will position the country as a reliable jurisdiction for responsible innovation and provide a foundation for cross-border digital finance partnerships.</p> <p>6.3 Such a framework will also increase market confidence by ensuring that all service providers—regardless of their technical architecture—are subject to appropriate rules, clear duties, and effective regulatory oversight. This is essential for building a credible and inclusive digital finance ecosystem that serves the public interest.</p>
2	<p>“Issuer” means a person who is authorised to issue a virtual asset offering under this Act.</p> <p>“Virtual asset offering” means a method of raising funds whereby an issuer issues virtual assets and offers them in exchange for funds.</p>	<p>Delete and replace with:  <b>“Issuer” means a natural or legal person, or any other undertaking, that creates, originates, or otherwise makes available crypto-assets to the public, either through an initial offering or any subsequent issuance mechanism.”</b></p> <p>Delete and replace with:</p> <p><b>“Initial virtual financial asset offering” means a method of raising funds whereby an issuer is issuing virtual financial assets and is offering them in exchange for fiat currency or other virtual assets.”</b></p> <p>Introduce complementary definitions:</p>	<p><b>RATIONALE / JUSTIFICATION</b></p> <p>The current definitions of <b>“issuer”</b> and <b>“virtual asset offering”</b> are overly narrow, structurally outdated, and insufficient to address the operational realities of today’s crypto-asset ecosystem. They focus exclusively on initial, formally authorized offerings, without accounting for the diverse, decentralized, and ongoing nature of token issuance in global and local markets. This undermines legal enforcement, regulatory oversight, and consumer protection in Kenya. The following issues illustrate why reform is essential:</p> <ol style="list-style-type: none"> <li><b>1. Definition Limits Enforcement to Authorized Issuers Only</b>  By defining an issuer solely as someone authorized under this Act, the Bill inadvertently excludes unlicensed or rogue issuers who are often the highest-risk actors in token markets. These may include promoters</li> </ol>

		<p><b>‘applicant issuer’ means an issuer of asset-referenced tokens or e-money tokens who applies for authorisation to offer to the public or seeks the admission to trading of those crypto-assets;</b></p> <p><b>‘offer to the public’ means a communication to persons in any form, and by any means, presenting sufficient information on the terms of the offer and the crypto-assets to be offered so as to enable prospective holders to decide whether to purchase those crypto-assets;</b></p>	<p>of scams, fraudulent projects, or foreign entities targeting Kenyan citizens online. Without including all persons or undertakings who engage in token issuance, enforcement is severely weakened, and investor protection is compromised.</p> <p><b>2. Fails to Capture Decentralized and Programmatic Issuance Structures</b> A growing share of crypto-assets are issued through decentralized autonomous organizations (DAOs), protocol-level governance votes, or automatically via smart contracts. These issuance models lack a traditional legal “issuer” but still pose financial, governance, and consumer risks. The definition must be broadened to cover these undertakings, ensuring that the law captures all issuance activity regardless of organizational form or degree of centralization.</p> <p><b>3. Overemphasis on Initial Offerings Ignores Ongoing and Secondary Issuance</b> The current framing treats issuance as a one-time, IPO-like event. In reality, token supply is often dynamic expanded through staking rewards, liquidity incentives, protocol forks, or inflationary mechanisms. These subsequent issuance events significantly impact market prices, token utility, and consumer exposure. Excluding them from regulation creates loopholes and distorts the market’s regulatory perimeter.</p> <p><b>4. No Jurisdictional Reach Over Cross-Border Issuers Targeting Kenya</b> Many crypto offerings originate from outside Kenya but directly target Kenyan users through websites, social media, and digital platforms. A definition that requires domestic authorization excludes these actors from</p>
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			<p>oversight. By redefining issuance as the act of making crypto-assets available to the public, the Bill can extend legal jurisdiction to all token offers made to Kenyan residents, regardless of where the issuer is based.</p> <p><b>5. Unclear Meaning of “Funds” Reduces Coverage of Common Offering Structures</b>  The phrase “in exchange for funds” is ambiguous. It is unclear whether this includes only fiat currency or also crypto-assets such as ETH or USDT, which are now the dominant forms of consideration in token sales. If interpreted narrowly, offerings settled in crypto could fall outside the Bill’s scope. Clarifying this point ensures that materially similar transactions are treated with equal regulatory scrutiny.</p> <p><b>6. Staking Rewards Resemble Gaming Incentives and Pose AML/CFT Risks</b>  Staking rewards distribute tokens based on participation, often using algorithmic rules or probabilistic returns. This resembles betting or gaming, where users stake value and receive variable returns. Kenya already regulates the gaming sector and has brought it under the AML reporting regime due to its susceptibility to abuse. Excluding staking-based issuance from this Bill opens a regulatory gap where virtual assets operate with gaming-like risk and reward profiles without consumer protection or AML safeguards. Including these models in the scope of “offerings” ensures regulatory consistency across digital financial services and protects the integrity of Kenya’s AML/CFT framework.</p> <p><b>7. Exclusion of Airdrops, Rewards, and Indirect Offerings Enables Regulatory Arbitrage</b>  Token distributions today occur through</p>
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airdrops, loyalty schemes, bundled purchases, and non-cash compensation models. While not direct “sales,” they often result in tradable crypto-assets with market value. Bad actors can exploit the current narrow definition to avoid compliance by disguising offerings through these structures. A functional, effect-based definition ensures that issuance is regulated based on the risks and outcomes it creates not its form.

**8. Ambiguity Around Accountability of Unlicensed Issuers**

When the law recognizes only authorized parties as “issuers,” it becomes unclear who bears responsibility for tokens created outside the licensing regime. This ambiguity weakens enforcement in cases of fraud, misinformation, or operational failure. By defining issuer status based on conduct (i.e., creation or distribution of tokens to the public), the law can hold all actors accountable, regardless of registration status.

**9. Lack of Supporting Definitions Weakens Supervision and Disclosure Rules**

The absence of terms like “applicant issuer” and “offer to the public” limits the legal framework’s ability to enforce licensing, disclosures, whitepaper standards, and advertising rules. These complementary definitions are essential for creating a structured and predictable regulatory environment that treats investor communication and offering mechanics with appropriate oversight.

**10. Misalignment with Global Standards Limits Kenya’s Regulatory Credibility**

Globally, regulators have adopted more flexible definitions that focus on the activity and impact of token issuance—not just on the

			<p>legal status of the issuer. These definitions recognize that issuance can be centralized, decentralized, one-time, or continuous. Kenya’s current language falls behind these trends. Adopting broader, function-based definitions ensures Kenya keeps pace with international norms, facilitates cross-border regulatory cooperation, and positions the country as a credible destination for compliant innovation.</p>
2	<p>“virtual asset” means a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes and does not include digital representation of fiat currencies, e-money, securities and other financial assets;</p>	<p>Delete the current definition of “<b>virtual asset</b>” and replace it with the following internationally aligned and technology-neutral definition:</p> <p>“Virtual asset” means a digital representation of value that is not issued or guaranteed by a central bank or public authority, is not necessarily attached to a legally established currency, and is capable of being transferred, stored, or traded electronically. It may be used for payment, investment, or access to goods, services, or rights. It excludes digital representations of fiat currency, e-money, securities, or other financial instruments regulated under separate legislation.”</p>	<p>The definition of “virtual asset” is the legal cornerstone of the entire Virtual Asset Service Providers (VASP) framework. It determines what falls within regulatory scope and what does not. A narrow or vague definition risks either overregulating low-risk use cases or underregulating high-risk ones. The current Kenyan definition is too limited in scope and fails to reflect the diversity, structure, and real-world use of crypto-assets. It should be replaced with a broader, more precise formulation that is legally coherent and globally consistent.</p> <p><b>1. The current definition relies on subjective economic functions</b></p> <p>By tying regulatory scope to whether a token “can be used for payment or investment,” the definition introduces unnecessary vagueness. Many tokens today serve multiple or evolving functions. A token may be designed for utility (such as platform access or governance) but gain investment-like characteristics over time through trading or staking. Others may be held for community participation or access rights, yet still represent value.</p>

			<p>A regulatory perimeter based only on economic use introduces interpretational uncertainty and weakens legal enforceability. The proposed definition avoids subjective use tests and instead focuses on inherent functional attributes whether a digital representation of value is transferable, tradable, or storable electronically. This removes ambiguity and improves regulatory clarity.</p> <p><b>2. It fails to capture modern crypto instruments beyond payment and investment tokens</b></p> <p>Crypto-asset ecosystems now encompass a wide range of token types, including:</p> <ul style="list-style-type: none"><li>• <b>Utility tokens</b> used to access services or digital products;</li><li>• <b>Governance tokens</b> that confer voting rights in decentralized autonomous organizations (DAOs);</li><li>• <b>NFTs</b> that represent intellectual property, royalties, or fractional rights;</li><li>• <b>Programmable tokens</b> with embedded logic or automated distribution mechanisms.</li></ul> <p>These assets may not neatly fall into “payment” or “investment” categories but still carry economic significance and user risk. The updated definition broadens the scope to cover access rights, governance, and digital services, which are increasingly central to blockchain economies.</p> <p><b>3. The exclusion clause lacks legal clarity and coordination with existing laws</b></p> <p>The phrase “does not include digital representation of fiat currencies, e-money, securities and other financial</p>
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			<p>assets” is insufficiently precise. It fails to define or cross-reference what constitutes a “security” or “financial asset” under Kenyan law, potentially creating overlap or conflict with the Capital Markets Act, the Central Bank of Kenya Act, and the National Payment Systems Act.</p> <p>The revised definition remedies this by stating that excluded instruments are those regulated under separate legislation, thereby respecting Kenya’s regulatory architecture while maintaining legal clarity. It allows for harmonisation between regulators and prevents jurisdictional conflicts between CBK, and CMA.</p> <p><b>4. It does not reflect decentralization, programmability, or smart contract functionality</b></p> <p>Modern crypto-assets are not only digital values but automated financial instruments, managed through smart contracts, DAOs, and programmable logic. These characteristics introduce governance complexity, execution risk, and cyber exposure. A static definition based solely on tradeability or economic intent ignores the technological dimension of risk and operation.</p> <p>The FATF framework recognize the need for technology-neutral language. By emphasizing whether the asset is stored, transferred, or traded electronically, the proposed definition incorporates the underlying technological traits of blockchain systems without over-relying on economic intent.</p> <p><b>5. Global regulatory coherence requires convergence with FATF standards</b></p>
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			<p>Kenya's ambition to become a credible jurisdiction for digital innovation requires alignment with international financial integrity and market development standards. The FATF defines virtual assets based on functionality and risk, not by economic purpose alone. Setting a broad perimeter and using sub-classifications (e.g., e-money tokens, asset-referenced tokens, utility tokens) ensures appropriate, proportionate regulation.</p> <p>Adopting this updated definition would ensure:</p> <ul style="list-style-type: none"><li>• Ensure compatibility with AML/CFT frameworks under FATF;</li><li>• Improve cooperation with international regulators, central banks, and financial intelligence units;</li><li>• Provide market certainty for innovators, exchanges, wallet providers, and token developers;</li><li>• Future-proof its legal framework against new and hybrid token models.</li></ul> <p><b>6. A modern definition enables more robust consumer protection and systemic oversight</b></p> <p>Digital assets that do not fall under clearly defined regulatory categories can pose systemic risks especially when their legal treatment is unclear. A broader and precise definition ensures that any product marketed to the public as a store of value, medium of exchange, or access token is within scope, regardless of the label it carries.</p> <p>This allows regulators to apply disclosure rules, conduct supervision, licensing requirements, and enforcement powers consistently. It also reduces the</p>
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2	<p>virtual service token” means a digital representation of value which is not transferable or exchangeable with a third party at any time and includes digital tokens whose sole function is to provide access to and application of service or to provide a service or function directly to its owner; and</p>	<p><b>Proposal</b></p> <p>“<b>Virtual service token</b>” means a type of crypto-asset that is intended solely to grant digital access to a specified good, content, service, or function provided within a closed or limited ecosystem and does not confer any rights of ownership, profit participation, payment, redemption, investment return, or governance in respect of the issuer or any third party.</p> <p>A token shall not be deemed a virtual service token if it:</p> <p>(a) is transferable or exchangeable, directly or indirectly, for fiat currency or any other crypto-asset;</p> <p>(b) is used or marketed as a means of payment, investment, or value transfer outside the limited ecosystem in which access is granted;</p> <p>(c) is traded, or reasonably expected to be traded, on a crypto-asset exchange, decentralized protocol, or peer-to-peer marketplace; or</p> <p>(d) is offered, advertised, or promoted in a manner that implies speculative value, resale potential, or capital gain</p> <p>e) is a utility token or a non-financial access token</p>	<p>risk of regulatory arbitrage, where actors design token structures to deliberately avoid compliance.</p> <p><b>RATIONALE / JUSTIFICATION</b></p> <ol style="list-style-type: none"> <li><b>1. Ensures Regulatory Precision Based on Economic Function, Not Label</b> The current definition hinges on the issuer’s stated purpose rather than how the token behaves in practice. This opens the door to regulatory evasion. The revised wording adopts a function-based approach that considers how the token is used, whether it is transferable, marketed for gain, or traded—regardless of its original intent or technical design. This aligns with evolving international norms that classify tokens by their actual economic impact, not superficial features or promotional claims.</li> <li><b>2. Prevents Misuse of the Utility Token Label to Avoid Oversight</b> Many token issuers design products that confer access to services while embedding economic rights such as tradability or speculative resale. These tokens are often promoted as “utility tokens” to escape financial regulation. The amended definition makes it clear that once a token is designed, promoted, or expected to function as a payment or investment tool, it ceases to qualify as a pure service token and must be regulated accordingly. This distinction is vital to protect consumers from disguised investment schemes.</li> <li><b>3. Addresses the Reality of Programmable Tokens and Evolving Features</b> Tokens today can evolve after issuance through smart contract upgrades, bridging, wrapping, or governance proposals that alter their use. A token that begins as an access tool</li> </ol>
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		<p><b>“Utility token”</b> means a crypto-asset that is intended to provide access to a specific digital application, network, platform, or protocol, and that may be used within such platform to consume services, interact with features, or activate functions, but which does not entitle the holder to any financial return, asset backing, or governance right beyond its defined utility function.</p> <p><b>“Non-financial access token”</b> means a digitally issued token that confers access to a personal, non-transferable service, such as memberships, subscriptions, event access, or digital entitlements, and is neither tradable nor exchangeable outside the issuer’s-controlled environment.</p>	<p>may later gain exchangeability or profit-sharing functions. The updated definition focuses on actual market behavior, making it possible to reclassify and regulate tokens as they change in function, rather than relying on static definitions.</p> <p>4. <b>Protects Genuine Access-Based Innovation</b> There is a legitimate category of tokens that serve purely as keys to content, platforms, or services and are not tradable or used as stores of value. The revised definition maintains a safe legal space for such tokens, shielding them from unnecessary regulatory burden while drawing clear limits: once a token is used as money, invested in, or traded on exchanges, it must be treated as a virtual asset.</p> <p>5. <b>Improves Legal Clarity and Enforceability</b> Phrases such as “not transferable or exchangeable... at any time” are legally ambiguous and difficult to enforce. The revised clause offers specific, testable conditions such as whether a token is actually traded, can be exchanged for fiat or other crypto-assets, or is promoted with profit expectations. This makes the framework actionable for regulators and interpretable by courts.</p> <p>6. <b>Captures Risks from Emerging Use Cases Including DeFi and GameFi</b> Tokens in digital games, decentralized applications, or content platforms increasingly resemble financial instruments. Some are exchangeable, carry market value, and are distributed in reward-based or gamified structures that mimic gambling or investment behavior. The revised definition ensures that tokens functioning like money or securities, even if embedded in entertainment platforms, are subject to proper supervision.</p>
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			<p><b>7. Mitigates Regulatory Arbitrage and Enhances Supervisory Consistency</b>  Without a function-based definition, token issuers can easily restructure offerings to exploit gaps between service token exemptions and investment-related obligations. This leads to inconsistent supervision, undermines consumer confidence, and weakens the credibility of the regulatory framework. The proposed definition closes these loopholes by setting clear boundaries for what qualifies as a service token and what does not.</p>
			<p>This refined rationale supports the adoption of a definition that is practical, enforceable, and future-ready- a future that protects innovation while ensuring that economically active tokens are brought under appropriate oversight. Let me know if you would like the accompanying legislative text or if you would like this packaged into a formal legal brief or policy note.</p>
2	<p><b>“Virtual asset trading platform”</b> means a digital platform—  (a) which facilitates the exchange and trading of virtual assets for fiat currency or other virtual assets on behalf of third parties for a fee, commission or other benefit; and  (b) which—  (i) holds custody or controls virtual assets on behalf of its clients to facilitate an</p>	<p><b>PROPOSED AMENDMENT</b></p> <p><b>“Virtual asset trading platform”</b> means any digital interface, software protocol, or technological infrastructure whether centralized, decentralized, or hybrid that facilitates the exchange, trading, or matching of virtual assets with other virtual assets or fiat currency, on behalf of users or participants, and which derives direct or indirect economic benefit from such facilitation.</p>	<p><b>RATIONALE / JUSTIFICATION</b></p> <p><b>1. Captures Both Centralized and Decentralized Models</b>  The current definition assumes custodial control or principal-agent intermediation. This excludes non-custodial platforms and automated trading systems such as decentralized exchanges (DEXs), automated market makers (AMMs), and smart contract-based marketplaces. These platforms execute high-value transactions without holding user assets, yet introduce similar market, consumer, and AML/CFT risks.</p>

