

Memorandum

To James Asset (PTC) Limited
Date 10 March 2023
From Appleby (BVI) Limited
Matter 455411.0001.AJ.SF

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OVERVIEW OF REGULATION OF PROPOSED BVI ENTITY

1. INTRODUCTION

1.1 This memorandum has been prepared in response to a request for guidance on whether the proposed activities of James Asset (PTC) Limited, a British Virgin Islands private trust company with company number 2103767 (the **Trustee**) requires licensing pursuant to BVI law as a result of undertaking the following activities:

- (a) the receipt by the Trustee of certain stablecoins from the MakerDAO and the exchange of those stablecoins in to fiat which is used to purchase financial assets such as bonds, ETFs, loans, stablecoins, and interests in money market funds;
- (b) the receipt by the Trustee of fiat, the exchange of that fiat to DAI and the subsequent transfer of the DAI to a crypto vault and/or wallet;
- (c) the holding of the assets by the Trustee on trust for the holders of the DAI and/or MKR tokens; and
- (d) the receipt by the Trustee of reporting services and advice or instructions in respect of when and what to buy,

together, the **Proposed Activities**.

1.2 In order to understand the scope of the restrictions, however, it is useful to provide a brief summary of the regulatory regime and the distinctions therein. Such overview is set out in paragraph 2 of this memorandum.

- 1.3 Paragraph 3 hereof discusses whether, in our view, the Proposed Activities would require licensing under the laws of the BVI.
- 1.4 This memorandum is subject to the assumptions, limitations and reservations set out in paragraph 4 hereof.

2. **OVERVIEW OF REGULATORY ENVIRONMENT**

Virtual Asset Service Provider Legislation

2.1 A new legislative framework, summarised at 2.2 below and including the definitions noted in the Schedule, for regulating virtual asset businesses, the Virtual Asset Service Providers Act 2022 (**VASP Act**), was gazetted on 29 December 2022 and came into force on 1 February 2023. Importantly, the VASP Act derives from recommendations made by the Financial Action Task Force (**FATF**) in 2019 and updated in 2021. As the BVI is committed to meeting international standards with regard to anti-money laundering and countering the financing of terrorism (AML/CFT) measures, the VASP Act provides for the regulation of VASPs (as defined in the Schedule) and for the registration and licensing of persons who are providing virtual asset services. The VASP Act contains a number of defined terms which are used throughout this memo. For ease of reference, these definitions are out in the Schedule to this memo.

2.2 We note that the VASP Act provides that:

- (a) VASPs incorporated in the BVI are required to comply with the AML Regulations and to collect KYC documentation on their users for deposits of US\$1,000 or more (or its equivalent in any currency), in line with FATF guidance (including implementation of recommendation 16 of the FATF guidance, commonly referred to as the 'crypto travel rule');
- (b) VASPs are required to register or become licensed by the BVI Financial Services Commission; and
- (c) there is a grace period between the changes coming into force and being implemented, to allow existing BVI VASPs to apply for registration and to meet the requirements.

Importantly, the VASP Act follows the FATF approach and provides specific exemptions for certain activities which will not require registration. These include:

- (a) the provision of ancillary infrastructure to enable others to offer a service – such as cloud storage;
- (b) the development, sale or offering of software or hardware;
- (c) the provision of an unhosted wallet service where the customer retains control of their own private keys; and
- (d) the acceptance by a merchant of virtual assets as payment for goods and services.

2.3 The VASP Act provides a number of activities which will not qualify an entity as a VASP as follows:

- (a) providing ancillary infrastructure to allow another person to offer a service, such as cloud data storage provider or integrity service provider responsible for verifying the accuracy of signatures;
- (b) providing service as a software developer or provider of unhosted wallets whose function is only to develop or sell software or hardware;
- (c) solely creating or selling a software application or virtual asset platform;
- (d) providing ancillary services or products to a virtual asset network, including the provision of services like hardware wallet manufacturer or provider of unhosted wallets, to the extent that such services do not extend to engaging in or actively facilitating as a business any of those services for or on behalf of another person;
- (e) solely engaging in the operation of a virtual asset network without engaging or facilitating any of the activities or operations of a VASP on behalf of customers;
- (f) providing closed-loop items that are non-transferable, non-exchangeable, and which cannot be used for payment or investment purposes; and
- (g) accepting virtual assets as payment for goods and services (such as the acceptance of virtual assets by a merchant when effecting the purchase of goods).

3. **APPLICATION TO THE PROPOSED ACTIVITIES**

- 3.1 The Trustee would not be subject to the VASP Act and therefore does not require to be registered as a VASP.
- 3.2 Whilst the Proposed Activities might fall within the Virtual Asset Service definition, it is noted that the Trustee is not providing the Proposed Activities “on behalf of another person” and therefore it does not satisfy the definition of a VASP.
- 3.3 The Trustee would not, by acting as a trustee on the instructions of an advisor or a MakerDAO resolution, be offering a Virtual Asset Service.

