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General Notice

BANK OF NAMIBIA

No. 513

2023

CAPITAL AND OTHER FINANCIAL REQUIREMENTS: VIRTUAL ASSETS ACT, 2023

The Bank of Namibia designated as the Regulatory Authority in terms of section 5(1) of the Virtual Assets Act, 2023 (Act No. 10 of 2023) in terms of section 19 of that Act specify the Capital and Other Financial Requirements set out in the Schedule.

J. !GAWAXAB
GOVERNOR
BANK OF NAMIBIA

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PART 1**DEFINITIONS AND SCOPE OF NOTICE****Definitions**

1. In this notice, a word or an expression to which a meaning has been given in the Virtual Assets Act, 2023 (Act No. 10 of 2023), has that meaning, and –

“financial year” means the financial year referred to in section 21(1) of the Act;

“the Act” means the Virtual Assets Act, 2023 (Act No. 10 of 2023).

Scope of notice

2. (1) This notice applies to persons issued with a licence under the Act to operate as a virtual asset service providers or as token issuers.

(2) The provisions in this notice must be read together with the Act, regulations, rules, directives and guidelines issued under the Act, the laws relating to money laundering and terrorism financing and proliferation activities and other applicable laws.

PART 2**GENERAL REQUIREMENTS****General requirements**

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

(2) The matters which are relevant in determining whether a licence holder has adequate capital and liquidity resources are as follows:

- (a) the business carried on, or to be carried on, by the licence holder;
- (b) the risks to the continuity of the services provided by, or to be provided by, the licence holder, including any outsourced services;
- (c) the liabilities to which the licence holder is exposed or could be exposed to, including as a result of any failure by any third party; and

- (d) the means by which the licence holder manages and, if the licence holder is a member of a group, by which other members of the group manage, the occurrence of risk in connection with the licence holder's business.

(3) When determining his or her or its capital adequacy and financial requirements, a licence holder must also at all times have regard to its risk management assessment, required pursuant to the Risk Management Rules published under the Act.

PART 3

CAPITAL REQUIREMENTS

Capital requirement

4. (1) A licence holder must, as a minimum, as unimpaired capital and liquidity resources, have at all times the higher of –

- (a) the own fund's requirement referred to in paragraph 5, taking into consideration the general requirements set out in the Risk Management Rules published under the Act;
- (b) the prudential requirements referred to in paragraph 6; or
- (c) such other amount as may from time to time be specified by the Regulatory Authority under section 19 of the Act.

(2) Intangible assets, including goodwill, cannot be used as part of calculating capital and must be deducted prior to determining whether there is sufficient capital for the purposes of subparagraph (1).

Own funds requirement

5. (1) A licence holder must maintain the own funding requirements specified in the Annexure 1.

(2) Where the licence holder holds multiple licences under the Act, the licence holder must be subject to the combined capital requirement for each licence held by the licence holder.

Prudential requirement

6. (1) A licence holder must, at all times, have in place prudential safeguards equal to an amount of capital which is at least the higher of the following:

- (a) one quarter of the fixed overheads of the licence holder over the preceding year, reviewed annually by the licence holder; and
- (b) the financial resources requirements determined under the Risk Management Rules published under the Act.

(2) For the first financial year from being licenced, in determining their fixed overheads in accordance with subparagraph (1)(a), licence holders must use their projected fixed overheads, which must be submitted to the Regulatory Authority, when the licence holder applies for a licence under the Act.

(3) Projected fixed overheads referred to in subparagraph (2) must be realistic for the business in different market conditions both negative and positive scenarios.

(4) A licence holder may not use unaudited interim profits in the calculation of capital unless it has obtained the prior written approval of the Regulatory Authority.

PART 4

FIXED OVERHEADS

Calculation of fixed overhead costs

7. A licence holder must calculate his or her or its fixed overheads as –
- (a) the total expenses after distribution of profits to shareholders in their most recent financial statements, in the case the licence holder has shareholders;
 - (b) plus the third party expenses; and
 - (c) minus the deductible items referred to in paragraph 8.

Deductible items

8. (1) Deductible items for purposes of paragraph 7(c) are –
- (a) any of the following, if they are fully discretionary –
 - (i) staff bonuses and other variable remuneration;
 - (ii) employees', directors' and partners' shares in profits; and
 - (iii) other appropriations of profits.
 - (b) shared commission and fees payable that meet all of the following conditions:
 - (i) they are directly related to commission and fees receivable;
 - (ii) the commission and fees receivable are included within total revenue; and
 - (iii) the payment of the commission and fees payable is contingent on receipt of the commission and fees receivable;
 - (c) non-recurring expenses from non-ordinary activities;
 - (d) fees, brokerage and other charges paid to virtual asset market places and virtual asset broker-dealers for the purposes of executing, registering and clearing transactions, provided that the fees, brokerage and charges are directly passed on and charged to customers;
 - (e) 80 per cent of the value of any fees, brokerage and other charges, excluding any fees or charges to which subparagraph (2) applies, paid to virtual asset market places and virtual asset broker-dealers for the purposes of executing, registering and clearing transactions in relation to which –

- (i) the licence holder is dealing on own account; and
- (ii) the fees, brokerage or charges have not already been deducted under sub-subparagraph (d);
- (f) interest paid to customers on money held for clients, where there is no obligation of any kind to pay the interest;
- (g) taxes where they fall due in relation to the annual profits of the licence holder;
- (h) losses from trading on own account; and
- (i) payments related to contract-based profit and loss transfer agreements according to which the licence holder is obliged to transfer its annual profit to the parent undertaking following the preparation of the licence holder's annual financial statements.