	<p>exchange; or (ii) purchases virtual assets from a seller when transactions or bids and offers are matched in order to sell them to a buyer.</p>	<p>This includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>(a) platforms that match, aggregate, or execute trades between counterparties;</li> <li>(b) systems that provide or integrate access to liquidity pools, automated market makers, or smart contracts for trading purposes;</li> <li>(c) entities that exercise custodial or administrative control over virtual assets to facilitate exchange, settlement, or order execution;</li> <li>(d) operators that act as principal to the trade by purchasing virtual assets from a seller for onward sale to a buyer; and</li> <li>(e) service providers offering decentralized interfaces, protocols, or algorithms that perform these functions autonomously or via delegated access.</li> </ul> <p>A platform shall be deemed a virtual asset trading platform if it enables users in Kenya to transact, irrespective of its place of incorporation, operational model, or underlying technology.</p>	<p><b>2. Aligns Regulation with Function, Not Structure</b> Modern trading platforms are no longer confined to traditional exchange models. Peer-to-peer protocols, interface-only platforms, and algorithmic liquidity protocols now perform core trading functions. The revised definition focuses on functional conduct that is what the platform does, rather than how it is structured or where it is domiciled.</p> <p><b>3. Encompasses Smart Contract-Based and Protocol-Level Trading</b> Trading platforms today may operate entirely through code without a human intermediary. These platforms still require regulatory scrutiny where they:</p> <ul style="list-style-type: none"> <li>• Route transactions,</li> <li>• Set trading parameters,</li> <li>• Facilitate pricing through oracles or token pairs, or</li> <li>• Enable real-time asset transfer.</li> </ul> <p>A legal definition must reflect these realities.</p> <p><b>4. Includes Platforms Acting as Principals</b> Some platforms purchase crypto-assets in bulk from sellers and re-sell them to buyers (e.g., broker-dealer models). The current law omits these principal-based structures unless custody is involved. This risks leaving some high-risk trading models unlicensed.</p> <p><b>5. Closes Jurisdictional Loopholes in Cross-Border Access</b> Without an extraterritorial trigger, offshore exchanges can claim to fall outside local regulation even while actively targeting Kenyan users through web portals, apps, influencers, or marketing campaigns. The revised definition establishes jurisdiction based on</p>
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			<p>user access, not platform location, in line with international AML and investor protection norms.</p> <p><b>6. Supports Proportional Licensing and Tiered Regulation</b>  By clearly identifying platform functions eg matching, custody, execution, or settlement. The new definition enables risk-based licensing regimes. Different types of platforms can be subjected to different regulatory burdens depending on function, risk profile, and user base.</p>
Clause Section 3(1)	A person is a virtual asset service provider if that person is a local company incorporated under the Companies Act or a foreign company with a certificate of compliance under the Act.	<p><b>Proposal</b></p> <p>Amend to: "A virtual asset service provider means any natural or legal person, or other undertaking, that conducts one or more of the activities listed in the First Schedule, regardless of legal form or licensing status, and whether centralised or decentralised."</p>	<p><b>Rationale</b></p> <p>The current provision wrongly limits the scope to only incorporated and licensed entities, creating a regulatory blind spot. FATF Recommendation 15 applies to both natural and legal persons engaged in VASP functions, even if unlicensed. Decentralised services and peer-to-peer platforms must be captured to prevent regulatory arbitrage and uphold AML/CFT obligations. This proposal ensures function-based rather than form-based coverage.</p>
Section 3(2)	Virtual service tokens are not virtual assets and service providers dealing with them are exempt from licensing.	Delete blanket exemption. Replace with: "Service tokens that are non-transferable, non-tradable, and non-exchangeable may be exempt, provided they meet criteria set by the regulator through subsidiary legislation."	Blanket exclusion invites misclassification and abuse. Under FATF guidance and international practice, any token functioning as a means of payment or investment must fall within the regulatory perimeter. The revised proposal introduces a functional test, ensuring that economic substance, not labels, determines scope. This also reflects emerging practices, which use functionally grounded exemption criteria.
Section 4	The main object is to license and regulate the activities of virtual asset service providers in and from Kenya.	Amend to: "To license and regulate virtual asset activities in and from Kenya, in line with risk-based principles, international standards, and obligations under anti-money laundering and consumer protection frameworks."	The current clause lacks clarity on regulatory purpose and alignment with FATF obligations. The proposed language integrates financial integrity objectives and supports the policy intent behind digital asset regulation, including systemic risk mitigation and consumer protection. The VASP regime must signal regulatory seriousness and readiness to international partners and investors.
Section 5(2)	Excludes digital value within closed ecosystems, fiat currencies issued by central	"This Act shall not apply to instruments or systems explicitly excluded by the regulator on	Overly broad exclusions undermine flexibility and responsiveness. Market dynamics shift, and instruments like NFTs and closed-loop tokens can evolve into financial

	banks, and NFTs not used for financial purposes.	the basis of a published risk assessment and subject to periodic review."	assets. A regulator-led exemption framework ensures adaptive oversight. Functional and risk-based exclusions offer better protection than static legislative carve-outs.
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**PART 2**

<b>CLAUSE</b>	<b>CURRENT PROVISION</b>	<b>PROPOSED CHANGES</b>	<b>RATIONALE/JUSTIFICATION</b>
<b>Section 6</b>	Designates the Capital Markets Authority, the Central Bank of Kenya, and any other body designated by the Cabinet Secretary as the regulatory authorities under the Act.	<p><b>Proposed Amendment:</b> Revise Section 6 to explicitly allocate regulatory mandates based on the nature of the virtual asset service or product, referencing the functional categories outlined in the First Schedule. As currently worded, the clause implies that all listed authorities have jurisdiction over all matters, which creates ambiguity for license applicants and risks regulatory overlap. A clarified structure should read:</p> <ul style="list-style-type: none"> <li>• The <b>CBK</b> shall be responsible for oversight of payment-related virtual assets and services, including e-money tokens, stable payment tokens, and custodial wallet functions involving value storage or transmission.</li> <li>• The <b>CMA</b> shall regulate investment-oriented virtual assets, capital-raising mechanisms (such as token offerings), decentralized finance (DeFi) instruments, and platforms facilitating trading or investment access.</li> <li>• Where applicable, the <b>Office of the Data Protection Commissioner (ODPC)</b> and <b>Communications Authority of Kenya (CA)</b> shall exercise concurrent jurisdiction over</li> </ul>	<p><b>Rationale / Justification:</b></p> <ol style="list-style-type: none"> <li>1. <b>Eliminates Jurisdictional Ambiguity</b> Clarifying which regulator governs which service class prevents institutional conflict, avoids double licensing, and supports coherent regulatory guidance for applicants.</li> <li>2. <b>Aligns with FATF’s Risk-Based and Multi-Agency Oversight Model</b> FATF Recommendation 15 encourages the use of specialized agencies based on risk type—financial integrity, consumer protection, and systemic risk—ensuring that no single body bears impractical or inappropriate oversight burdens.</li> <li>3. <b>Supports Legal Certainty and Market Confidence</b> Service providers, investors, and compliance professionals require clarity on where to file applications, make disclosures, and obtain guidance. This amendment fosters predictability and reinforces institutional accountability.</li> </ol>

		<p>services that process personal data or leverage digital communications infrastructure.</p> <ul style="list-style-type: none"> <li>The Cabinet Secretary may designate other sectoral regulators to co-supervise niche services through gazetted regulations. Eg SACCOS when that market matures</li> </ul>	
<p><b>Section 7</b></p>	<p>Lists the powers and functions of the regulatory authorities.</p>	<p><b>Proposed Amendment:</b> Revise Section 7 to include clear, risk-sensitive, and accountability-based powers with codified inter-agency coordination and transparency mechanisms. The revised clause should state:</p> <p><b>7(1)</b> The relevant regulatory authorities shall exercise their functions in accordance with the following principles:</p> <p>(a) <b>Risk-Based Supervision</b> – Regulatory action and licensing requirements shall be proportionate to the nature, scale, complexity, and risk profile of the virtual asset service provider or activity.</p> <p>(b) <b>Functional Allocation</b> – Each regulatory authority shall act within its designated jurisdiction as defined under Section 6 and the First Schedule.</p> <p>(c) <b>Collaborative Regulation</b> – Regulatory authorities shall enter into binding Memoranda of Understanding (MoUs) to ensure consistent supervisory approaches, information sharing, and cross-border cooperation.</p> <p>(d) <b>Public Guidance and Consultation</b> – All binding rules, codes, or circulars with industry impact must be preceded by public</p>	<p><b>Issues Identified with Current Clause:</b></p> <ol style="list-style-type: none"> <li><b>No Reference to Risk-Based Supervision</b> The current provision enables blanket regulation without tailoring oversight to the specific risks posed by different types of virtual asset service providers (VASPs).</li> <li><b>Absence of Formal Coordination Protocols</b> In an environment involving multiple regulators, failure to mandate MoUs or structured cooperation leads to jurisdictional friction, duplicative compliance burdens, or systemic oversight failures.</li> <li><b>Vague Guidance Mandate</b> The powers to issue guidelines and notices are overly broad and could result in fragmented or unclear regulatory expectations if not transparently grounded in process.</li> </ol> <p><b>Rationale / Justification:</b></p> <ol style="list-style-type: none"> <li><b>Risk-Based Regulation Aligns with Global Best Practice</b> FATF’s Recommendation 15, endorse risk-based supervision as a core operating principle for virtual asset regulation. It ensures regulatory resources are focused on the</li> </ol>

		<p>notice and a comment period of not less than 21 days unless issued in emergency.</p> <p>(e) <b>Annual Reporting</b> – Each regulatory authority shall submit an annual report to Parliament detailing:</p> <ul style="list-style-type: none"> <li>• Licensing activity and compliance outcomes,</li> <li>• Enforcement actions taken,</li> <li>• Risk assessments conducted, and</li> <li>• Recommendations for regulatory improvement.</li> </ul> <p>7(2) The regulatory authorities may issue joint guidance or circulars on matters requiring cross-functional supervision including:</p> <p>(a) Virtual asset custody and safekeeping;</p> <p>(b) Decentralized finance protocols;</p> <p>(c) Cross-border offerings and offshore token issuers targeting Kenyan residents;</p> <p>(d) Data protection and cybersecurity in blockchain systems.</p>	<p>highest-risk activities without stifling innovation.</p> <p>2. <b>Multi-Agency Coordination is Critical for Systemic Oversight</b> Virtual asset ecosystems span financial markets, payments infrastructure, data governance, and consumer protection. Effective regulation must be co-created and co-enforced across specialized authorities to avoid gaps and overlaps.</p> <p>3. <b>Public Transparency Builds Market Trust</b> By requiring prior consultation, publication of enforcement outcomes, and parliamentary reporting, the regulatory framework enhances its legitimacy, improves predictability for market actors, and signals Kenya’s commitment to responsible innovation governance.</p>
<b>Section 8</b>	<p>Outlines that regulatory authorities shall be guided by the principles of:</p> <ul style="list-style-type: none"> <li>• Ensuring financial stability,</li> <li>• Ensuring market integrity (duplicated),</li> <li>• Fostering innovation, fairness, transparency, and efficiency,</li> </ul>	<p><b>Proposed Legislative Clause:</b></p> <p><b>8. In exercising their powers and discharging their functions under this Act, the relevant regulatory authorities shall be guided by the following principles—</b></p> <p>(a) To safeguard the integrity, stability, and resilience of the financial and virtual asset ecosystem;</p>	<p><b>Identified Issues with Current Clause:</b></p> <p>1. <b>No Explicit Reference to Consumer and Investor Protection</b> Modern regulatory frameworks emphasize the protection of retail users and institutional investors, particularly in the face of fraud, rug-pulls, and data exploitation in virtual asset markets.</p> <p>2. <b>Absence of Proportionality and Risk-Based Supervision</b></p>

	<ul style="list-style-type: none"> <li>Preventing conduct harmful to Kenya’s financial reputation.</li> </ul>	<p><b>(b)</b> To promote a proportionate and risk-based approach to regulation that aligns regulatory requirements with the scale, complexity, and risk profile of the service provider or activity;</p> <p><b>(c)</b> To ensure the protection of consumers, users, and investors, including safeguards against fraud, unfair practices, financial loss, and systemic exploitation;</p> <p><b>(d)</b> To foster responsible innovation, fair competition, and open market access while maintaining regulatory certainty for entrepreneurs and developers;</p> <p><b>(e)</b> To promote financial inclusion through equitable access to virtual asset services, especially for underserved or excluded segments of the population;</p> <p><b>(f)</b> To enhance transparency, accountability, and procedural fairness in regulatory guidance, licensing, and enforcement processes;</p> <p><b>(g)</b> To encourage domestic and cross-border cooperation between regulators, competent authorities, and international standard-setting bodies for the effective supervision of virtual asset activities;</p> <p><b>(h)</b> To prevent the abuse of virtual asset systems for money laundering, terrorism financing, market manipulation, or the circumvention of national laws and public policy objectives.</p>	<p>Without a mandate for proportionality, smaller innovators and lower-risk actors face excessive compliance burdens. This inhibits responsible innovation and creates a compliance-heavy environment without corresponding gains in oversight.</p> <p>3. <b>Omission of Financial Inclusion and Global Cooperation</b> Virtual assets offer unique inclusion opportunities in developing markets. Regulation must actively support their safe adoption. Additionally, oversight of borderless digital systems demands statutory provisions for information exchange and regulatory alignment across borders.</p> <p>4. <b>Drafting Error – Repetition of Subclause (b)</b> The duplicated clause weakens the structural clarity of the Bill and invites interpretation challenges.</p> <p><b>Rationale / Justification:</b></p> <p>1. <b>Aligns with Global Standards for Digital Asset Supervision</b> Risk-based and proportionate regulation is a core principle of FATF Recommendation 15 and is embedded in leading digital asset frameworks globally. This approach enables differentiated treatment of low-risk actors while maintaining high-risk guardrails.</p> <p>2. <b>Protects Consumers and Investors in High-Volatility Markets</b> Explicitly including consumer protection empowers regulators to act preemptively</p>
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			<p>against market abuse and failure, bolstering investor confidence and reputational integrity.</p> <p>3. <b>Supports Financial Innovation and Market Access</b> By emphasizing fairness, transparency, and inclusion, the Act builds a competitive environment that attracts responsible innovation and foreign investment while safeguarding vulnerable populations.</p> <p>4. <b>Strengthens Legal Coherence and Enforceability</b> Codifying these guiding principles as statutory benchmarks ensures all subsequent regulations, circulars, or enforcement actions adhere to a transparent and predictable legal logic.</p>
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**PART III — LICENSING REQUIREMENT**

CLAUSE	CURRENT PROVISION	PROPOSAL	RATIONALE
Section 9(1)-(3)	Licensing requirement for any person conducting VASP business in or from Kenya	"9(2) For the avoidance of doubt, a natural person or a startup, or a micro enterprise shall not carry on, or purport to carry on, in or from within Kenya, the business of virtual asset services, unless operating under a regulatory sandbox or simplified licensing regime as prescribed by the relevant regulatory authority."	<p><b>Issue:</b> Absence of a differentiated regime for low-risk and high-risk virtual asset service providers (VASPs); absolute prohibition on natural persons is overly restrictive.</p> <p><b>Rationale and Justification:</b></p> <ol style="list-style-type: none"> <li>1. FATF Recommendation 15 encourages proportionality in regulation.</li> <li>2. Provide exemptions or simplified regimes for micro-entities.</li> <li>3. Supports innovation by enabling small-scale operators to test solutions under controlled conditions.</li> </ol>

<p><b>Section 10</b></p>		<p><b>Proposed Amendment:</b></p> <p>"10(2) The relevant regulatory authority shall issue guidelines that classify virtual asset services by risk tier and provide corresponding supervisory expectations. Such guidelines shall include: (a) a tiered licensing framework based on size, complexity, and risk; (b) thresholds for exempted or simplified licensing for low-risk activities."</p>	<p><b>Issue:</b> Over-reliance on Schedule without direct statutory clarification of authority roles; absence of risk classification in licensing criteria.</p> <p><b>Rationale and Justification:</b></p> <ol style="list-style-type: none"> <li>1. Creates a framework which tier licenses based on activity class.</li> <li>2. Enhances predictability and supervisory focus, in line with FATF's risk-based approach.</li> </ol>
	<p><b>Section 11</b></p>	<p><b>Proposed Amendment:</b></p> <p>"11(6) The relevant regulatory authority shall maintain and publish a public register of all licensed virtual asset service providers, including details of the license status, class of license, and principal business address."</p>	<p><b>Issue:</b> Evaluation criteria in 11(5) and Section 12 overlap; does not require public register of licensees or licensing decisions.</p> <p><b>Rationale and Justification:</b></p> <ol style="list-style-type: none"> <li>1. FATF guidance mandates public registers to improve transparency.</li> <li>2. Enhances market trust and facilitates AML compliance by counterparties.</li> </ol>
	<p><b>Section 12</b></p>	<p><b>Proposed Amendment:</b></p> <p>"12(h) the likelihood that the service shall promote innovation, environmental sustainability, financial inclusion, and benefits to consumers."  "12(m) whether the applicant has been afforded an opportunity to respond to any adverse findings"</p>	<p><b>Issue:</b> Lacks specificity on ESG and innovation considerations; weak procedural transparency.</p> <p><b>Rationale and Justification:</b></p> <ol style="list-style-type: none"> <li>1. Reflects inclusion of sustainability criteria and weeds out predatory services</li> <li>2. Ensures adherence to administrative fairness and good regulatory practice.</li> </ol>

		prior to final determination of licensing."	
	<b>Section 13</b>	<p><b>Proposed Amendment:</b></p> <p>"13(5) A person aggrieved by a licensing condition, rejection, or variation shall have a right to apply for internal review and appeal to the Financial Services Tribunal within thirty days."</p>	<p><b>Issue:</b> Broad discretion without binding procedural safeguards; no appeal mechanism.</p> <p><b>Rationale and Justification:</b></p> <ol style="list-style-type: none"> <li>1. Reinforces procedural fairness.</li> <li>2. Explicitly provide appellate frameworks to challenge supervisory decisions.</li> </ol>
<b>Section 14–16</b>		<p><b>Proposed Amendment:</b></p> <p>"14(2) A license shall be renewable annually subject to ongoing compliance and the payment of the prescribed renewal fee."</p> <p>"16(1)(f) the licensee has repeatedly breached fair market conduct obligations, including misrepresentation or conflicts of interest."</p>	<p><b>Issue:</b> No automatic renewal framework or conditions for suspension tied to market conduct principles.</p> <p><b>Rationale and Justification:</b></p> <ol style="list-style-type: none"> <li>1. Introduces clarity and business continuity.</li> <li>2. Provides guidelines on cause-based revocation.</li> </ol>
Section 17(1)	A licensee may surrender its license by giving a prior notice for surrender accompanied by a list of documents.	<p><b>Proposed Amendment:</b></p> <p>Clarify timelines for submission and introduce mandatory clearance certificate from regulatory authority to complete surrender.</p> <p><b>New Provision:</b></p> <p>"A licensee shall not be deemed to have surrendered a license until a</p>	<p><b>Rationale / Justification</b></p> <p>Ensures finality and regulatory closure and surrender protocols which require regulator certification of closure.</p>

		formal clearance certificate is issued by the relevant regulatory authority, confirming discharge of all liabilities and obligations under this Act.	
Section 17(1)(c)	The arrangement to be made in respect of client assets.	<p><b>Proposed Amendment:</b></p> <p>Expand to specify independent auditor verification of client asset reconciliation.</p> <p><b>New Language:</b> "...accompanied by an auditor-certified report on the reconciliation and transfer of all client assets..."</p>	Protects consumer funds and aligns with FATF's recommendations on safeguarding client assets during license wind-down.
Section 17(2)(b)	Authority may give directions to the licensee to protect the interest of the customers or members of the public.	Make protection of customers a mandatory responsibility during surrender. <b>New Clause:</b> "...shall issue specific protective directions to safeguard customer assets and interests during the wind-down process."	Reinforces a duty of care and increases regulator accountability,
Section 18(1)	Requires the regulatory authority to maintain a register of licensees.	<p>Add obligation to publicly publish a searchable and regularly updated online register.</p> <p><b>New Clause:</b> "...and shall publish and maintain the register in a publicly accessible electronic format updated on a quarterly basis."</p>	Enhances transparency and market confidence; reflects digital disclosure and registry practices.
Section 18(1)(c)	Mentions date of issuance of the license.	<p>Include date of expiry, status of license (active, suspended, revoked), and any conditions attached.</p> <p><b>New Clause:</b> "...including date of issuance, expiry, current status, and any material license conditions imposed."</p>	Improves regulatory transparency and investor due diligence; aligns with FATF emphasis on transparency in supervision.