4. **LIMITATIONS, RESERVATIONS AND DISCLOSURE**

- 4.1 This memorandum speaks as of its date and is strictly limited to the matters stated herein and we assume no obligation to review or update this memorandum if applicable law, the interpretation thereof or the existing facts or circumstances should change. The advice set out herein is limited to our current understanding of the interpretation of those BVI laws set out herein and none of the views expressed herein relate to compliance with or matters governed by the laws of any jurisdiction except the BVI. The scope of this memorandum is strictly limited to the matters discussed herein and does not extend to, and is not to be extended by implication to, any other matters.
- 4.2 This memorandum is based on, and assumes the completeness and accuracy of, the summary of the Proposed Activities set out in paragraph 1.1 hereof and the truth, accuracy and completeness of all representations and warranties or statements of fact or law made in the business plans and any correspondence submitted to us. For the purposes of giving this memorandum, we have not investigated or verified, any matter of fact or opinion in any business plan or correspondence submitted to us. We have presumed that all relevant information has been provided to us and that there is no other matter, event, proposal or information which affects the conclusions stated in this memorandum. We have not reviewed, verified or confirmed the contents of the Company’s website. We have not examined any other documents or records or made any enquiries or searches into the activities of the Company except as specifically stated in this memorandum.
- 4.3 This memorandum is addressed to James Asset (PTC) Limited (**Addressee**), a BVI private trust company. This memorandum is solely for the benefit of the Addressee and is neither to be transmitted to any other person, nor relied upon by any person

or for any purpose nor quoted or referred to in any public document nor filed with any governmental agency or person, without our prior written consent and as may be required by law or regulatory authority save that the Addressee may publish this memorandum, strictly on a non-reliance basis, to the MakerDAO forum.

A handwritten signature in blue ink that reads "Appleby". The signature is fluid and cursive, with a prominent loop at the end.

Appleby (BVI) Limited

Schedule

Definitions

Virtual assets:

a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes, but does not include:

- (a) *a digital representation of fiat currencies and other assets [to be specified in guidelines];*
- (b) *a digital record of a credit against a financial institution of fiat currency, securities or other financial assets that can be transferred digitally.*

Note: Although formal guidance from the FSC is awaited, this wide definition of Virtual Assets is intended to capture all cryptocurrencies, security tokens, utility tokens or other digital assets that are tradeable or transferable, with the exception of digital representations of fiat currencies. The term "digital representation of fiat currencies" is not defined but under the FATF model this is intended to apply only to central bank issued virtual currencies as opposed to USDT or similar fiat or asset backed tokens.

Virtual asset service providers (VASPs):

A virtual asset service provider who provides, as a business, a virtual assets service and is registered to conduct one or more of the following activities or operations on behalf of another person:

- (a) *exchange between virtual assets and fiat currencies;*
- (b) *exchange between one or more other forms of convertible virtual assets;*
- (c) *transfer of virtual assets where the transfer relates to conducting a transaction on behalf of another person that moves a virtual asset from one virtual wallet address or account to another;*
- (d) *safekeeping or administration of virtual assets or instruments enabling control over virtual assets;*
- (e) *the participation in, and provision of, financial services related to an issuer's offer or sale of a virtual asset; or*

(f) perform such other activity or operation as may be specified [under the law or prescribed by regulations]

Virtual asset custody service:

the acceptance for safekeeping virtual assets or instruments that enable a VASP to exercise control over the virtual assets or instruments;

Virtual assets exchange:

A trading platform that is operated for the purpose of allowing an offer or invitation to be made to buy or sell any virtual asset in exchange for money or any virtual asset and which comes into custody, control, power or possession of, or over, any money or any virtual asset at any point in time during its course of business;

Virtual Asset Service:

The business of engaging, on behalf of another person, in any VASP activity or operation (as outlined in the definition of VASP) and includes:

- (a) hosting wallets or maintaining custody or control over another person's virtual asset, wallet or private key;*
- (b) providing financial services relating to the issuance, offer or sale of a virtual asset;*
- (c) providing kiosks (such as automatic teller machines, bitcoin teller machines or vending machines) for the purpose of facilitating virtual assets activities through electronic terminals to enable the owner or operator of the kiosk to actively facilitate the exchange of virtual assets for fiat currency or other virtual assets;
or*
- (d) engaging in any other activity that, by enactment or guidelines, constitute the carrying on of the business of providing virtual asset service or issuing virtual assets or being involved in virtual asset activity.*