(2) The deducted amounts in subparagraphs (1)(d) and (e) may not include fees and other charges necessary to maintain membership of, or otherwise meet loss-sharing financial obligations to virtual asset market places.

Third party expenses

9. (1) A licence holder must add any fixed expenses that have been incurred on his or her or its behalf by a third party to the licence holder's total expenditure for the purposes of the calculation of fixed overheads.

(2) A licence holder is not required to add fixed expenses incurred on his or her or its behalf by a third party to the licence holder's expenditure if the expenses are already included in the figures resulting from the calculation of fixed overheads.

(3) Where a breakdown of the third party's expenses is available, the licence holder must add to the licence holder's total expenditure the share of the third party's expenses incurred on behalf of the licence holder.

(4) Where a breakdown of the third party's expenses is not available, the licence holder must –

- (a) add to the licence holder's total expenditure the share of the third party's expenses incurred on behalf of the licence holder as projected in the licence holder's business plan; or
- (b) if the licence holder does not have a business plan that projects the third party's expenses, reasonably estimate the share of those expenses that are attributable to the licence holder's business and add that estimated share of expenses to the licence holder's total expenditure.

Accounts used to determine fixed overheads

10. (1) For the purposes of the calculating the fixed overheads, a licence holder must use the figures in its most recent –

- (a) audited annual financial statements; or

- (b) unaudited annual financial statements, where audited financial statements are not yet due.

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

(3) Where the financial statements referred to in subparagraph (1) do not cover a 12-month period, the licence holder must –

- (a) divide the amounts included in those statements by the number of months the financial statements cover; and
- (b) multiply the result of the calculation in sub-subparagraph (a) by 12 to produce an equivalent annual amount.

(4) Where a licence holder does not yet have financial statements, the licence holder must instead use the projected fixed overheads included in their projections for the first 12 months of service provision, as submitted with their application for licence.

Accuracy of books and records

11. (1) A licence holder must maintain adequate systems and controls to ensure the integrity and accuracy of his or her or its books and records, and this includes, but is not limited to, maintaining records of accounts and corresponding information which must be provided to the Bank upon request.

(2) A licence holder must ensure his or her or its books, records and accounts comply with internationally recognised accounting standards as applicable.

PART 5

MATERIAL CHANGE TO PROJECTED RELEVANT EXPENDITURE DURING THE YEAR

Increases in expenditure

- 12.** (1) This paragraph applies where there –
- (a) is an increase of 30 percent or more in the licence holder's projected relevant expenditure for the current year; or
- (b) would be an increase of N\$10,000,000 or equivalent amount in another fiat currency or more in the licence holder's fixed overheads requirement based on projected relevant expenditure for the current year.
- (2) Where this paragraph applies, a licence holder must –
- (a) immediately recalculate the fixed overheads requirement in relation to the projected relevant expenditure, taking into account the increase in subparagraph (1);
- (b) immediately substitute the revised fixed overheads requirement that results from the calculation in subparagraph (1)(a) for the licence holder's original fixed overheads requirement; and

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

Decreases in expenditure

- 13. (1) This paragraph applies where there –
 - (a) is a decrease of 30 per cent or more in the licence holder’s projected relevant expenditure for the current year; or
 - (b) would be a decrease of N\$10,000,000 or equivalent amount in another fiat currency or more in the licence holder’s fixed overheads requirement based on projected relevant expenditure for the current year.

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

Known changes in expenditure

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

- (2) Examples of planned changes referred to in subparagraph (1) may include –
 - (a) starting or ceasing a major business line;
 - (b) acquiring or disposing of a major business line; or
 - (c) undertaking a significant investment, upgrade or restructuring programme.

PART 6

ENFORCEMENT

Enforcement

15. Where a licence holder or a person to whom these rules apply contravenes or fails to comply with a provision of these rules, the Regulatory Authority, may as it consider appropriate in the circumstance and in accordance with the Act, issue a directive, suspend or cancel a licence or amend a condition of a licence, impose administrative sanctions or institute criminal proceedings in terms of the Act.

PART 7**SHORT TITLE****Short title**

16. The requirements of this notice may be cited as Capital and Other Financial Requirements.

PART 8**EFFECTIVE DATE****Effective date**

17. This notice become effective on the date of publication in the *Gazette*.

ANNEXURE 1**CAPITAL AND FINANCIAL REQUIREMENTS**

Class of Licence	Amount
Token Issuer	sufficient working capital to be capable of meeting its debts as they fall due.
Virtual Asset Advisory Services	sufficient working capital to be capable of meeting its debts as they fall due.
Virtual Asset Broker-Dealer	N\$1,000,000 or its equivalent in any other fiat currency.
Virtual Asset Wallet Services	sufficient working capital in fiat currency to continue business for a period of 12 months, based on realistic forecasts for the business in different market conditions (both negative and positive scenarios).
Virtual Asset Custodian	N\$2,000,000 or its equivalent in any other fiat currency.
Virtual Asset Market Place	N\$2,700,000 or its equivalent in any other fiat currency.