Section 19(1)	A licensee shall not appoint a director, senior officer or other such person unless the person is fit and proper.	<b>Proposed Amendment</b> A licensee shall not appoint or retain a director, senior officer, beneficial owner, significant shareholder or key function holder unless that person is determined to be fit and proper in accordance with criteria prescribed by the regulatory authority and subject to ongoing assessment.	Ensures inclusion of beneficial owners and key functionaries, aligning with FATF Recommendations 10 and 26. Prevents circumvention through indirect control or shadow appointments.
Section 19(2)(a)	Probity, competence, experience and soundness of judgment.	<b>Replace with:</b> “the person’s integrity, competence, professional conduct, decision-making capacity and record of regulatory compliance.”	Broadens scope beyond “probity” to encompass decision-making, ethics, and regulatory history.
Section 19(2)(c)	Education and professional membership as relevant.	Include language requiring evidence of continuing professional development or demonstrated knowledge of virtual asset services.	Brings focus to <b>sector-specific expertise</b> . Avoids licensing of nominal professionals with no actual grasp of blockchain, crypto, or cyber risk issues.
Section 19(2)(e)	Past dishonesty, malpractice, misconduct, bankruptcies.	Expand to include sanctions for AML/CFT violations, tax evasion, and disqualification from other regulatory jurisdictions.	FATF explicitly requires jurisdictions to exclude actors with AML/CFT offences or reputational risk from financial licensing. Ensures cross-border alignment and mitigates regulatory arbitrage.
Section 19(2)(f)	Contravention of any law with respect to virtual assets.	Broaden to include contraventions of data protection, cybersecurity, financial services or consumer protection laws in Kenya or any jurisdiction where the person has previously operated.	cross-jurisdictional scrutiny and ensures individuals with <b>questionable records in other states</b> are not able to act locally under a new entity
Section 19(2)(g)	Financial standing integrity.	<b>Clarify to:</b> “the person’s financial soundness, solvency status, ability to meet financial obligations, and absence of unmitigated financial distress or credit risk.”	Precision in language ensures this clause is enforceable. Focuses on both current and historical financial responsibility, preventing financial risk to client assets.
New Clause	(Not currently in the Bill)	(h) has not been the subject of adverse regulatory findings or public sanctions related to financial services, digital assets, or technology governance in the past 10 years.	Proactive inclusion of regulatory history requirement is crucial for public trust and market stability. FATF promotes exclusion of persons who could pose systemic reputational risk.

<b>New Clause</b>	<i>(Not currently in the Bill)</i>	(i) fit and proper assessments shall be ongoing and subject to regulatory review upon any material change in control, ownership, or operational responsibilities.	Brings the provision in line with <b>ongoing due diligence</b> norms under FATF Rec. 26. Removes false comfort of once-off clearance. Ensures bad actors can be removed even post-licensing.
20(1)	"A virtual asset service provider shall maintain a physical office in Kenya where its business activities are carried out."	Replace with: "A virtual asset service provider shall maintain a principal place of business in Kenya, which may include a physical or virtual office that enables effective regulatory oversight."	The current provision rigidly mandates a physical office, which is increasingly outdated for digital-first or decentralized financial services. Many VASPs operate globally with cloud infrastructure and minimal local footprint. Requiring a physical office increases cost and stifles innovation. A modernized definition accommodates innovation while ensuring accountability.
New Sub-Clause	—	"A virtual asset service provider shall appoint a compliance officer or authorized representative resident in Kenya, responsible for regulatory liaison and ongoing compliance."	Introducing a compliance officer or resident agent ensures effective local engagement and supervisory access, without burdening the VASP with real estate overheads. This aligns with best practices under the FATF Recommendations (R.15 & R.26) responsible person framework. It balances regulatory oversight with operational flexibility.
21(1)	A licensee shall have a minimum of three directors, all of whom must be natural persons. A director shall not serve on more than two boards of licensees.	Expand to clarify: "...each director shall be a fit and proper person and collectively, the board shall demonstrate expertise in finance, technology, compliance, and risk management."	While the clause establishes a basic governance floor, it lacks specificity around qualifications or diversity of expertise. Best practice includes "fit and proper" assessments and collective board competence. Limiting board seats promotes focus, but guidance should mandate board composition relevant to virtual asset risk profiles.
21(3)(a-e)	Lists criteria for assessing prudence: legal compliance, adherence to regulatory guidance, adequate capital, sound accounting, and insurance coverage.	Add a new clause (f): "has implemented an internal control framework, including independent compliance and audit functions appropriate to the size and complexity of the business."	The current list is strong but misses internal control mechanisms and oversight structures. Supervisory regimes require not just financial and legal compliance, but robust risk governance architecture, including independent compliance/audit roles. Internal control frameworks are key to resilience and regulatory trust.
22(1)(a-c)	Prohibits mixer/tumbler services, misleading conduct, and mandates diligence in service delivery.	Add a new paragraph: "(d) maintain mechanisms to detect, prevent and report suspicious activities, including red flags for anonymity-enhancing tools or obfuscation techniques."	This section rightly targets high-risk anonymity tools. However, it lacks a proactive monitoring obligation. FATF's Guidance on Virtual Assets and VASPs (June 2023) stresses the importance of monitoring and reporting tools, not merely prohibition. Emphasize

			market abuse prevention. Kenya must move beyond moral framing (integrity) to systems-based enforcement.
22(2)	Offence and penalty provision.	Add: "...and shall be subject to both criminal and administrative penalties, proportionate to the severity of the breach and potential for consumer or systemic harm."	The enforcement clause lacks proportionality and gradation. digital finance laws distinguish between minor breaches and systemic misconduct, applying tiered sanction models. Kenya should incorporate a graduated penalty matrix to avoid binary enforcement.
23(1)	Requires compliance with capital, solvency, and insurance obligations.	Add: "...as determined by the regulatory authority in accordance with the risk profile, business model, and customer base of the licensee."	While sound, this clause would benefit from tying capital and solvency requirements to risk-based supervision principles, consistent with FATF R.15 and IOSCO Objectives. Adopt proportionality in prudential thresholds. Kenya must avoid fixed thresholds that ignore scale or risk class.
24(1)(a-c)	Requires conflict of interest policies covering licensee-client, licensee-third party, and intra-client relationships.	Add: "...and ensure that these policies include disclosure obligations, escalation protocols, and regular internal audits to review compliance."	Merely requiring policies is insufficient. Emphasize disclosure and mitigation. There should be enforceable procedures, not vague assurances. Effective governance demands traceable accountability.
24(2)	Enforcement clause.	Add: "...including revocation of license where conflicts materially harm client interests or market integrity."	Strengthens regulatory response options. Aligns with FATF and IOSCO principles on governance and fiduciary responsibility. Severe conflict breaches should be treated as grounds for license suspension or termination.
25(a-b)	Honest service delivery and maintenance of capital requirements	Clarify: "...in a manner that promotes fair market practices and protects clients from misrepresentation or exploitative terms."	These clauses reiterate foundational principles. However, 'honesty' and 'fairness' require clearer market conduct guidance on consumer protection.
25(c)	Manage actual and potential conflicts of interest	Reference to Section 24 for alignment	Redundancy risk exists. Better to cross-reference and consolidate. Ensure this clause invokes structured conflict resolution, not just vague intent.
25(d)	Adequate technological, financial, and human resources	Add: "...consistent with the scale, complexity, and risk profile of the services offered."	Mirrors risk-based resource allocation standards. Ensures scalability, not blanket standards.
25(e)	Full AML/CFT compliance	Add: "...including periodic risk assessments and transaction monitoring systems tailored to the nature of the VASP's operations."	Aligns with FATF Travel Rule. This should include digital KYC and ongoing surveillance protocols.

25(i-j)	Data governance and truthful marketing	Specify compliance with Kenya's Data Protection Act and add: "...adhering to sectoral consumer data handling norms."	Anchors VASPs within the Kenyan legal data sovereignty framework, ensuring harmonization with non-sectoral laws.
25(k-l)	Business continuity, disaster recovery, and customer complaint handling	Add: "...and demonstrate testing of business continuity plans at least annually; complaint mechanism must include escalation and resolution timelines."	Moves this from policy presence to active governance. FCA and ASIC require testing of continuity plans and complaints dashboards.
25(m)	Whistleblower protection	Add: "...in accordance with the Whistleblower Protection Act (when enacted) or globally accepted standards."	Reinforces alignment with expected future Kenyan law or fallback to OECD/UNODC frameworks.
25(n-o)	Market abuse and consumer education	Add digital asset literacy obligations and reporting thresholds for suspicious market conduct	Leverages and aligns with IOSCO principles on market transparency and consumer education.
25(p-q)	Employee legal compliance and staff competence	Include requirement for continuous professional training (CPT) annually	Embeds lifelong compliance competency, ensuring staff are up to speed with evolving threats.
25(r)	Due diligence on virtual assets	Specify pre-offer disclosures and issuer risk scoring	Kenyan VASPs should offer clarity on token utility, risks, and issuer solvency.
25(s)(i-v)	Vetting persons associated with the VASP	Add: "...and maintain documentation evidencing due diligence for each associated party."	Documentation is critical to demonstrate compliance during audits.
29	29. (1) A licensee shall have appropriate and effective cyber security measures as prescribed or as provided for under the Computer Misuse and Cybercrimes Act	Replace Computer Misuse and Cybercrimes Act with Data Protection Act 2019	Computer Misuse and Cybercrimes Act does not prescribe cyber security measures only offences for abuses. The Cyber security measures are in Data protection Act and regulations.
30(1-3)	Requires annual audited financial statements by an approved auditor, submitted within 3 months after financial year end.	No changes to these subsections. However, insert a new <b>Section 30A</b> immediately after Section 30: <b>"30A. System Audit Requirement:</b> (1) A licensee shall, at least once every two years, commission a system audit by a certified IT auditor to assess its digital infrastructure, data security, transaction integrity, cybersecurity preparedness, and operational resilience.	The current law mandates financial audits but is silent on system and cybersecurity audits—a critical oversight in the context of virtual asset services, which are entirely tech-driven.  Require IT and cybersecurity audit frameworks.  This proposed Section 30A introduces a proportionate, risk-aligned requirement that ensures VASPs maintain secure infrastructure and are not exposed to unmonitored digital threats. It also allows the regulator

		<p>(2) The system audit report shall be submitted to the regulatory authority within 30 days of its completion.</p> <p>(3) The regulatory authority may issue guidelines on the scope, methodology, and frequency of such audits based on the licensee's risk profile."</p>	to tailor audit expectations based on the complexity and risk classification of the licensee.
31(1-4)	Requires appointment of a CEO who is fit and proper, with regulatory approval prior to designation.	Add to subsection (2): "...and shall possess demonstrable experience in digital finance, risk management, compliance, or related fields, proportionate to the size and complexity of the licensee."	<p>The 'fit and proper' test is vague without sector-relevant competence indicators.</p> <p>Apply sector-specific criteria for executive roles in crypto/virtual asset service firms. Including domain-relevant expertise ensures competent leadership and reduces risk of mismanagement.</p>
33(2)(a-i)	Enumerates supervisory powers: vetting, inspections, document production, sanctions, and guidance issuance.	Add new clause (j): "require licensees to implement and periodically test AML/CFT risk assessment tools and transaction monitoring systems suited to virtual asset risks."	The listed powers are strong but lack emphasis on technology-enabled compliance. Require automated screening, wallet analysis, and real-time monitoring for VASPs. Adding a system-testing power supports tech-enabled enforcement.
34(1-2)	Prohibits officers, agents, or employees from breaching AML/CFT rules. Violations attract criminal penalties.	Add to 34(1): "including failure to file suspicious transaction reports, failure to monitor high-risk wallets, and deliberate obfuscation of transaction trails."	Adds specificity to actionable misconduct. Emphasize liability for both acts of commission and omission, particularly around suspicious activity reporting (SAR), PEP screening, and pseudonymous risk management. Clarity also enhances enforcement effectiveness.
35(2)	Bars natural persons from issuing assets from Kenya.	Reframe: "No natural person shall, in their personal capacity, issue or promote a virtual asset unless done through a licensed entity or legal person approved by the regulatory authority."	Instead of a blanket ban, this amendment allows natural persons to operate through regulated vehicles, enhancing legitimacy while enabling innovation similar to Dubai VARA and UK FCA approaches.
35(3-4)	Issuers must apply for approval to issue or promote virtual assets in/from Kenya.	Add a reference to eligibility criteria: "...shall comply with eligibility criteria, disclosure obligations, and consumer protection requirements prescribed by the Authority."	There's a need to introduce a clear, risk-tiered framework for different asset classes (e.g., stablecoins vs. utility tokens). This enhances regulatory clarity and investor protection.

35(5)(a-f)	Grants the regulatory authority power to object and impose remedial measures post-issuance if discrepancies or misconduct are discovered.	Add: "...the regulatory authority may suspend the issuance, require additional disclosures, or order restitution to affected parties."	The current provisions are reactive but lack enforcement clarity. Empower regulators to suspend, fine, and compel restitution where token offerings are misleading or breach public interest. This addition enhances investor protection.
35(6)	Criminalizes submission of false or misleading information in an application.	Add: "...including the omission of material facts likely to affect an investor's decision-making or the regulator's risk assessment."	Expands liability to omissions, aligning with materiality standards. Many fraudulent disclosures involve omission, not just falsehood.
36(1)	Empowers the regulatory authority to conduct compliance inspections and investigations.	Add: "...including the power to enter premises, access digital systems, request transaction records, and engage third-party experts where technical assessment is required."	Investigation authority must be explicit and digitally capable. As VASPs rely heavily on software systems, the regulator must be empowered to inspect code repositories, system logs, wallet activity, and algorithmic controls.
36(5)	Criminalizes supplying false or misleading information during an investigation.	Add: "including information supplied digitally or through third-party service providers."	Expands the scope to cover API-based submissions, outsourced KYC vendors, and any digital onboarding/transaction data. Aligns with modern digital asset compliance contexts.
36(6)	Enables enforcement action for failure to comply with lawful regulatory requests.	Add: "...including, but not limited to, enhanced inspections, suspension of business activities, financial penalties, or license restrictions."	Reinforces regulatory teeth. Broadens the range of possible sanctions beyond general enforcement under Section 40.
39(1)(c)	Allows the regulatory authority to summon persons for questioning.	Add: "...including by digital means such as secure video conferencing, where physical presence is impractical."	Modernizes the provision to reflect digital-first compliance environments. Many regulatory authorities globally accept virtual hearings or testimony under secure protocols. This is especially vital when dealing with decentralized teams and foreign-based operators.
39(2)(a)	Requires production of documents in custody of senior officers or related persons.	Add: "...including digital records, encryption keys, access logs, and backup files relevant to operations of the licensee."	This expands the clause to recognize the critical role of digital infrastructure in VASP governance and ensures the regulator has access to relevant tech-layer evidence.
39(2)(c)	Permits the regulator to direct specific actions during investigations.	Clarify: "...including the temporary suspension of services, wallet freezing, or internal access restrictions as reasonably required."	Makes this clause operationally relevant by explicitly identifying intervention powers critical in the prevention of further harm or asset flight during ongoing investigations.
Section 39(3)	Allows regulator or their agent to copy or extract information.	Allows regulator or their agent to copy or extract information.	Allows regulator or their agent to copy or extract information.

Section 39(4)	Allows regulator to enter premises to obtain documents if needed.	Add: "...including digital premises such as data centres, server access locations, and remote storage environments under the control of the licensee or its agents."	Necessary to update the understanding of "premises" to include digital environments for effective enforcement in a borderless, digital-native space.
Section 39(5)	Defines connected persons for investigation purposes.	Add: "...or has had material influence, access, or oversight over digital systems, wallets, platforms, or protocols used by the licensee."	Broadens the scope beyond equity/shareholding to cover tech and ops influencers (e.g., outsourced CTOs, developers, third-party custodians).
40(1–2)	Grants the authority power to take administrative enforcement action for violations, including warnings, remedial directions, directives, and restrictions.	Add: "The authority shall maintain an enforcement register accessible to the public summarizing enforcement actions taken, subject to confidentiality under Section 43."	This amendment aligns with transparency principles where public enforcement registers deter repeat offenses and inform counterparties of risk.
40(2)(d–e)	Provides for suspension/revocation of licenses and initiation of investigations.	Add: "The licensee shall be given reasonable opportunity to respond prior to any revocation or suspension, unless urgent action is needed to prevent imminent consumer harm."	Ensures procedural fairness (audi alteram partem) while retaining the ability for swift action.
40(2)(f)	Sets administrative penalties: KES 3M for individuals, KES 10M for companies.	Adjust upward for inflation and add proportionality clause: "...or such higher amount as commensurate with the economic gain from the violation or harm caused to the public."	Introduces risk-based penalties, ensuring fines are not treated as the cost of doing business based on FATF's proportionality principle.
40(3)	Lists factors considered when determining enforcement action.	Add: "...including cooperation with investigations, voluntary disclosures, and implementation of compliance remediation plans."	Codifies incentives for cooperation and post-breach behavior, aligning with OECD guidance on cooperative enforcement.
41(1–3)	Categorizes fines and imprisonment terms for different offences, scaled by severity and whether committed by individuals or companies.	Add to each category: "...and the Court may, in addition, order disgorgement of profits, restitution to affected parties, or disqualification from holding office in a regulated entity."	Introduces reparative justice and market integrity measures. Restitution is critical in VASP markets where user losses can be massive.
Section 42 – Liability of	Holds directors, senior officers, partners, or employees liable for	Add: "The burden shall rest on the individual to demonstrate absence of	Shifts this into a "reverse burden" model similar appropriate for high-risk sectors like crypto. Promotes

Individuals for Organizational Offences	authorizing, permitting, or aiding an offence committed by the licensee.	knowledge or that reasonable steps were taken to prevent the offence.”	individual accountability and proactive risk management.
43(1)	Prohibits the regulatory authority or its agents from disclosing any information or documents obtained in the course of their duties.	Add: “...except in cases where disclosure is required to protect market integrity, prevent systemic risk, or inform other regulatory or supervisory bodies in Kenya under formal MoUs.”	Aligns with FATF Recommendation 40 and global practice where regulatory cooperation and information sharing are essential to prevent regulatory arbitrage and enable cross-border supervision. This ensures confidentiality is not a barrier to effective oversight.
43(2)(a–d)	Provides exceptions for disclosure under court orders, consent, anonymized statistical data, or legal requirements (e.g., AMLA, MLAA).	Add to (b): “...including digital consent mechanisms that are auditable and attributable to the individual or entity giving such consent.”	Reflects the digital-first nature of VASPs where consent may be logged electronically. Auditable digital consent trails are standard under GDPR, Kenya’s Data Protection Act.
44(2)	Gives the appeal body power to confirm, vary, revoke decisions and make appropriate orders.	Add: “...including ordering interim relief or suspending enforcement action until final determination.”	Prevents irreversible damage pending appeal. Aligned with judicial review principles and right to remedy provisions.
Section 46 – Protection from Liability	Shields regulators from legal action when duties are performed in good faith.	Add: “...provided such acts are not grossly negligent, reckless, or in willful disregard of statutory obligations.”	Introduces balanced immunity. Mirrors judicial precedents, CBK Act, and international public law norms that permit challenge where egregious failure exists.

Subject Comments: Virtual Assets Service Providers Bill, 2025.

From Agatha Gichana <agatha.gichana@oxygene.co.ke>

To cna@parliament.go.ke <cna@parliament.go.ke>

Date Friday April 25, 2025 1:36:44 PM

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Greetings,

We are writing from Oxygène MCL, a leading marketing and communications company, through our Public Affairs Department. Oxygène's Public Affairs practice comprises seasoned professionals from diverse fields, including law, economics, international relations and policy.

We wish to share our comments on **Virtual Assets Service Providers Bill, 2025**, in line with our commitment to supporting sound policy and regulatory frameworks.

Please find our comments attached for your consideration and do not hesitate to reach out if you require any clarification.

Kind regards,



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Attachments

Comments on the Virtual Assets Service Providers Bill, 2025. .docx.pdf (117 kB)

cc Mr. Benjamin Magak, HoD

In place before the Dept. Comm. on Finance.  
Jm 25/04/25





## VIRTUAL ASSETS SERVICE PROVIDERS BILL, 2025

No.	Section	Comment	Rationale
1.	<p><b>PART I — PRELIMINARY</b></p> <p><b>Section 2</b></p> <p><b>Definition of Virtual Asset</b> "virtual asset" means a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes and does not include digital representation of fiat currencies, e-money, securities and other financial assets.</p>	<p><b>Amend as below:</b></p> <p>"virtual asset" means a digital representation of value that can be <b>owned</b>, digitally traded or transferred and can be used for payment or investment purposes and does not include digital representation of fiat currencies, e-money, securities and other financial assets</p>	<p>The proposed inclusion of the term "owned" in the definition of "virtual asset" ensures comprehensive legal recognition of digital assets that, while not transferable or tradable, still represent a legitimate form of digital value held by a user. This is particularly relevant in the context of non-transferable virtual assets such as in-game tokens, loyalty points, or digital collectibles, which users can own and use within specific platforms or ecosystems, even if such assets are not capable of being traded externally.</p>
2.	<p><b>Meaning of virtual asset service provider</b></p> <p><b>Section 3</b> <b>(2)</b>For the purposes of this Act, virtual service tokens are not virtual assets and a person or legal arrangement that provides services that involve virtual service tokens only are not required to have a licence under this Act.</p>	<p><b>Amend as below:</b></p> <p>For the purposes of this Act, virtual service tokens <b>are</b> virtual assets and a person or legal arrangement that provides services that involve virtual service tokens only are required to have a licence under this Act.</p>	<p>Removing service tokens from the virtual assets regulatory scope creates a risk by providing an easier conduit for money laundering funds.</p> <p>According to the definition under Section 2 of the bill , "virtual service token" means a digital representation of value which is not transferable or exchangeable with a third party at any time and includes digital tokens whose sole function is to provide access to and application or service or to provide a service or function directly to its owner; "</p>

			This therefore means that virtual Service tokens represent value and should therefore fall under the purview of the law.
3.	<p><b>Decision by the relevant regulatory authority to license.</b></p> <p>Section 12 The relevant regulatory authority, in making a decision to grant a virtual asset service provider licence under this Act, shall consider the following—</p> <p>(k) if the applicant is already operating in a regulated sector, a no-objection shall be required from the relevant regulator;</p>	<p><b>Amend as below:</b></p> <p>Section 12 The relevant regulatory authority, in making a decision to grant a virtual asset service provider licence under this Act, shall consider the following—</p> <p>(k) if the applicant is already operating in a regulated sector, a no-objection shall be required from the relevant regulator;</p> <p><i>Provided that where the licensing authority is also the sector regulator, the requirement for a separate no-objection shall not apply.</i></p>	<p>The provision does not clearly address the scenario where the relevant regulatory authority issuing the Virtual Asset Service Provider (VASP) licence is the same as the "relevant regulator" required to provide a no-objection. If, for instance, the Central Bank of Kenya (CBK) is the licensing authority and the regulator for the applicant's existing operations, the CBK will be required to issue a no-objection to itself.</p> <p>Our proposal of a proviso to section 12(k) ensures that where the licensing authority under VASP Act 2025 is the same as the sector regulator, a no-objection will not be required.</p>
4.	<p><b>Duration of a licence.</b></p> <p><b>Section 14</b></p> <p>A licence granted under this Act shall be valid from the date it is issued and shall expire on the 31st December of the year it is issued.</p>	<p><b>Amend as below:</b></p> <p><i>A licence granted under this Act shall be valid for a period of one financial year from the date of issuance.</i></p>	<p>The current provision disproportionately disadvantages licensees who are granted licences later in the year, resulting in <b>unequal licence durations</b> for the same fees and compliance requirements. For example, an entity licensed in November would receive less than two months of operational validity before expiry, which is neither equitable nor business-friendly.</p> <p>The proposed amendment standises the duration of licences to a <b>12-month validity period from the date of issuance</b>, rather than linking expiry to a fixed calendar date (31st December).</p>

<p>5.</p>	<p><b>Business to be conducted in prudent manner</b></p> <p>21. (1) Subject to subsection (2) and section 19, the business and affairs of a licensee shall be managed by a board of directors consisting of at least two directors;</p> <p>Provided that a director shall not serve in more than two boards of a licensee under this Act.</p>	<p><b>Amend as below:</b></p> <p>21. (1) Subject to subsection (2) and section 19, the business and affairs of a licensee shall be managed by a board of directors consisting of at least two directors;</p> <p>Provided that a director shall not serve in more than two boards of a licensee under this Act.</p> <p>An exemption shall apply to licensees with existing board structures established prior to the commencement of this Act, however, in such cases, the Chairperson of the Board shall not serve as the Chairperson of any other board under this Act.</p>	<p>The proposed amendment introduces a practical exception for licensees with pre-existing board structures, while still maintaining sound governance principles. This is particularly important for regulated entities that may have directors already serving on other boards, as it ensures continuity in leadership and avoids unnecessary disruption to existing governance arrangements.</p> <p>By allowing an exception, while still placing a specific restriction that the Chairperson shall not serve as Chair on any other board under this Act, the amendment strikes a balance between flexibility and accountability.</p>
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The Clerk of the National Assembly  
Departmental Committee on Finance and National Planning  
Parliament  
Parliament Road  
P.O BOX 41842-00100 Nairobi  
Nairobi, Kenya

Sent via email to [cna@parliament.go.ke](mailto:cna@parliament.go.ke)

27 May 2025

Dear Sirs,

**Subject: The Finance Bill 2025  
Submission of Tax Proposals on behalf of Keega & Company Advocates LLP**

Pursuant to the Public Notice released by the National Assembly Committee on Finance and National Planning ("Committee") on 13 May 2025 and Article 201 of the Constitution of Kenya, 2010, we, Keega & Company Advocates LLP ("Keega"), are glad to submit tax proposals on the Finance Bill, 2025.

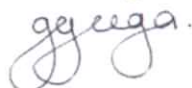
We have provided an executive summary of the legislative proposals in the attached document which also provides detailed analyses of the issues, impact, and recommendations. We are happy to provide any additional information on the proposals should you require us to.

We would be grateful for an opportunity to engage the National Assembly Committee on Finance and National Planning ("Committee") to further deliberate on Keega's proposals and recommendations attendant thereto.

Should you wish to discuss the contents of this letter, please do not hesitate to contact the undersigned on [keega@keegalegal.com](mailto:keega@keegalegal.com) or our tax consultants on [edna.gitachu@pwc.com](mailto:edna.gitachu@pwc.com) or [brian.kanyi@pwc.com](mailto:brian.kanyi@pwc.com) at your convenience.

Yours faithfully

**For: Keega & Company Advocates LLP**



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## 1. Executive Summary

Table 1: Executive summary

No	Issue	Provision proposed to be amended	Proposed amendment	Justification for proposed amendment
1	The tax base applicable to digital asset tax and the persons upon whom the obligation to remit tax is imposed.	<p>Section 12F of the Income Tax Act CAP 470 ("ITA") currently provides as follows:</p> <p>(1) <i>Notwithstanding any other provision of this Act, a tax to be known as digital asset tax shall be payable by a person on income derived from the transfer or exchange of digital assets.</i></p> <p>(2) <i>The owner of a platform or the person who facilitates the exchange or transfer of a digital asset shall deduct the digital asset tax and remit it to the Commissioner.</i></p> <p>(3) <i>A non-resident person who owns a platform on which digital assets are exchanged or transferred shall register under the simplified tax regime.</i></p> <p>(4) <i>A person who is required to deduct the digital asset tax</i></p>	<p>We recommend the deletion of Section 12F of the ITA to repeal the digital asset tax. We further recommend inclusion of the word 'digital asset' under the definition of property in the Eight Schedule to the ITA as follows:</p> <p>"property"–</p> <p>(a) <i>in the case of a company has the meaning assigned thereto in the Interpretation and General Provisions Act (Cap. 2), and includes property acquired or held for investment purposes but does not include a road vehicle;</i></p> <p>(b) <i>in the case of an individual means–</i></p> <p>(i) <i>land situated in Kenya and any right or interest in or over that land; and</i></p> <p>(ii) <i>a marketable security situated in Kenya, other than an</i></p>	<p>We recommend deleting Section 12F and to establish digital assets as a form of property for taxation purposes. This change is necessary to address several critical shortcomings in the current formulation of Section 12F</p> <p>(a) <b>Recognising Losses and Volatility:</b> Digital assets are highly volatile. Section 12F taxes the full value of a transfer even when a loss is made. A fair system should tax only real profits, not gross amounts.</p> <p>(b) <b>Recognising digital assets as Payment Instruments:</b> Section 12F treats all transfers of digital asset transfers as taxable events, including payments made using stablecoins. This ignores their role as a medium of exchange.</p> <p>(c) <b>Ensuring Equal Tax Treatment:</b> Unlike shares or property, digital assets are taxed on gross value, not net gains. This unfairly targets digital asset users and distorts investment</p>

		<p>shall, within five working days after making the deduction, remit the amount so deducted to the Commissioner together with a return of the amount of the payment, the amount of tax deducted, and such other information as the Commissioner may require.</p> <p>(5) For the purposes of this section – “income derived from transfer or exchange of a digital asset” means the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset.</p>	<p>investment share as defined in Part II of this Schedule;</p> <p>(iii) a <b>digital asset</b></p>	<p>decisions.</p> <p>(d) <b>Avoiding Double Taxation in Swaps:</b> In a crypto-to-crypto exchange, both parties can be taxed on the full amount received—even if no profit is made. Tax should apply only to actual gains.</p> <p>(e) <b>Supporting Innovation and Compliance:</b> The current approach pushes activity offshore and into informal channels. A fairer system will promote innovation, transparency, and voluntary compliance.</p> <p>(f) <b>Using Existing Tax Rules:</b> Kenya’s current laws already cover income from digital assets through capital gains, business income, and Significant Economic Presence rules. There’s no need for a separate tax.</p> <p>(g) <b>Reflecting the Diversity of Digital Assets:</b> Digital assets vary widely from tokens and NFTs to platform fees and rewards. A single flat tax cannot fairly cover all these use cases.</p>
2	<p>Inclusion of Virtual Asset Service Providers (“VASP”) under the definition of financial institution</p>	<p>Part III of the first schedule to the Excise Duty Act defines a “financial institution” to mean -</p> <p>(a) a person licensed under -</p> <p>(i) the Banking Act;</p> <p>(ii) the Insurance Act;</p>	<p>Specifically, we propose Part III of the first schedule to the Excise Duty Act to be amended to include a new subparagraph (d) as follows</p> <p>(a) a person licensed under -</p> <p>(i) the Banking Act;</p>	<p>Inclusion of VASPs under the definition of financial institutions will:</p> <ul style="list-style-type: none"> <li>• Ensure fair tax treatment, promote equity between providers of similar services and eliminate regulatory arbitrage.</li> </ul>

	<p>(iii) the Central Bank of Kenya Act; or</p> <p>(iv) the Micro Finance Act, 2006;</p> <p>(b) a Sacco society registered under the Sacco Societies Act, 2008; or</p> <p>(c) the Kenya Post Office Savings Bank established the Kenya Post Office Savings Bank Act;</p>	<p>(ii) the Insurance Act;</p> <p>(iii) the Central Bank of Kenya Act; or</p> <p>(iv) the Micro Finance Act, 2006;</p> <p>(b) a Sacco society registered under the Sacco Societies Act, 2008; or</p> <p>(c) the Kenya Post Office Savings Bank established the Kenya Post Office Savings Bank Act;</p> <p><b>(d) Virtual Asset Service Providers</b></p>	<ul style="list-style-type: none"> <li>• Lead to avoiding double taxation through preventing cascading VAT charges on VASP transactions, aligning with global VAT norms.</li> <li>• Support legal and policy alignment through harmonizing tax law with the VASP Bill 2025, hence strengthening regulatory coherence.</li> <li>• Future-proof the tax system by establishing a scalable, innovation-friendly tax model for the digital economy.</li> <li>• Boost sector growth and compliance by encouraging formalization, investment, and support of Kenya's digital economy agenda.</li> </ul>
	N/A	<p>Amendment of Part II of the First Schedule to the VAT Act to include the following new Paragraph immediately after Paragraph 2 of the first schedule to the VAT Act</p> <p><b>(3) "The Supply of services provided by Virtual Asset Service Providers in relation to dealings with Virtual Assets"</b></p>	

## 2. Background

### 2.1. About Digital Assets

#### 2.1.1. Definition and Terminology

A digital asset is a form of value or ownership that exists in digital form and is recorded on electronic ledgers maintained across decentralized computer networks. These systems use cryptography, a method of securing information through complex codes, to protect transactions and verify ownership. Commonly referred to as crypto assets, virtual assets, or digital tokens, these assets are not typically issued or backed by a central authority, though exceptions exist, such as Central Bank Digital Currencies (CBDCs), which are government-backed.

#### 2.1.2. How Digital Assets Work

Most digital assets rely on a technology called blockchain, which is essentially a type of digital ledger, a record-keeping system. Unlike traditional systems managed by a single institution, blockchain is maintained by a network of computers that work together to verify and store data. Transactions are grouped into blocks, and each block is linked to the one before it, forming a continuous chain that is very difficult to alter.

To add a new transaction, the network must first agree that it is valid, a process called consensus. This is done either by solving complex problems (proof of work) or by pledging digital assets as a guarantee (proof of stake). Each user has a digital wallet with a public key, like an account number, and a private key, like a password, which are used to manage their digital assets securely.

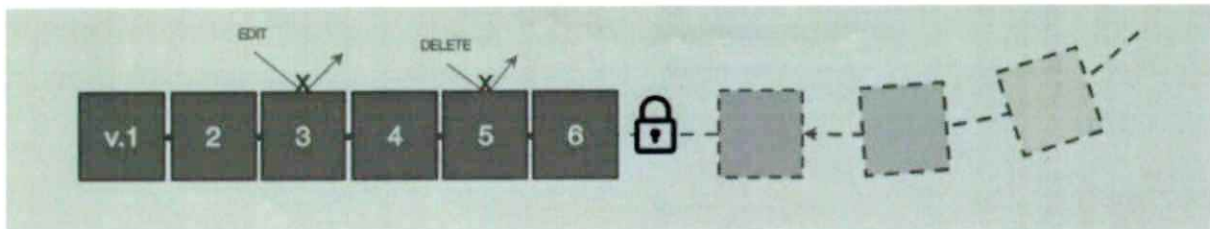







Figure 1: Visual Representation of Blockchain Technology

#### 2.1.3. Types of Digital Assets and Their Uses

Digital assets can be grouped into several categories based on their design and intended use:

Table 2: Types of Digital Assets

Asset Type	Description	Primary Use	Common Examples
Unbacked Cryptocurrencies	Digital currencies not backed by any physical or financial asset. Value is driven by market demand and supply.	Medium of exchange, investment, smart contract execution	Bitcoin (BTC) Ethereum (ETH) 
Stablecoins	Digital currencies pegged to stable assets like fiat currencies (e.g., USD). Designed to reduce price volatility.	Payments, remittances, trading within crypto markets	USDC (USD Coin) USDT (USD Tether) 
Utility Tokens	Tokens used to access specific features or services within a blockchain platform. Not primarily intended for investments.	Access to services, governance, transaction fees	BNB (Binance Coin) INK (Chainlink) 
Real-World Asset Tokens	Digital representations of ownership in physical assets like real estate, commodities, or securities.	Fractional ownership, investment, automated asset management	Tokenized Real Estate Security Tokens 
Non-Fungible Tokens (NFTs)	Unique digital tokens representing ownership of a specific item or asset. Each token is distinct and not interchangeable.	Digital art, collectibles, intellectual property rights	NFTs on Ethereum 

#### 2.1.4. Importance of digital assets

**Driving Financial Innovation:** Digital assets are reshaping how value is created, stored, and transferred. They enable faster, cheaper, and more efficient financial transactions, reducing reliance on traditional intermediaries like banks and payment processors.

**Expanding Economic Participation:** By lowering entry barriers, digital assets allow individuals and small businesses—especially in underserved regions—to access financial tools, raise capital, and participate in global markets. This promotes inclusion and economic empowerment.

**Supporting Transparent and Accountable Systems:** Transactions involving digital assets are recorded on secure, tamper-proof ledgers. This transparency helps reduce fraud, improve auditability, and build trust in both public and private sector operations.

**Enabling New Forms of Ownership and Investment:** Digital assets make it possible to tokenize real-world assets like property, commodities, or art. This allows for fractional ownership, making investment more accessible and unlocking new forms of wealth creation.

**Creating Jobs and Building Digital Skills:** The digital asset ecosystem is generating demand for new skills in technology, finance, law, and cybersecurity. This opens employment and entrepreneurship opportunities, particularly for youth and tech-savvy populations.

#### 2.1.5. Transaction of digital assets

##### (a) Outside Exchanges (On-Chain)

Traders can send or receive digital assets by interacting directly with the blockchain. These are on-chain transactions, and they are fully recorded and verified by the decentralized network.

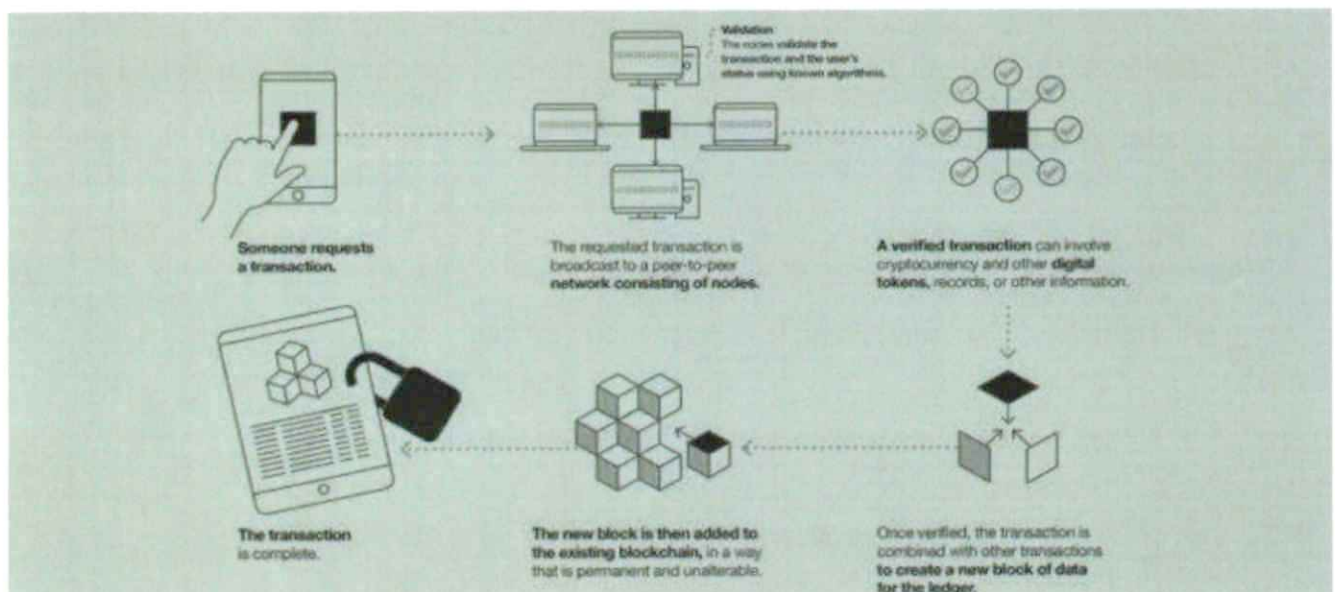


Figure 2: Process of on-chain transactions

### (b) Within Centralized Exchanges (off-chain)

Digital assets are often traded on centralized cryptocurrency exchanges like Binance and Coinbase. These platforms let users buy, sell, and manage assets easily, similar to regular financial apps. Most trades happen off the blockchain, using the exchange's internal system.

#### 2.1.6. Generation of income through the transfer or exchange of digital assets

Table 2: Means of Income Generation

Type of Transaction	Description	Example
<b>Trading (Capital Appreciation)</b>	Buying and selling digital assets to profit from market price fluctuations. Income is generated when assets are sold at a higher price than they were bought.	A user buys 1 ETH at <b>KES 250,000</b> and later sells it at <b>KES 300,000</b> , earning a <b>KES 50,000</b> profit.
<b>Selling Digital Assets for Fiat or Stablecoins</b>	Converting digital assets into local currency (e.g., KES) or stablecoins (e.g., USDT). Income arises from the difference between the selling price and the original cost.	A digital artist sells an NFT for <b>USDT 1,000</b> ( $\approx$ <b>KES 150,000</b> ) after buying it for <b>KES 100,000</b> , generating <b>KES 50,000</b> in income.
<b>Exchanging One Digital Asset for Another</b>	Swapping one crypto asset for another (e.g., BTC to ETH). Income is realized if the value of the received asset is higher than the value of the asset given up.	A user trades 1 BTC (worth <b>KES 9 million</b> ) for 40 ETH (worth <b>KES 10 million</b> ), resulting in <b>KES 1 million</b> in income.
<b>Holding Digital Assets as a Store of Value</b>	Acquiring and holding digital assets long-term for investment. Income is only realized when the asset is eventually sold or exchanged.	An investor holds an NFT bought at <b>KES 100,000</b> . It appreciates to <b>KES 500,000</b> , but no income is realized until it is sold.
<b>Using Digital Assets as Payment</b>	Accepting or spending digital assets for goods or services. The value of the asset at the time of the transaction represents earned income.	A freelancer is paid <b>0.5 ETH</b> for a project. At <b>KES 300,000/ETH</b> , the income is <b>KES 150,000</b> .
<b>Staking and Yield Farming</b>	Earning rewards by locking crypto in Proof-of-Stake networks or DeFi protocols. These rewards represent passive income.	A user stakes 20 ETH and earns 1.5 ETH. At <b>KES 300,000/ETH</b> , the reward is worth <b>KES 450,000</b> .

<b>Mining Rewards</b>	Income earned by validating transactions on Proof-of-Work blockchains like Bitcoin. Typically involves hardware and energy costs.	A miner earns <b>0.25 BTC/month</b> . At <b>KES 4 million/BTC</b> , this equals <b>KES 1 million/month</b> in income.
<b>NFT Royalties and Smart Contract Income</b>	Creators earn royalties from secondary sales of NFTs through smart contracts. This provides recurring income.	An artist earns a <b>10% royalty</b> on a <b>KES 1 million</b> NFT resale, receiving <b>KES 100,000</b> .
<b>Fees and Commissions by VASPs</b>	Virtual Asset Service Providers (e.g., exchanges, wallets) earn income from user fees for services like trading, withdrawals, or custody.	A local exchange charges <b>1% per transaction</b> . On <b>KES 1 billion</b> in volume, it earns <b>KES 10 million</b> in fees.

### 2.1.7. Players in the Virtual Assets Ecosystem

#### (a) Virtual Asset Service Providers (“VASPs”)

VASPs are businesses or individuals that help people buy, sell, store, or transfer digital assets. They include exchanges, wallet providers, and custodians who manage digital assets or the keys that control them.

#### (b) Miners and Validators

These are the actors who confirm and record transactions on blockchain networks.

#### (c) Token Issuers

Token issuers create and distribute digital tokens, which can be used for access to services or as investment tools. They often distribute these through sales or free giveaways.

## 2.2. Digital Asset Landscape in Kenya

In September 2023, the Financial Reporting Centre published its inaugural National Risk Assessment Report on Money Laundering and Terrorism Financing risks associated with Virtual Assets and Virtual Asset Service Providers (“NRA”).<sup>1</sup> This assessment was driven by the growing uptake of digital assets in Kenya and the global push for jurisdictions to identify and mitigate risks associated with these emerging technologies. The report identified the following:

<sup>1</sup> Financial Reporting Centre, National Risk Assessment Report on Money Laundering and Terrorism Financing risks associated with Virtual Assets and Virtual Asset Service Providers, September 2023 < [https://www.frc.go.ke/wp-content/uploads/2024/02/VAs-and-VASPs-ML\\_TF-Risk-Assessment-Report-1.pdf](https://www.frc.go.ke/wp-content/uploads/2024/02/VAs-and-VASPs-ML_TF-Risk-Assessment-Report-1.pdf) > accessed on 24 May 2025.

### 2.2.1. The Rise of Blockchain Use and VA Adoption

Blockchain technology in Kenya has rapidly permeated financial and non-financial sectors. Its decentralized, transparent, and relatively low-cost nature has attracted a broad demographic, particularly the youth. According to survey data collected during the assessment, 75% of virtual asset users in Kenya are aged between 18 and 40, with students being among the most active participants.

People in Kenya are using blockchain-based virtual assets primarily for investment and speculation, but also for remittances, online transactions, and as a hedge against currency depreciation. These transactions often occur via peer-to-peer platforms due to restrictions on financial institutions engaging with virtual asset platforms. Respondents indicated strong usage of online wallets and centralized exchanges to store their digital assets, although some also used physical wallets (e.g. in the form of hard drives) and non-custodial services.

### 2.2.2. Usage Patterns and Popular Platforms

Bitcoin (BTC) and Ethereum (ETH) emerged as the most commonly used virtual assets. Binance, Coinbase, Paxful, Luno, Crypto.com, KuCoin, and BitPesa (now operating as Aza Finance, and the only Kenyan platform) are among the most frequently used VASPs in the Kenyan market. These platforms enable users to trade, hold, or convert digital currencies into fiat currency. A significant portion of users, over 53%, invested less than **KES 100,000**, indicating cautious but growing interest.

Stablecoins like USDT and USDC are also widely used, particularly for their relative price stability. Some users are also engaged with NFTs, where they participate in real estate and fund investments.

### 2.2.3. The Key Players

Kenya's virtual assets/VASP ecosystem comprises wallet providers, exchanges, brokers/payment processors, and investment platforms. Many of the service providers operate across jurisdictions without a physical presence in Kenya, taking advantage of the internet's borderless nature. About 80% of surveyed VASPs confirmed operating across multiple African countries and internationally, including in the UK, EU, and Asia.

## 2.3. Kenya's Policy Position on Virtual Assets and VASPs

### 2.3.1. Draft Policy on Virtual Assets and Virtual Asset Service Providers

The Draft National Policy on Virtual Assets and Virtual Asset Service Providers of December 2024<sup>2</sup> affirms Kenya's intention to support the regulated adoption of virtual assets. Rather than banning or discouraging their use, the policy proposes a comprehensive, risk-based regulatory

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<sup>2</sup> National Treasury, Draft National Policy on Virtual Assets and Virtual Asset Service Providers, December 2024 <<https://www.treasury.go.ke/wp-content/uploads/2025/01/DRAFT-NATIONAL-POLICY-ON-VAs-AND-VASPs.pdf>> accessed on 24 May 2025.

framework to govern virtual assets and VASPs in line with international best practices, particularly those set by the Financial Action Task Force.

In the draft policy, the Government of Kenya has made a clear policy decision to allow virtual asset-related activities in the country. This follows the findings of the 2023 NRA, which recommended regulatory action rather than prohibition, citing widespread adoption. Accordingly, the policy positions Kenya to leverage the benefits of digital assets, such as efficiency in cross-border transactions, alternative investment channels, financial innovation, and job creation, while managing risks through regulatory oversight. The policy promotes a “regulate-and-enable” rather than a “ban-and-restrict” approach.

### 2.3.2. Tax Policies in Kenya

The Government of Kenya's tax policy direction on digital assets reflects a clear intention to tax the digital economy. As outlined in the National Tax Policy (2023),<sup>3</sup> the government aims to enhance tax compliance and revenue collection from digital platforms by leveraging technology, regularly reviewing tax laws, training tax administrators, and collaborating with stakeholders. Classifying the digital sector as hard to tax, this approach is rooted in a risk-based framework that seeks to detect tax avoidance and ensure the tax system keeps pace with emerging technologies.

The Medium-Term Revenue Strategy (2023) (“MTRS”)<sup>4</sup> operationalizes the National Tax Policy by outlining specific tax reforms and measures to enhance revenue collection. The MTRS similarly recognizes the digital sector as a hard to tax sector due to the mobile, intangible, and often opaque nature of digital transactions. In response, the government aims to bring digital assets into the tax net through targeted policy and administrative measures, ensuring that this growing part of the economy contributes fairly to national revenue.

It is essential that tax policy remains aligned with broader government priorities, particularly in supporting innovation and fostering long-term, sustainable growth in the digital economy, including the responsible integration of virtual assets.

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<sup>3</sup> National Treasury, National Tax Policy, Sessional Paper No. 02 of 2023, 2023 < <https://www.treasury.go.ke/wp-content/uploads/2024/05/7.05.-2024-National-Tax-Policy.pdf> > accessed on 24 May 2025.

<sup>4</sup> National Treasury, Medium Term Revenue Strategy, September 23 < <https://www.treasury.go.ke/wp-content/uploads/2023/12/Medium-Term-Revenue-Strategy-2023.pdf> > accessed on 24 May 2025.

### **3. Detailed Submissions on Tax Proposals**

#### **3.1. Proposal to reduce the rate of Digital Asset Tax from 3% to 1.5% of the value of the transfer or exchange value of the digital asset.**

##### **3.1.1. Background**

In July 2023, the Finance Act, 2023 introduced Section 12F into the Income Tax Act, CAP. 470 (ITA), establishing a framework for taxing digital asset transactions. Under this provision, the tax base is defined as the gross fair market value of income earned from the transfer or exchange of digital assets. The responsibility to deduct and remit the tax is placed on the platform owner or the person facilitating the transaction.

To operationalize this framework, the Finance Act also amended the Third Schedule of the ITA by inserting Paragraph 13, which sets the digital asset tax rate at 3 percent of the income derived from such transfers or exchanges. This tax applies uniformly to all digital asset transactions, regardless of whether the transaction results in a gain or a loss.

The Finance Bill, 2025 proposes to amend Paragraph 13 by reducing the tax rate to 1.5 percent of the transaction value. While this reduction may appear to ease the burden on taxpayers, it does not address the core concerns raised by industry stakeholders regarding the structure and fairness of the current regime.

##### **3.1.2. Issues**

While we welcome the decision to lower the tax rate, the following issues are yet to be addressed:

###### **(i) Violation of the principle of neutrality**

Section 12F taxes digital asset transactions on gross proceeds, unlike other assets such as equities or real estate, which are taxed on net gains. This unequal treatment distorts investment decisions, discourages innovation, and may push activity outside formal systems, reducing transparency and compliance.

###### **(ii) Potential for double taxation in exchange-based transactions**

By taxing the full value received in exchanges, Section 12F risks taxing both parties in a single transaction, even when no net wealth is created. This leads to double taxation, which is economically unjustified and increases the compliance burden.

###### **(iii) Uncertainty in the phrase “person who facilitates the exchange or transfer”**

The law requires the person who facilitates the exchange or transfer to remit tax but does not define who this is. In centralized system transactions, it is unclear whether this refers to the platform, wallet provider, or custodian. In addition, in the instances of decentralized or peer-to-peer system transactions, there may be no identifiable party, making enforcement unworkable.

#### (iv) Excessive Compliance Burden on Non-Resident Platforms

Most digital asset platforms serving Kenya are based abroad. These platforms often lack local infrastructure or access to user data, making it difficult to identify Kenyan users or apply tax rules in real time. The requirement to remit tax within five days and submit returns is especially demanding for platforms handling large volumes. Many do not control the information needed for compliance but may still held liable, which may deter them from operating in Kenya and limit user access to global services.

##### 3.1.3. Regional best practices

We have considered some of the regional practices in connection with this subject. The findings are summarized in the table below:

Table 3: Regional practices in connection with this subject

No	Country	Legislative Provision/Authority/Practice	Tax Treatment
1	Tanzania	Section 83C and Paragraph 4(c)(ix) of the First Schedule to the Income Tax Act, 2004 ('Tanzania ITA')	<ul style="list-style-type: none"><li>• Specialised tax regime similar to Kenya</li><li>• Digital asset tax is levied on the value of the gross fair market value of the transfer, with no consideration for whether the trade results in a profit or loss.<sup>5</sup></li><li>• The Act places the obligation on the digital exchange platform or facilitator of the transfer/exchange to deduct and remit the digital asset tax.<sup>6</sup></li></ul>
2	South Africa	Income Tax Act, 1962	<ul style="list-style-type: none"><li>• Normal tax rules on disposal of property assets apply. (Capital Gains Tax Rules and Business Income Rules).</li><li>• Taxpayers conduct a self-assessment.</li><li>• Acquisition costs and losses are allowable deductions.<sup>7</sup></li><li>• In determining whether to subject the transfer of the digital asset to CGT or to gross income, the factors SARS will consider include the intention with which</li></ul>

<sup>5</sup> Paragraph 83C, Tanzania Income Tax Act, 2004.

<sup>6</sup> Section 83C (1), Tanzania Income Tax Act, 2004

<sup>7</sup> South African Revenue Service, 'Crypto Assets & Tax' < <https://www.sars.gov.za/individuals/crypto-assets-tax/>> accessed on 24 May 2025.

			the taxpayer acquired the property, the actual activities of the taxpayer in relation to the asset in question, the manner of its realisation, the taxpayer's business operations (if any) and, in the case of a company, its objects as laid down in its memorandum of association. <sup>8</sup>
3	Nigeria	Section 2 and 5, Capital Gains Act, 1967	<ul style="list-style-type: none"> <li>Specialised tax regime in the form of a CGT model.</li> <li>Tax is levied on the gains from the disposal and losses are considered allowable deductions.<sup>9</sup></li> </ul>

### 3.1.4. International best practices

We have considered some of the international practices in connection with this subject. The findings are summarized in the table below:

Table 4: International practices in connection with this subject

No	Country	Legislative Provision/Authority/Practice	Tax Treatment
1.	United Kingdom	His Majesty's Revenue and Customs ('HMRC') Cryptocurrency Manual 2021	<ul style="list-style-type: none"> <li>Normal tax rules on disposal of property assets apply. (Capital Gains Tax (CGT) rules and Business Income Rules).<sup>10</sup></li> <li>Companies are not liable for CGT; they pay corporation tax on profits from selling their digital assets.</li> <li>In order to determine whether the exchange would have taken place as a personal investment or a business, HMRC considers the frequency of the exchange of the tokens and the level of organisation and sophistication of the nature of the</li> </ul>

<sup>8</sup> Supreme Court of Appeal of South Africa, *Commissioner for the SA Revenue Service v Catherine Wyner*, 25 November 2003, 6 < <https://www.supremecourtsofappeal.org.za/index.php/component/jdownloads/summary/31-judgments-2003/2024-commissioner-sa-revenue-service-v-wyner-581-02> > accessed on 26 May 2025.

<sup>9</sup> Section 3, Nigeria Finance Act, 2023.

<sup>10</sup> Crypto20050, Cryptoassets for individuals: which taxes apply, HMRC Cryptoassets Manual, 2021.

			<p>individual's dealings.<sup>11</sup></p> <ul style="list-style-type: none"> <li>• Taxpayers conduct a self-assessment</li> <li>• Acquisition costs and losses are allowable deductions.</li> </ul>
2.	<b>India</b>	Section 115BBH and 194S, Income Tax Act, 1961	<ul style="list-style-type: none"> <li>• Specialised tax regime including a flat rate tax and a withholding tax.</li> <li>• Digital assets are taxed on the profits from the transfer of such digital asset.<sup>12</sup></li> <li>• Only the acquisition cost of the digital asset is an allowable cost in determining the profit.<sup>13</sup></li> <li>• The Act also imposes a withholding tax obligation on the buyer in transactions exceeding a particular value.<sup>14</sup></li> </ul>
3.	<b>Australia</b>	Income Tax Assessment Act, 1997	<ul style="list-style-type: none"> <li>• Normal tax rules on disposal of property assets apply. (CGTax rules and Business Income Rules).<sup>15</sup></li> <li>• In order to determine whether the exchange would have taken place as a personal investment or a business, the Australian Taxation Office considers the frequency of the exchange of the tokens and the level of organisation and sophistication of the nature of the individual's dealings.<sup>16</sup></li> <li>• Taxpayers conduct a self-assessment.</li> <li>• Acquisition costs and losses are allowable deductions.</li> <li>• Individuals, trusts and</li> </ul>

<sup>11</sup> Crypto20250, Cryptoassets for individuals: what is trading, HMRC Cryptoassets Manual, 2021.

<sup>12</sup> Section 115BBH (1) (a), India Income Tax Act, 1961 as read with section 2 (24)(i) of the Income Tax Act, 1961.

<sup>13</sup> Section 115BBH (2) (a), India Income Tax Act, 1961.

<sup>14</sup> Section 194S (3), India Income Tax Act, 1961.

<sup>15</sup> Australian Taxation Office, 'What are crypto assets?' 16 June 2024 < <https://www.ato.gov.au/individuals-and-families/investments-and-assets/crypto-asset-investments/what-are-crypto-assets> > accessed on 24 May 2025.

<sup>16</sup> Paragraph 13-25, Taxation Determination 2014/27, 17 December 2014 < <https://www.ato.gov.au/law/view/document?docid=TXD/TD201427/NAT/ATO/00001> > accessed on 24 May 2025.

			superannuation funds are allowed discounts on CGT where they hold the digital asset for more than 12 months. Companies are not eligible for a discount. <sup>17</sup>
4.	<b>OECD</b>	The OECD released in October 2020, a report titled, 'Taxing Virtual Currencies- An Overview of Tax Treatments and Emerging Tax Policy Issues'. The report was prepared after undertaking a study on over 50 jurisdictions.	<ul style="list-style-type: none"> <li>• In most countries including Argentina, Australia, Belgium, Canada, Estonia, Finland, France, Greece, Ireland, Israel, Japan, Luxembourg, Netherlands, Slovak Republic, Slovenia, South Africa, Spain, Sweden and the United Kingdom normal tax rules on disposal of property apply (CGT rules and Business Income Rules).<sup>18</sup></li> <li>• Occasional trades, or transactions made in a personal investment capacity, often give rise to CGT liabilities.</li> <li>• Trading in a business capacity, or by businesses, gives rise to business or capital income, meaning that normal business tax rates apply.<sup>19</sup></li> </ul>

### 3.1.5. General Observations from International Best Practice

A review of regional and global frameworks reveals key trends in digital asset taxation:

- Net Gain Taxation:** Most countries, including South Africa, Nigeria, the UK, and Australia, tax digital assets based on net gains, allowing deduction of acquisition costs and other costs that may be incidental to the generation of the income.
- Volatility and Loss Recognition:** Most jurisdictions acknowledge the volatility of digital assets by permitting loss offsets, ensuring fairer tax outcomes.
- Rejection of Gross-Based Taxation:** Gross taxation, as seen in Kenya and Tanzania, is rare. Most systems focus on taxing actual gains.
- Property Classification:** Digital assets are widely treated as property, enabling the use of existing CGT or income tax rules and promoting consistency and legal clarity.

<sup>17</sup> Australian Taxation Office, 'How to calculate your CGT' 8 April 2025 < <https://www.ato.gov.au/individuals-and-families/investments-and-assets/capital-gains-tax/calculating-your-cgt/how-to-calculate-your-cgt#ato-Whatyoupaytaxon>> accessed on 24 May 2025.

<sup>18</sup> OECD, *Taxing Virtual Currencies: An overview of Tax Treatments and Emerging Tax Policy Issues*, 31.

<sup>19</sup> OECD, *Taxing Virtual Currencies: An overview of Tax Treatments and Emerging Tax Policy Issues*, 31.

### 3.1.6. Proposed Amendments

While we appreciate and welcome the proposed amendment of the rate of tax subjected on the transfer value of digital assets transferred or exchanged, we wish to recommend the further amendment of section 12F of the ITA as follows:

#### (a) Deletion of Section 12F

We recommend that the deletion of Section 12F of the ITA to repeal the digital asset tax.

#### (b) Application of Normal Rules Applicable to Property Disposal to Digital Assets

We further recommend inclusion of the word 'digital asset' under the definition of property in the Eight Schedule to the ITA. This would allow for digital assets to be taxed under the normal rules applicable to property disposal.

### 3.1.7. Justification for the Proposed Amendments

#### (a) Deletion of Section 12F

The proposed amendment seeks to delete Section 12F and establish digital assets as a form of property for taxation purposes. This change is necessary to address several critical shortcomings in the current formulation of Section 12F:

##### (i) *Recognition of Losses and accounting for Volatility in Digital Asset Markets*

The current provision taxes digital asset transfers based on gross proceeds, without accounting for acquisition costs. This approach fails to recognize losses, which is a fundamental departure from standard income tax principles. The proposed amendment restores balance by ensuring that only actual economic gains are taxed, thereby aligning digital asset taxation with broader income tax norms.

Furthermore, Digital assets are highly volatile, with prices subject to rapid and unpredictable changes. Taxing gross proceeds without regard to acquisition cost ignores this volatility and imposes tax liabilities even in loss-making scenarios. By shifting to a net gain basis, the amendment acknowledges the inherent risks of digital asset markets and ensures that taxation reflects real economic outcomes.

For instance, an investor who bought 1 ETH at KES 580,000 during its 2021 peak and sold it for KES 110,000 in 2022 would incur a massive loss of KES 470,000. Yet, under a gross-based tax system, they would still be required to pay KES 1,650 (1.5% proposed) in tax on the transfer value, despite having made no profit. Continued taxation though the digital asset tax penalizes loss-making transactions and disregards the economic reality of the investor, making it both inequitable and economically distortive.

##### (ii) *Some Digital Assets are used as a Medium of Exchange*

Section 12F does not distinguish between digital assets held for investment and those used as a means of payment. This is especially problematic for stablecoins, which are linked to fiat currencies and often used to pay for goods and services. Taxing these transactions on a gross basis is both economically distortive and unfair.

For instance, if a Kenyan freelancer is paid 100 USDT (a stablecoin) for services, the platform must withhold 3 USDT as tax, even though the freelancer has simply received payment and not made any profit. This is comparable to taxing a mobile money transaction, or bank transfers and goes against the principle of tax neutrality. Repealing Section 12F would allow these transactions to be taxed more fairly under the existing income tax rules, promoting fairness and encouraging the use of digital assets in everyday commerce.

***(iii) Upholding the Principle of Tax Neutrality***

Tax neutrality requires that the tax system not favour or penalise specific types of economic activity. Currently, digital assets are taxed more harshly than other asset classes such as equities or real estate, which are taxed on net gains. This inconsistency distorts investment decisions and discourages participation in the digital economy. The proposed amendment promotes neutrality by aligning the treatment of digital assets with that of other capital assets.

***(iv) Preventing Double Taxation in Exchange-Based Transactions***

Under the current gross-based approach, both parties in a digital asset swap may be taxed on the full value of what they receive, even though no net wealth is created. This results in the potential double taxation of a single transaction. The proposed amendment mitigates this risk by taxing only the net gain realized by each party, thereby promoting fairness and reducing the compliance burden.

***(v) Supporting Innovation and Compliance***

The punitive nature of the current tax treatment may drive digital asset activity underground or offshore, undermining transparency and compliance. By adopting a more equitable and economically sound approach, the amendment supports the objectives of the Draft National Policy on Digital Assets, which seeks to foster innovation while ensuring effective regulation and taxation.

***(vi) Existing tax framework is sufficient***

Kenya's current income tax framework already provides sufficient legal and administrative mechanisms to tax income and gains arising from the digital asset ecosystem without the need for a separate digital asset tax regime. If Section 12F is repealed, digital assets can be effectively brought within the scope of existing provisions under the Income Tax Act (ITA), particularly:

- CGT under the Eighth Schedule for disposals of digital assets held as investment property;
- Business income rules or WHT where applicable for trading, service-related income arising from the use or facilitation of digital assets or royalties;

- Significant Economic Presence (SEP) provisions under Section 3(3)(c), applicable to non-resident platforms with a digital presence in Kenya.

Repealing Section 12F will not eliminate taxation of digital asset transactions. It will replace an inequitable and impractical regime with a fair, administrable, and future-proof framework, grounded in existing law and aligned with the realities of the digital economy.

**(vii) Section 12F Overlooks the Complexity of Digital Asset Transactions**

Digital assets are highly diverse in nature, function, and income types—ranging from capital gains and staking rewards to royalties and service fees. This reflects the complexity of blockchain systems and the varied roles of participants like investors, creators, and validators. Applying a uniform gross-based tax regime like Section 12F ignores these differences, resulting in economically flawed and impractical outcomes. For example, speculative gains differ fundamentally from service compensation, yet Section 12F treats them the same. A more effective approach is to tax digital assets under existing income and capital gains frameworks, which better reflect transaction substance. Repealing Section 12F is essential to ensure Kenya’s tax system remains fair, enforceable, and aligned with global standards.

**3.2. Proposal to include Virtual Assets Service Providers included under the definition of financial institutions**

**3.2.1. Background**

According to the Virtual Assets Service Providers Bill 2025 (“the VASP Bill”), a virtual asset has been defined to mean “a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes and does not include digital representation of fiat currencies, e-money, securities and other financial assets.

On the other hand, the Bill defines a VASP “as a local company incorporated under the Companies Act or a foreign company issued with a certificate of compliance under the Companies Act and conducts one or more of the activities listed under the schedule”. Some of the services rendered are as highlighted below:

- ✓ Providing storage of virtual assets on behalf of others;
- ✓ Providing a digital online platform facilitating virtual asset transfers and exchanges;
- ✓ Exchanges may occur between one or more forms of virtual assets, or between virtual assets and fiat currency.
- ✓ Issuing own virtual assets to facilitate virtual asset transfers and exchanges
- ✓ Arranging transactions involving virtual assets and fiat currency, or between virtual assets.
- ✓ Managing portfolios in accordance with mandates given by clients on a discretionary basis where such portfolios include one or more virtual assets;
- ✓ Issuing and selling virtual assets to the public
- ✓ Participating in and providing financial services relating to the initial virtual asset offering.

From the list provided above, you will note that the services offered by VASP's are more or less similar to what is offered by a financial institution. We have highlighted immediately below some of the main elements of VASPs that equate them to Financial Services:

- ✓ **Intermediate and Brokerage;** VASPs often act as intermediaries, facilitating the exchange, transfer, or custody of virtual assets between parties, similar to how banks and brokers operate in traditional financial markets.
- ✓ **Custody and Safekeeping;** Many VASPs provide custodial services, holding virtual assets on behalf of clients. This mirrors the role of banks and other financial institutions that safeguard clients' funds and securities.
- ✓ **Payment and Settlement Services;** VASPs may offer payment processing and settlement services using virtual assets, akin to payment service providers and clearinghouses in the traditional financial sector.
- ✓ **Exchange Services;** VASPs frequently operate exchanges where users can buy, sell, or swap virtual assets for other assets or fiat currency. This is analogous to stock exchanges or currency exchanges in the financial industry.
- ✓ **Compliance and Regulatory Functions;** VASPs are increasingly subject to anti-money laundering (AML) and know-your-customer (KYC) regulations, similar to traditional financial institutions, further aligning their operations with those of established financial service providers.

Being that the Virtual Assets sector is a new niche, and the intention of the government is to bring this niche to tax, it is important that this is done through consideration of the underlying nature of the services being offered.

### 3.2.2. The Issue

The Value Added Tax, 2013 ('the VAT Act') imposes VAT on a taxable supply made by a registered person in Kenya, the importation of taxable goods and the supply of imported taxable services unless the taxable supply is exempt from VAT under the first schedule to the VAT Act. Given that services provided by VASPs are not specifically listed in the exempt schedule, Virtual Assets Services may be subject to VAT at the standard rate of 16% in absence of specific exemptions provided to the industry.

Virtual assets, such as cryptocurrencies, often function similarly to traditional means of payment like fiat currency or financial instruments such as securities or derivatives. Many VAT systems exempt transactions involving money and certain financial instruments to avoid taxing the medium of exchange itself, which would otherwise create cascading tax effects and hinder economic activity. Therefore, the tax treatment of services rendered by a VASP should be consistent with that applied to financial institutions.

Kenya already has a successful module for taxing financial services without impeding industry growth for the sector. Financial services are exempt from VAT according to Paragraph 1 of part B of the first schedule to the VAT Act. On the other hand, financial institutions in Kenya pay Excise Duty on the fees charged for money transfer services at the rate of 15% and on other fees charged as defined under Part III of the First Schedule to the Excise Duty Act, 2015 at the rate of 20%.

Since there are no specific considerations on the applicability of VAT on services offered by VASPs, our proposal is that such services are accorded with similar treatment as that of other financial services.

### 3.2.3. International best practices

We have considered some of the international best practices in connection with this subject. The findings are summarized in the table below:

Table 5: International practices in connection with this subject

No	Country	Legislative Provision/Authority/Practice	Tax Treatment
	<b>United Kingdom</b>	His Majesty's Revenue and Customs ("HMRC") Cryptocurrency Manual 2021 Value Added Tax Act 1994	<ul style="list-style-type: none"> <li>In 2014, HMRC decided that under Item 1, Group 5, Schedule 9 of the Value Added Tax Act 1994, the financial services supplied by bitcoin exchanges - exchanging bitcoin for legal tender and vice versa - are exempt from VAT<sup>20</sup>.</li> </ul>
	<b>United Arab Emirates</b>	UAE Federal Tax Authority Guidance	<ul style="list-style-type: none"> <li>The UAE has positioned itself as a crypto-friendly jurisdiction. It does not levy any transaction tax on crypto trades. In fact, cryptocurrency transactions are exempt from VAT (Value Added Tax), treating them akin to traditional financial services.</li> </ul>
	<b>Singapore</b>	The Goods and Services Tax Act 1993	<ul style="list-style-type: none"> <li>The Inland Revenue Authority of Singapore (IRAS) treats digital payment tokens (e.g., Bitcoin) as neither goods nor money for VAT (GST) purposes.</li> <li>Since January 1, 2020, the supply of digital payment tokens is exempt from GST. This means that buying, selling, or using digital payment tokens as payment is not subject to GST.</li> <li>However, the supply of goods or services paid for with digital tokens remains subject to GST.</li> <li>Utility tokens and security tokens are</li> </ul>

<sup>20</sup>

<https://www.gov.uk/hmrc-internal-manuals/cryptoassets-manual/crypto45000#:~:text=In%202014%2C%20HMRC%20decided%20that,versa%20%2D%20are%20exempt%20from%20VAT>

			treated based on their underlying function—utility tokens may be subject to GST, while security tokens are generally exempt <sup>21</sup>
<b>Australia</b>	Treasury Laws Amendment (2017 Measures No. 6) Act 2017		<ul style="list-style-type: none"> <li>• From 1 July 2017, digital currencies (e.g., Bitcoin, Ethereum) are no longer subject to GST when used as payment for goods or services.</li> <li>• This means that using crypto to pay for goods/services is treated the same as using fiat currency—the underlying good/service is taxed, not the crypto itself.</li> <li>• This change ensures that digital currencies are treated like money, avoiding double taxation (previously, GST applied both when buying the crypto and when using it).</li> </ul>
<b>European Union</b>	Legal Precedence: <i>Skatteverket v. Hedqvist (C-264/14), 2015</i>		<p>The EU currently treats virtual currencies (like Bitcoin) as a means of payment, following the 2015 European Court of Justice (ECJ) ruling in the <i>Hedqvist</i> case. This means:</p> <ul style="list-style-type: none"> <li>• Exchanges of virtual currencies for fiat money are exempt from VAT, similar to currency exchange services.</li> <li>• Goods and services purchased using virtual currencies are subject to VAT, just as if they were purchased with traditional currency.</li> </ul> <p>By forgoing a transaction tax, the EU focuses on growth and transparency; governments still collect taxes on exchange profits and on gains when cashed out into fiat, but users are not taxed simply for transacting.</p>
<b>OECD<sup>22</sup></b>	The OECD released in October 2020, a report titled, 'Taxing Virtual Currencies- An Overview of Tax Treatments and Emerging Tax Policy		For consumption taxes, there is more consistency in tax treatment, with countries treating almost all aspects of virtual currencies as exempt or out of scope. This is often for practical reasons, as they may wish to avoid

<sup>21</sup> Australian Taxation Office, 'How to calculate your CGT' 8 April 2025 < <https://www.ato.gov.au/individuals-and-families/investments-and-assets/capital-gains-tax/calculating-your-cgt/how-to-calculate-your-cgt#ato-Whatyoupaytaxon>> accessed on 24 May 2025.

<sup>22</sup> <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/tax-policy/flyer-taxing-virtual-currencies-an-overview-of-tax-treatments-and-emerging-tax-policy-issues.pdf>

	<p>Issues'. The report was prepared after undertaking a study on over 50 jurisdictions.</p>	<p>having to consider the implications of a barter scenario, whereby a single transaction creates two sets of VAT liabilities and input credits.</p> <p>Additionally, in EU countries, the VAT treatment was determined by the decision of the European Court of Justice in 2015 that exchanges of Bitcoin are exempt under the EU VAT Directive.</p> <p>Finally, virtual currencies form part of a taxpayer's assets and are taxable under wealth and inheritance taxes, where these exist. Inheritance taxes may pose logistical difficulties, as the asset may not be accessible to the inheritor, but tax is generally still payable.</p>
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### 3.2.4. Proposed Amendments

We propose that Virtual Asset Service Providers are accorded similar tax treatment with the financial institutions as far as VAT and Excise Duty is concerned. Specifically, we propose the following amendments:

#### a) The Excise Duty Act

Amendment under Part III of the first schedule to the Excise Duty Act to include sub paragraph (d) immediately after subparagraph (c) "*Virtual Asset Service Providers*" as part of the definition of a financial institution.

#### b) The Value Added Tax Act

Amendment of Part II of the First Schedule to the VAT Act to include Paragraph 3 immediately after Paragraph 2 as follows:

*"The Supply of services provided by Virtual Asset Service Providers in relation to dealings with Virtual Assets"*

### 3.2.5. Justification for the Proposed Amendments

#### a) Functional Parity and Equity in Taxation

VASPs perform core financial functions such as brokerage, custody, payment facilitation, settlement, and asset management which mirrors the services of traditional financial institutions. Despite these similarities, they are currently subjected to VAT on their services, unlike banks and other licensed financial institutions, which are exempt under the VAT Act and instead pay excise duty.

The proposal to classify VASPs as financial institutions ensures horizontal equity, where entities providing similar services are taxed in a consistent manner. This removes regulatory arbitrage and upholds the principle of tax neutrality, eliminating distortions in the financial sector and fostering fair competition.

#### **b) Risk of double taxation**

Imposing VAT on services offered by VASPs introduces a significant risk of double taxation, particularly in transactions involving virtual asset exchanges or custodial services. For example, if a person buys goods or services using cryptocurrency and VAT is charged both on the purchase of the cryptocurrency and on the goods/services, this will create an unfair tax burden. This not only inflates the cost of using VASP services but also violates international best practices, where financial intermediation is typically exempt from VAT to avoid cascading tax effects. The VAT Act exempts financial services from VAT for this very reason. By contrast, applying VAT to VASP transactions could lead to over-taxation and ultimately disincentivize the formalization of the sector.

Transitioning VASPs into the same tax treatment as financial institutions where only the fees and commissions are subject to excise duty protects government revenue while eliminating distortionary tax layering. This approach strikes a balance between effective taxation and fostering innovation and growth in the digital economy.

#### **c) Policy Alignment and Future-Proofing the Tax Framework**

This proposal harmonizes Kenya's tax laws with the Virtual Asset Service Providers Bill, 2025, which already recognizes and licenses VASPs similarly to financial institutions. Recognizing VASPs in the tax code closes a regulatory gap and strengthens legal coherence between tax and financial sector laws.

Additionally, as virtual assets grow in relevance for cross-border payments, remittances, investment, and digital commerce, this step future-proofs Kenya's tax system by creating a scalable model for taxing digital financial innovations, in line with global standards.

In addition, other East Africa countries are yet to issue specific VAT guidance on virtual assets. Therefore, including such guidance in the VAT Act will set Kenya apart in the digital financial sector which is a growing market.

#### **d) Balancing growth and innovation in the digital financial sector**

Imposing VAT on services offered by VASPs risks stifling innovation and driving businesses into informal channels or offshore jurisdictions, particularly given the price-sensitive and technology-driven nature of the digital finance space. By subjecting VASPs to excise duty on commissions and fees, rather than VAT on gross transaction values, Kenya would ensure steady revenue collection without compromising sector growth or investment.

This treatment is consistent with Kenya's existing tax model for financial services and aligns with global trends in fintech taxation, where many jurisdictions exempt digital asset transactions to avoid tax cascading effects but also protect the payment function of virtual assets.

**e) Consistency with other local policies and International best practices**

Bringing VASPs under the financial institution framework creates a clear and predictable tax regime, encouraging registration, licensing, and formal sector participation. This supports the Kenya Revenue Authority's (KRA) digital tax agenda, increases compliance, and widens the tax base. Moreover, it aligns with Kenya's broader development goals under Vision 2030 and the Digital Economy Blueprint, by supporting digital financial inclusion, lowering the cost of financial services, and boosting investor confidence in the Kenyan fintech ecosystem.

On the other hand, treating Virtual Assets akin to financial services aligns with many jurisdictions, including the European Union and OECD guidelines who have chosen to exempt virtual currencies from VAT to maintain consistency with international practices and to avoid creating barriers to cross-border transactions.

**BOWMANS – DIGITAL ASSET TAX – SUBMISSIONS ON THE FINANCE BILL, 2025 (NATIONAL ASSEMBLY BILL NO. 19 OF 2025)**

No	Clause	Description of the Clause	Proposal	Justification
1.	28(d)	The Finance Bill proposes to decrease the rate of digital asset tax (DAT) from 3% to 1.5%.	<p>The proposal to reduce the DAT rate from 3% to 1.5% will not address the challenges of implementing the DAT provisions as currently contained under the Income Tax Act. We propose the following options in respect of DAT:</p> <p><b>Proposal 1: To safeguard the nascent and growing virtual asset sector</b></p> <p>(a) <b>Repeal digital asset tax provisions</b> by repealing section 12F and paragraph 13 of the Third Schedule of the Income Tax Act as there have been numerous compliance difficulties with the provisions as currently enacted. The</p>	<p><b>I. Introduction</b></p> <p>DAT is applicable to virtual assets that are generated through cryptographic means (or otherwise) and provide a digital representation of value, cryptocurrencies, non-fungible tokens or other similar tokens.</p> <p>Digital asset tax as currently enacted requires: (a) <b>the owner of a platform;</b> or (b) <b>the person who facilitates the exchange or transfer</b> of a digital asset to deduct DAT and remit it within five (5) working days to the Kenya Revenue Authority (the <b>KRA</b>).</p> <p>After a user completes registration of an account on a cryptocurrency exchange website or app (<b>Platform</b>), such as Binance, under the P2P service - which is the only on-ramp/off-ramp mechanism currently available for Kenyan users, given the restrictive regulatory environment - the user is able to: (a) post an advertisement offering the sale of digital assets; or (b) respond to an advertisement to purchase the offered digital asset.</p>



			<p>tax on gain/income should be paid under self-assessment regime as either capital gains tax or income tax regime on the person realizing the gain. Disclosure would be done by platforms under a report framework such as the OECD's CARF, allowing KRA to collect the tax due from users (this is the standardized approach chosen by most countries) ;</p> <p>(b) <b>Amend digital asset tax provisions</b> by repealing subsection 12F(2) and (3) and providing that the Cabinet Secretary for Treasury and National Planning shall implement regulations to provide for the definition of DAT, the scope of transactions chargeable to DAT and exclude stable coins from the ambit of DAT as they are not held for</p>	<p>The owner/operator of the Platform acts as an escrow that holds the digital assets pending the confirmation by the buyer and seller that the required payment (which could be cash or another digital asset) has been transferred to the wallet (in the case of digital assets) or preferred payment option (such as bank account) of the seller.</p> <p>Accordingly, the owner/operator of the Platform does not have sight of the fiat currency payments exchanged between the buyer and seller of the digital asset since these payment options are not owned or operated by the Platform owner.</p> <p><b>II. Platform owners/operators do not have access to the fiat currency transactions between users on its platform</b></p> <p>As set out above, Platform owners/operators are unable to withhold and remit DAT in fiat currency for digital asset trading transactions because Binance offers escrow services for digital assets in a trading transaction. Accordingly, the fiat currency element of the transactions occur between the buyer and seller of the digital assets outside the Platform through their preferred third-party payment service providers such as bank accounts.</p> <p><b>III. DAT is significantly higher than Platform fees for a transaction and therefore Platforms are not able to fund DAT payment from its fees</b></p>
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value but used as a means of payment;

(c) **Introducing VAT exemption** for services offered by virtual asset service providers to attract these players to Kenya.

We propose amending the First Schedule of the VAT Act to expressly provide that services provided by virtual asset service providers would be exempt from VAT.

Virtual asset service providers would have the meaning assigned to it under section 3 of the Virtual Asset Service Providers Bill, 2025 which is also before the Committee.

Examples include virtual asset wallet providers, exchanges, payment

Platform owners/operators' fees on transfer of a digital asset (whether in exchange for fiat or for crypto) is lower than 3%.

See <https://flipster.io/en/blog/crypto-exchanges-ranked-by-lowest-fees-comparison-guide> and <https://www.investopedia.com/tech/how-much-does-it-cost-buy-cryptocurrency-exchanges/>

for general fees charged by crypto Platforms.

Platform	Maker's Fee	Taker's Fee
Coinbase	0.4%	0.6%
Bybit	0.15%	0.2%
Kraken	0.25%	0.4%

DAT tax risk is up to 15 times Binance's fees.

Particulars	Amount
<b>Assume a seller places an offer to sell Bitcoin which a buyer agrees to purchase at the selling price. Assuming 1 Bitcoin = KES 13,544,507.47</b>	KES 10,000,000 of Bitcoin (0.74 bitcoins)



			<p>processors, brokers, investment advisors, among others.</p> <p><b>(d) Introducing excise duty</b> at a rate of five percent (5%) on the fees/commissions charged by virtual asset service providers.</p> <p>We propose a new provision introducing excise duty at a rate of five percent (5%) on the fees/commissions charged by virtual asset service providers.</p> <p>Virtual asset service providers would have the meaning assigned to it under section 3 of the Virtual Asset Service Providers Bill, 2025 which is also before the Committee.</p>	<table border="1"> <tr> <td data-bbox="1108 370 1740 469"><b>The transaction (@0.1% of the virtual asset)</b></td> <td data-bbox="1740 370 2004 469">0.00074 Bitcoins (approx. KES 10,031.83).</td> </tr> <tr> <td data-bbox="1108 469 1740 568"><b>Digital asset tax (DAT) (@3% of the transfer value)</b></td> <td data-bbox="1740 469 2004 568">0.0222 Bitcoins (approx. KES 301,359.25)</td> </tr> </table>	<b>The transaction (@0.1% of the virtual asset)</b>	0.00074 Bitcoins (approx. KES 10,031.83).	<b>Digital asset tax (DAT) (@3% of the transfer value)</b>	0.0222 Bitcoins (approx. KES 301,359.25)
<b>The transaction (@0.1% of the virtual asset)</b>	0.00074 Bitcoins (approx. KES 10,031.83).							
<b>Digital asset tax (DAT) (@3% of the transfer value)</b>	0.0222 Bitcoins (approx. KES 301,359.25)							
<p><b>IV. Challenges faced when accounting for DAT</b></p> <p>In Kenya tax payments are required to be made in KES, while the transfers and transactions subject to DAT will be in the respective cryptocurrencies/tokens.</p> <p>In order to account for DAT, the Platform owner/operator would have to source for market and liquidate the digital assets in order to finance the tax.</p> <p>The liquidation by the Platform owner/operator on its platform would amount to a transfer under the current regime.</p> <p>Given the volatility of the crypto market, it is possible for the value of the digital assets to reduce between the time of transfer and subsequent liquidation by Platform owners/operators.</p> <p>If the liquidation is done and the proceeds subsequently converted into foreign currency and translation of the same into KES amounts to exchange losses, it would result in the Platform owner/operator bearing the cost arising from the exchange losses.</p>								



			<p>Regulations should prescribe how excise duty would be computed and remitted to KRA.</p> <p><b>Proposal 2: Define what falls within the ambit of digital assets</b> – Exclude stable coins from the ambit of digital assets as ordinarily they are not held for value but used as a means of payment.</p> <p><b>Proposal 3: Introduce tax on value of crypto assets held</b> - Introduce a tax, akin to wealth tax at the rate of 0.2% on the value of crypto assets held by Kenyan users at the end of the year. This would be similar to Italy's wealth tax on crypto which applies on the value of crypto assets held at the end of the year at the rate of 0.2%</p>	<p><b>Proposal 1: To safeguard the nascent and growing virtual asset sector</b></p> <p><b>1. Repealing DAT</b></p> <p>The repeal of DAT would ensure that there is no double taxation of income earned by persons trading in digital assets and remove the withholding tax burden (per the above challenges) for exchange owners. Further DAT is also applicable as a withholding tax, however, there is no credit offered to the persons who have been subject to DAT.</p> <p>The tax on gain/income should be paid under self-assessment regime as either capital gains tax or income tax regime on the person realizing the gain. Disclosure would be done by the platform under a report framework such as the Organization for Economic Cooperation and Development (OECD) Crypto-Asset Reporting Framework (CARF) and amendments to the Common Reporting Standards (CRS) (CARF will be implemented in at least 67 jurisdictions; in Europe it will be implemented through a directive, DAC 8). The CARF and CRS will allow the KRA to have access to information on the trading of crypto assets.</p> <p><b>2. Expressly requiring regulations implementing DAT</b></p> <p>The DAT provisions as currently drafted are vague as it is not clear the type of assets subject to tax, how income from DAT transactions is deemed to have accrued or derived from Kenya for tax purposes, the term transfer is not defined to</p>
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				<p>clearly specify transactions that would be deemed taxable and those that would not be taxable. Some trading transactions involve exchange of cryptocurrency from one type to another, such as from Ethereum to Bitcoin. Fiat is not needed to trade. This approach of introducing regulations for the digital sector has resulted in significant benefits in terms of revenue generation as has been the case with digital service tax and VAT on digital marketplace supplies.</p> <p><b>3. Introducing VAT exemption</b></p> <p>The virtual asset sector in Kenya has not yet been regulated by way of legislation and therefore, it is still in its developmental phase. This exemption proposal is intended to encourage leading sector players to register in Kenya to offer virtual asset services.</p> <p>Other financial services provided by traditional financial institutions such as banks are exempt from VAT. This proposal has significantly encouraged the growth of the financial sector in Kenya as it encourages transactions through the financial institutions.</p> <p>Implementation of DAT with similar features in other countries has had negative impact as follows:</p>
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- a) Indonesia: trading volume decreased by approximately 60% post the implementation; and
- b) India: trading volume of crypto exchanges dropped from the highs of USD 500M weekly to the lows of USD 2M weekly post implementation.

Further, from the comparison of jurisdictions below, only Indonesia charges VAT on services provided by virtual asset service providers. Leading economies such as the United States of America, United Kingdom, Germany and France do not impose VAT on virtual asset transactions

Below is a comparison with other jurisdictions.

Jurisdictions	Subject to CGT?	Income Tax Rate	Subject to VAT?	Tax Collected Upfront / at source
Australia	Yes	0% - 45% depending on personal income tax bracket. Long term capital gain from crypto asset	No	No



					held more than 1 year receives 50% capital gain tax reductions.			
				<b>Brazil</b>	Yes	15% - 22.5% depending on personal income tax brackets - only taxable after BRL 35k (USD 6.5k) transaction threshold is reached each month .	No	No
				<b>France</b>	Yes	Tax at 30% when crypto is converted into fiat. Crypto-to-crypto transactions are not taxed.	No	No





				<b>Malaysia</b>	No	Malaysia does not tax capital gain, except active trader	No	No
				<b>Singapore</b>	No	Singapore does not tax capital gain, except active trader	No	No
				<b>Thailand</b>	Yes	Up to 35%	No	No
				<b>United Kingdom</b>	Yes	Up to 20% depending on the personal tax bracket.	No	No
				<b>USA</b>	Yes	Depending on personal tax bracket, short term capital gain (held less than a year) are taxed up between 0% - 37%	No	No



						Long term capital gain are taxed between 0-20%				
						South Africa	Yes	18% of net gains based on the income tax rates	Exempt – financial services	No
						Nigeria	Yes	Net gains. The percentage of gains that are taxable depends on an individual's overall income for the tax year	Yes – 7.50%	No
<p><b>4. Introducing excise duty</b></p> <p>Excise duty based on the fee charged by the virtual asset service providers would provide relatively quick and easy access to revenue for the government. However, to ensure that the virtual asset sector players are incentivized to offer</p>										



				<p>their services to Kenyans, the repeal of DAT and introducing a VAT exemption is crucial.</p> <p>According to Chainalysis, <a href="https://www.chainalysis.com/blog/subsaharan-africa-crypto-adoption-2024/">https://www.chainalysis.com/blog/subsaharan-africa-crypto-adoption-2024/</a></p> <p>Sub-Saharan Africa accounts for 2.7% of transaction volume in cryptocurrency (approximately USD 125 billion). Kenya ranked as 28<sup>th</sup> globally in adoption of cryptocurrencies.</p> <p>In the <u>Virtual Assets and Virtual Asset Service Providers Money Laundering and Terrorism Financing Risk Assessment Report for Kenya</u> , 2023, 86% of respondents were familiar with cryptocurrency. The common cryptocurrencies owned include Bitcoin (20%), Ether (17%), Tether (10%). 53% of respondents had invested funds below KES 100,000, however, other respondents had invested above KES 100,000 including amounts as high as more than KES 10 million.</p> <p>There is opportunity for revenue to be raised, however, the law introducing the tax has to be clear on the scope, how to attribute the transactions to Kenyan users, and compliance measures.</p> <p><b>Proposal 2: Define what falls within the ambit of digital assets</b></p> <p>Stable coins would be excluded from the ambit of digital assets as ordinarily they are not held for value but used as a means of payment.</p>
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				<p><b>Proposal 3: Introduce tax on value of crypto assets held</b></p> <p>Introduce a tax, akin to wealth tax at the rate of 0.1% on the value of crypto assets held by Kenyan users at the end of the year. This is the case in Italy where tax applies on the value of crypto assets value held by Italian tax resident persons at the end of the year where (a) the crypto assets are held with a foreign intermediary or (b) held in self-custody.</p> <p>This tax regime would be easier to enforce as it would be based on the value of crypto assets held as at a specific time. In addition, tax would apply on the entire value of the crypto assets as opposed only to the gain. This regime would also have the merit of achieving the desired outcome of DAT - taxing individuals with wealth accumulated from crypto-assets -, but avoiding the controversy on the constitutionality of DAT, notably on the fact that it may target transactions where no real income is obtained by entities selling the asset.</p>
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# Digital Asset Tax

Submissions prepared on behalf of VAC

20 May 2025



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# Background

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Finance Act, 2023 introduced section 12F of the Income Tax Act which effective 1 September 2023 introduced digital asset tax (**DAT**) at the rate of three percent (3%) of the **transfer or exchange value** of a digital asset.

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The obligation to deduct and remit DAT (within 5 working days) is on **the owner of a platform** or **the person who facilitates the exchange or transfer** of a digital asset.

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A digital asset is defined as follows:

*"(i) **anything of value that is not tangible** and cryptocurrencies token code, number held in digital form and generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration that can be transferred, stored or exchanged electronically; and (ii) a non-fungible token or any other token of similar nature, by whatever name called."*

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Income derived from transfer or exchange of a digital asset is defined as:

*"the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset."*

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The Finance Bill, 2025 proposes to reduce the rate of digital asset tax from 3% of the transfer or exchange value of the digital asset to 1.5%.



# Overview of Binance operations

challenges may be smaller in size, not in number

the Platform

On-ramp: P2P

The proposed reduction of DAT from 3% to 1.5% will not address the compliance challenges facing Binance.

Exchanges offer a Platform on which users can exchange cryptocurrencies and virtual tokens

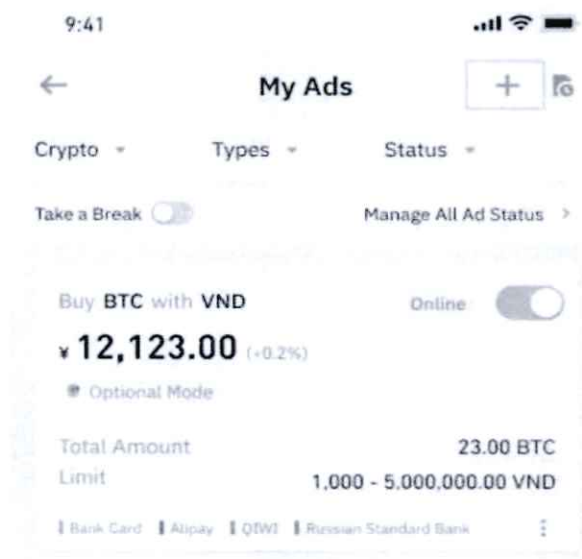
On-ramp available in Kenya is only P2P which allows direct interaction between the Maker and the Taker. Binance has no access or visibility to fiat funds

The Maker publishes an offer to sell a digital asset and the Taker responds to the Advertisement by placing an order to acquire the digital asset.

Fiat-payments made outside the Exchange's ecosystem through 3<sup>rd</sup> party PSPs

the Advertisement

No access to user's fiat





## Key compliance difficulties under the current DAT framework

### Ambiguity in the current provisions

**No definition of transfer** - The term transfer is not defined in respect of DAT and therefore, it is unclear whether other transactions using crypto would be deemed to be transfers.

Some of the Digital assets such as stable coins (e.g USDT) are ordinarily not held for value but used as a means of payment

### Not all activities amount to a taxable gain

Some trading transactions involve exchange of cryptocurrency from one type to another, such as from Ethereum to Bitcoin. Fiat is not needed to trade.

Numerous service offerings that do not include trading or exchange of digital assets

Exchange numerous service offering available to persons in other jurisdictions (not in Kenya) and the scope of DAT (how to determine applicability to Kenya) is not clear.

### CBK's Cautionary Notice

The **CBK** has publicly warned against the use, holding, and trading of virtual currencies such as Bitcoin and similar products including the dealing in virtual currencies or transacting with entities engaged in virtual currencies.

In particular, the CBK Banking Circular which in 2015 expressly cautioned all financial institutions against transacting with entities that are engaged in virtual currencies has not been withdrawn by the CBK.

Therefore, even if Binance were to obtain fiat currency, it would not be able to use Kenyan bank accounts or payment service providers to remit DAT.

### Potential loss of business

Investors tend to trade small amounts, many times, rather than one large trade: hence, DAT means millions of WHT deductions/year with huge compliance costs

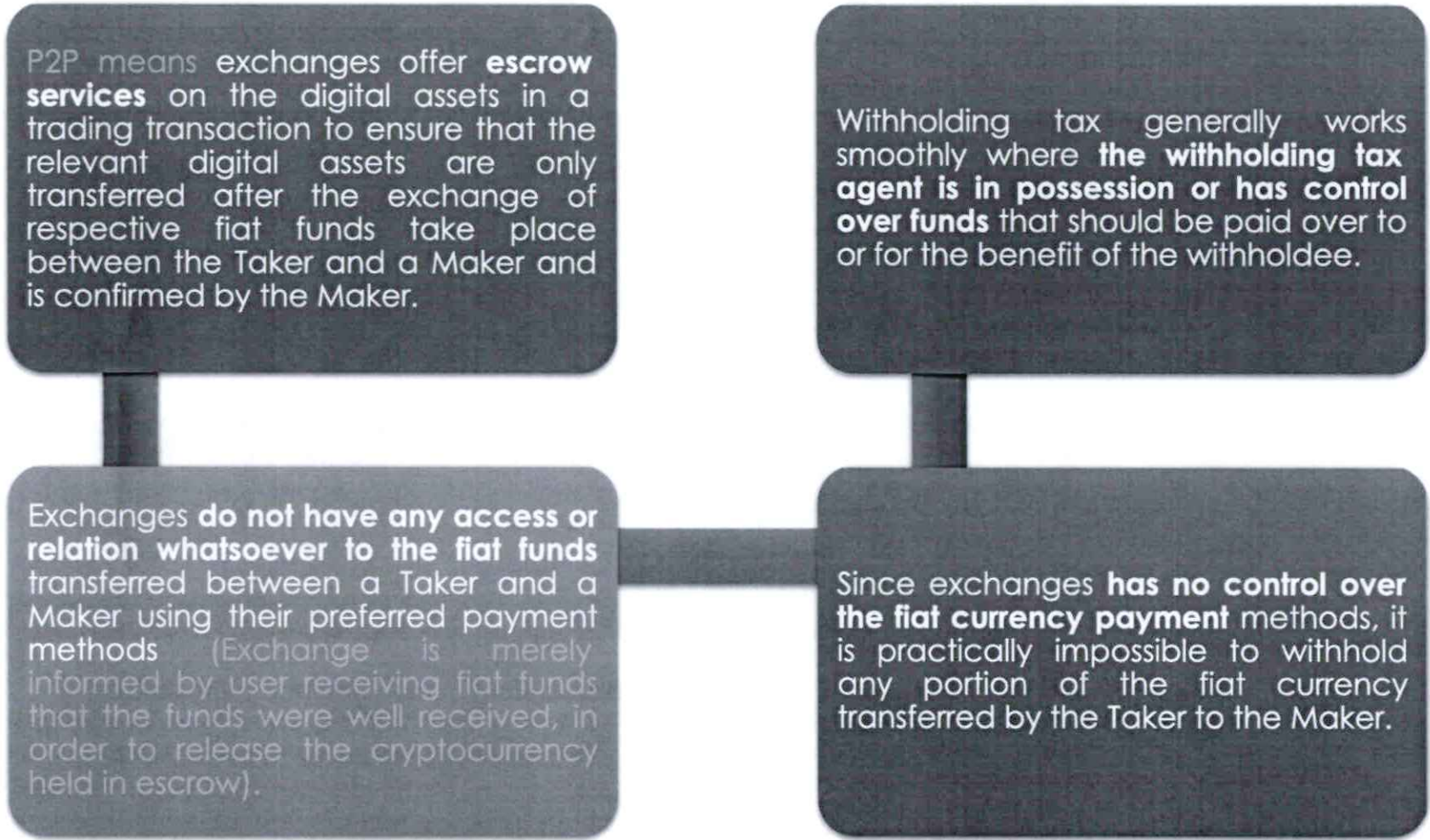
Exchanges that implement DAT first are likely to lose users and ultimately all revenue may be lost

Impact of DAT with similar features in other countries:

- Indonesia: trading volume decreased by approximately 60% post the implementation ; and
- India: trading volume of crypto exchanges dropped from the highs of USD 500M weekly to the lows of USD 2M weekly post implementation.



## Key compliance difficulties under the current DAT framework





## Key compliance difficulties under the current DAT framework

### Accounting for Tax

- In Kenya tax payments are required to be made in KES, while the transfers and transactions subject to DAT will be in the respective cryptocurrencies/tokens.

### Liquidation

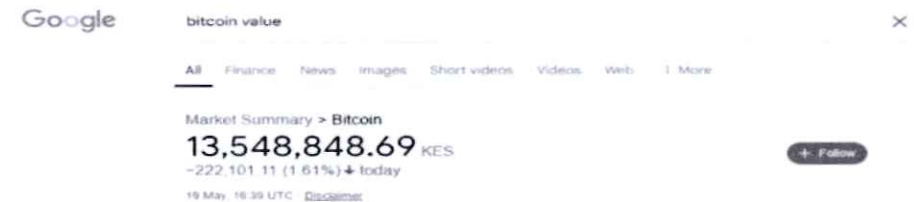
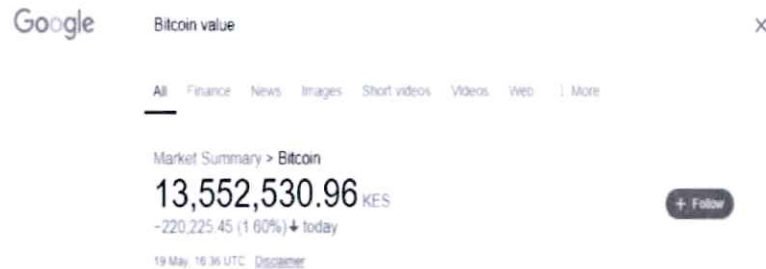
- In order to account for DAT, Binance as the owner of the Platform would have to source for market and liquidate the digital assets in order to finance the tax.
- The liquidation by Binance on its platform would amount to a transfer under the current regime.

### Volatility of market

- Given the volatility of the crypto market, it is possible for the value of the digital assets to reduce between the time of transfer and subsequent liquidation by the Platform owner.

### Exchange differences

- If the liquidation is done and the proceeds subsequently converted into foreign currency and translation of the same into KES amounts to exchange losses, it would result in the Platform owner bearing the cost arising from the exchange losses.





## Key compliance difficulties under the current DAT framework

Exchange's fee on transfer of a digital asset (whether in exchange for fiat or for crypto) is lower than 3%. The rate is usually 0.1% - 0.2% of the digital asset transferred, which is payable in the relevant digital asset.

**DAT tax risk is up to 15 times Exchange's revenue:** Risk is extremely disproportionate to the benefit obtained

Particulars	Amount
Assume a Maker places an Advertisement to sell Bitcoin which a Taker agrees to purchase at the Advertisement price.	KES 10,000,000 of Bitcoin (0.74 bitcoins) Assuming 1 Bitcoin = KES 13,544,507.47
The transaction (@0.1% of the virtual asset)	0.00074 Bitcoins (approx. KES 10,031.83).
Digital asset tax (DAT) (@3% of the transfer value)	0.0222 Bitcoins (approx. KES 301,359.25)



# COMPARISON WITH OTHER JURISDICTIONS

Jurisdictions	Subject to CGT?	Income Tax Rate	Subject to VAT?	Tax Collected Upfront / at source
<b>Australia</b>	Yes	0% - 45% depending on personal income tax bracket. Long term capital gain from crypto asset held more than 1 year receives 50% capital gain tax reductions.	No	No
<b>Brazil</b>	Yes	15% - 22.5% depending on personal income tax brackets - only taxable after BRL 35k (USD 6.5k) transaction threshold is reached each month .	No	No
<b>France</b>	Yes	Tax at 30% when crypto is converted into fiat. Crypto-to-crypto transactions are not taxed.	No	No
<b>Germany</b>	Yes	Tax up to 45% on short term gain only. Capital gain from crypto-assets held for periods longer than 1 year is exempt of income tax	No	No
<b>India *</b>	Yes (30%)	1% of Transactions Value ("TDS")	No	Yes
<b>Indonesia</b>	Yes (tax collected by agent)	0.1% of Transaction Value 0.2% of Transaction Value (if exchange is not registered with relevant government authority)	Yes at 0.11%	Yes
<b>Malaysia</b>	No	Malaysia does not tax capital gain, except active trader	No	No
<b>Singapore</b>	No	Singapore does not tax capital gain, except active trader	No	No
<b>Thailand</b>	Yes	Up to 35%	No	No
<b>United Kingdom</b>	Yes	Up to 20% depending on the personal tax bracket.	No	No
<b>USA</b>	Yes	Depending on personal tax bracket, short term capital gain (held less than a year) are taxed up between 0% - 37% Long term capital gain are taxed between 0-20%	No	No



# RECOMMENDATIONS

Proposal 1: To safeguard the nascent and growing virtual asset sector

Repeal of digital asset tax in the Income Tax Act

The tax on gain/income should be paid under self-assessment regime (supported by a prescribed reporting framework such as the OECD's CARF and amended CRS) as either capital gains tax or income tax regime on the person realizing the gain

Excise duty on commissions/fees charged by virtual asset service providers

VAT exemption on services provided by virtual asset service providers



Proposal 2: Define what fall within the ambit of digital assets

Exclude stable coins from the ambit of digital assets as ordinarily they are not held for value but used as a means of payment



Proposal 3: Reduced DAT rate

Reducing the rate of digital asset tax say 0.1% to take into account that the commissions earned by virtual asset service providers are between 0.1% - 0.5%



Proposal 4: Introduce tax on value of crypto assets held at the end of the year  
Introduce a tax, akin to wealth tax at the rate of 0.1% on the value of crypto assets held by Kenyan users at the end of the year, either assessed via WHT by the platform or self-assessed by user - (e.g. Italian model)

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## Proposed Amendment

## justification

Kenya Gazette, have overlapping or complementary roles.

As such, to eliminate ambiguity and ensure a clear division of responsibilities, each regulator should have specific and distinct functions.

This is because such ambiguity can complicate enforcement actions, especially in cases where swift action is required to curb illicit financial flows involving virtual assets.

Incorporate **New clauses** that **facilitate cross-border collaboration** for the regulators.

Virtual assets (VAs) inherently operate across international borders, making it crucial for regulators to establish collaborative frameworks. Therefore, there is need to incorporate explicit clauses within the Bill to facilitate effective international collaboration.

Insert a **new Clause** to provide for an **obligation to verify customer identity in accordance with sections 45, 45A, and 46 of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA).**

Every Virtual Asset Service Provider (VASP) should take reasonable steps to verify the identity of any customer or beneficial owner, pursuant to sections 45, 45A, and 46 of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA).

This proposal provides for enhanced due diligence to combat the misuse of virtual assets for illicit activities, including money laundering, terrorism financing and proliferation financing.

This is also in tandem with the FATF Recommendation 15 which mandates that countries and financial institutions identify, assess, and manage money laundering and terrorist financing risks associated with new technologies,

**Proposed Amendment**

**justification**

Create new **criminal offenses** for **Virtual Assets Service Providers** and **their directors**

including virtual assets and virtual asset service providers (VASPs).

Virtual Asset Service Providers (VASPs) play a critical role in the digital asset landscape. The VASPs and their directors must be held to high standards of integrity and accountability due to the critical role they play.

As such, in addition to sanctions and fines provided under section 41, the proposed recommendation seeks to criminally hold VASPs and their directors accountable for any potential misconduct or illegality they may perpetuate in conduct of their business.

Create a new provision for establishment of a **Virtual Asset Insurance Corporation (VAIC)** under the Bill

To safeguard the interests of depositors in the event of VASP failures, there is a need to establish a Virtual Asset Insurance Corporation (VAIC) similar to the Kenya Deposit Insurance Corporation (KDIC) to provide a safety net for depositors in the event the VASP collapses, ensuring compensation.

In light of the critical importance of accurately reflecting the Bill's scope and purpose, the Agency submits the proposed amendments for your consideration.

Yours

*Sincerely,*



Mark M. Ogonji, EBS, OGW, 'ndc'(K)

**Ag. DIRECTOR ASSETS RECOVERY AGENCY**



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**PARLIAMENTARY SUBMISSIONS ON THE VIRTUAL ASSETS SERVICE PROVIDERS BILL, 2025**

**INSTITUTION: NJOGU AND ASSOCIATES ADVOCATES LLP**

**DATE: 24<sup>th</sup> April 2025**

**INTRODUCTION**

The Virtual Assets Service Providers Bill, 2025 has made significant legislative efforts towards a strong regulatory framework for Kenya's unregulated and rapidly evolving virtual asset sector. It addresses the risks associated with virtual assets such as money laundering, terrorism financing, and consumer vulnerability while fostering innovation and market integrity. Through it, Kenya presents a forward-thinking jurisdiction that's committed to balancing technological advancement with financial stability. The Bill's comprehensive approach to licensing, supervision, and enforcement underscores its alignment with global standards, particularly in anti-money laundering (AML), countering terrorism financing (CFT), and countering proliferation financing (CPF).

While the Bill lays a solid foundation of regulating virtual assets, certain provisions warrant further scrutiny to ensure the legislation achieves its objectives without unintended consequence. The following areas, if refined, could strengthen the Bill's effectiveness, fairness, and adaptability to emerging challenges.

Section of the Bill	Provision of the Bill	Rationale for Amendment	Proposed Amendment
Section 2	<i>"Virtual asset" means a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes and does not include digital representation of fiat currencies, securities and other financial assets</i>	<ul style="list-style-type: none"> <li>Formally recognizing betting coins (e.g., tokens used exclusively for wagering) and virtual assets as a medium of exchange in gaming prevents regulatory arbitrage and ensures consumer protection.</li> <li>Without clear definitions, fraudulent schemes could exploit legal gaps.</li> </ul>	"Virtual Asset" means a digital representation of value that can be digitally traded or transferred and can be used for payment, investment, <b><u>betting, or as a medium of exchange in gaming activities</u></b> , including but not limited to cryptocurrencies, utility tokens, <b><u>betting coins</u></b> and does not include digital representation of fiat currencies, securities and other financial assets.



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<p>Section 2 and the schedule</p>	<p><i>"Virtual asset services" means the activities listed under the First Schedule of this Act. The activities listed in the First Schedule are as follows: Virtual asset wallet provider, virtual asset exchange, virtual asset payment processor, virtual asset broker, virtual asset investment advisor, virtual asset manager, virtual asset offering provider.</i></p>	<ul style="list-style-type: none"> <li>. The current description of virtual assets services excludes industries like the gambling/gaming industries, which creates a regulatory gap or renders the use of virtual assets in such industries, illegal by default.</li> </ul>	<ul style="list-style-type: none"> <li>Add a new category under First Schedule: <b><u>"Virtual Asset Gaming/Betting Provider"</u></b> Description: <b><u>Issuance and management of digital tokens for licensed betting or gaming platforms.</u></b> Regulator: <b><u>Betting Control &amp; Licensing Board (BCLB) in coordination with CMA/CBK</u></b></li> </ul>
<p>Section 2</p>	<p><i>Interpretation</i></p>	<ul style="list-style-type: none"> <li>Adding the definitions of "Virtual Assets betting/gaming" and "Virtual Assets betting/gaming" allows for inclusivity of the gaming / betting industry in the provision of virtual assets services to avoid a regulatory gap and eliminate ambiguity.</li> </ul>	<ul style="list-style-type: none"> <li>Add the following definitions: <b><u>"Virtual Assets betting/gaming" means any form of betting, gambling, or wagering where virtual assets are used for stakes, payouts, or prizes.</u></b>  <b><u>"Virtual Assets Gaming Operator (VAGO)" means any licensed entity offering betting, lottery, casino games, or other gambling services using virtual assets.</u></b></li> </ul>



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Section 5 (2) (b)	<p><i>5 (2) For avoidance of doubt, this Act shall not apply to-</i></p> <p><i>(b) Digital representation of fiat currencies, issued by the Central Bank of Kenya or any other jurisdiction;</i></p>	<ul style="list-style-type: none"> <li>▪ Permits fiat-backed stablecoins for betting, subject to CBK oversight.</li> <li>▪ Prevents unbacked "betting coins" from evading regulation.</li> </ul>	<ul style="list-style-type: none"> <li>▪ 5 (2) For avoidance of doubt, this Act shall not apply to-</li> <li>(b) digital representation of fiat currencies issued by the Central Bank of Kenya <b><u>unless used for betting or gaming transactions, in which case they must comply with CBK and BCLB regulations.</u></b></li> </ul>
Section 6	<p><i>"The following entities shall be the relevant regulatory authorities for the purposes of this Act—</i></p> <p><i>(a) the Capital Markets Authority established under section 5 of the Capital Markets Act;</i></p> <p><i>(b) the Central Bank of Kenya established by Article 231(1) of the Constitution; or</i></p> <p><i>(c) any other public body established under a written law that the Cabinet secretary may, by notice in the Kenya Gazette, designate as such."</i></p>	<ul style="list-style-type: none"> <li>▪ Adding the Betting Control and Licensing Board (BCLB) to the regulatory authorities will ensure that the Capital Markets Authority, the Central Bank of Kenya and the Betting Control and Licensing Board (BCLB) work together in regulating both the financial sector and the betting sector when it comes to Virtual Assets Services.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The following entities shall be the relevant regulatory authorities for the purposes of this Act—</li> <li>(a) the Capital Markets Authority established under section 5 of the Capital Markets Act;</li> <li>(b) the Central Bank of Kenya established by Article 231(1) of the Constitution;</li> <li>c) <b><u>the Betting Control and Licensing Board (BCLB) established under section 3 of the Betting, Lotteries and Gaming Act;</u></b> or</li> <li>(c) any other public body established under a written law that the Cabinet secretary may, by notice in the Kenya Gazette, designate as such."</li> </ul>



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<p>Section 9</p>	<p><i>9. (1) A person shall not carry on, or purport to carry on, the business of virtual asset services, or hold itself out as carrying on that business, in or from Kenya, unless that person is licensed to do so by the relevant regulatory authority under this Act.</i></p> <p><i>(2) For the avoidance of doubt, a natural person shall not carry on, or purport to carry on, in or from within Kenya, the business of virtual asset services.</i></p> <p><i>(3) A person who contravenes subsection (1) or (2) of this section commits an offence and is liable upon conviction to a fine or imprisonment, or to both, as specified under section 41(3) to this Act”</i></p>	<p>Dual approval:</p> <ul style="list-style-type: none"><li>■ Ensures that the Betting Control and Licensing Board has oversight over the virtual assets gambling/gaming.</li><li>■ Prevents money laundering: unlicensed offshore crypto betting platforms often evade Kenya’s AML laws, leading to revenue losses.</li><li>■ Enhances consumer protection: mandatory licensing ensures provably fair algorithms.</li></ul>	<ul style="list-style-type: none"><li>■ 9 (1) A person shall not carry on, or purport to carry on, the business of virtual asset services, or hold itself out as carrying on that business, in or from Kenya, unless that person is licensed to do so by the relevant regulatory authority under this Act.</li></ul> <p><b><u>(2) A person shall not operate a virtual asset betting/gaming platform unless licensed by the Capital Markets Authority (CMA) and has a permit from the Betting Control and Licensing Board (BCLB).</u></b></p> <p>(3) For the avoidance of doubt, a natural person shall not carry on, or purport to carry on, in or from within Kenya, the business of virtual asset services.</p> <p>(4) A person who contravenes subsection (1) or (2) of this section commits an offence and is liable upon conviction to a fine or imprisonment, or to both, as specified under section 41(3) to this Act”</p>
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Section 10	<p><i>10. (1) An eligible person may apply for a licence to operate as a virtual asset service provider conducting or offering one or more of the activities listed in the First Schedule to this Act.</i></p> <p><i>(2) The relevant regulatory authority may issue guidelines with respect to the virtual assets listed in the first Schedule to this Act.</i></p> <p><i>(3) For avoidance of doubt, only the persons specified under section 3(1) are eligible to be licensed to undertake virtual asset services under this Act.</i></p>	<ul style="list-style-type: none"><li>▪ A licensed virtual assets-betting exchange would ensure secure and traceable transactions under CMA oversight thereby reducing exposure to scams.</li></ul>	<ul style="list-style-type: none"><li>▪ 10. (1) An eligible person may apply for a licence to operate as a virtual asset service provider conducting or offering one or more of the activities listed in the First Schedule to this Act.</li></ul> <p><b><u>(2) A licensed Virtual Assets Service Provider may operate a Virtual Assets betting exchange, provided that:</u></b></p> <ul style="list-style-type: none"><li><b><u>(a) It segregates user funds from operational funds;</u></b></li><li><b><u>(b) It implements real-time transaction monitoring for fraud detection; and</u></b></li><li><b><u>(c) It complies with gaming fairness standards as prescribed by the Betting Control and Licensing Board</u></b></li></ul> <p>(3) The relevant regulatory authority may issue guidelines with respect to the virtual assets listed in the first Schedule to this Act.</p> <p>(4) For avoidance of doubt, only the persons specified under section 3(1) are eligible to be licensed to undertake virtual asset services under this Act.</p>
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Section 13 (1-5)	<i>Conditions attaching to Licence</i>	<ul style="list-style-type: none"><li>Formalizing betting coins as regulated blockchain tokens reduces fraud risks.</li></ul>	<ul style="list-style-type: none"><li>A subsection (4) may be added below subsection 3 (thereby increasing the subsections to six in number) and state as follows: <b><u>(4) "Any entity licensed to issue a virtual asset primarily designed for betting (a 'betting coin') must:</u></b><ul style="list-style-type: none"><li><b><u>(a) Disclose its tokenomics, supply mechanism, and redemption policies;</u></b></li><li><b><u>(b) Ensure provably fair algorithms for gaming use cases; and</u></b></li><li><b><u>(c) Maintain reserves or liquidity pools to back the token's value if pegged to fiat or another asset."</u></b></li></ul></li></ul>
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# NJOGU

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<p><i>Part V (Sections 33 and 34)</i></p>	<p><i>Prevention of money Laundering, terrorism financing and Proliferation financing by virtual Asset service provider.</i></p>	<ul style="list-style-type: none"><li>▪ Adding the section will ensure that there is due diligence in virtual assets gaming/betting.</li></ul>	<ul style="list-style-type: none"><li>▪ A section may be inserted after section 33 and state as follows: <b><u>Virtual Assets Gaming Operators must:</u></b> <b><u>(a) Conduct KYC (know your customer) for bets over 10,000 KES (or the virtual assets equivalent);</u></b> <b><u>(b) Monitor for suspicious betting patterns (e.g. rapid deposits/losses);</u></b> <b><u>(c) Report to the Financial Reporting Centre (FRC)</u></b></li></ul>
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