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General Notice

BANK OF NAMIBIA

No. 517

2023

STATUTORY RETURNS RULES: 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) has in terms of section 51(1) of that Act made the Statutory Returns Rules set out in the Schedule.

J. !GAWAXAB
GOVERNOR
BANK OF NAMIBIA

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

1. In these rules, a word and or expression to which a meaning has been given in the Act, 2023 (Act No. 10 of 2023), has that meaning, and –

“business continuity plan” means the business continuity plan created under the Cyber Security Rules issued under the Act;

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

“Regulatory Authority” means the Bank or any other entity designated as the Regulatory Authority in terms of section 5(1) of the Act;

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

Scope of the rules

2. (1) These rules apply to persons issued with a licence under the Act to operate as virtual asset service providers or as token issuers.

(2) These rules 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 deal with the Regulatory Authority in an open and cooperative way and must disclose appropriately anything of which the Regulatory Authority expects notice.

(2) In addition to the matters referred to in section 12 of the Act, the licence holder must notify the Regulatory Authority of –

- (a) any changes in relation to virtual asset licences and approvals held by the licence holder in any jurisdiction;
- (b) any actual, suspected or likely failure to ensure confidentiality and reliability of clients' information;
- (c) any material changes to the business continuity plan in place at the licence holder; and
- (d) any material changes to the outsourcing arrangements of the licence holder.

Requirement for approval

4. (1) A licence holder may not, without the prior written approval of the Regulatory Authority, make the material changes to its business activities as required under section 22 of the Act.

(2) An application for approval to make material changes to business activities must be made in writing and be submitted to the Regulatory Authority.

(3) After receiving approval of the Regulatory Authority to make material changes to business activities, the licence holder must comply with the following:

- (a) the licence holder must within 12 months from the date of approval implement the change, but if the 12 months expiry and the change has not been made, the licence holder must re-apply for approval to make the change; and
- (b) when the licence holder has implemented the relevant change, the licence holder must promptly in writing inform the Regulatory Authority.

Annual reporting requirements

5. A licence holder must provide the following information to the Regulatory Authority within four months after the end of the licence holder's financial year:

- (a) the number of prospective clients which the licence holder has rejected during the reporting period;
- (b) the number of clients with whom the licence holder no longer has a business relationship during the reporting period;
- (c) the number of clients where enhanced due diligence was applied;
- (d) the total number of the licence holder's clients;
- (e) the number of the licence holder's clients originating from high-risk jurisdictions, and for this purpose the Regulatory Authority may on its website publish high-risk jurisdictions;
- (f) the number of the licence holder's clients with whom the licence holder started a business relationship on a face-to-face basis;
- (g) a description of any changes to the client, on-boarding or opened process, including information on how the decision to accept a client is taken;
- (h) the number of suspicious transaction reports filed with the Financial Intelligence Centre established by section 7 of the Financial Intelligence Act, during the reporting period;
- (i) the number of individuals dealing with financial crimes and a description of any changes to the internal and external staff;
- (j) when the licence holder's business risk assessment was last updated, and any additional risks identified by the latest risk assessment;
- (k) whether private keys for virtual asset wallet services are held by the licence holder and, if so, the number of private keys held;
- (l) whether the licence holder holds clients' virtual assets with a third party custodian;
- (m) whether the licence holder forms part of a group of companies, and if so, the group structure;
- (n) whether the licence holder has entered into a resource sharing agreement and, if so, the names of the counterparty or counterparties;
- (o) whether the licence holder outsources any of its functions and, if so, any changes to the functions outsourced and to which entities;
- (p) the number of board meetings held during the reporting period in the case of licence holders governed by a board;
- (q) an overview of any involvement of the licence holder's owners including beneficial owners in the day-to-day operations of the of the licence holder during the reporting period;

- (r) whether there were any changes to management roles during the reporting period;
- (s) whether there was any unplanned downtime of critical information technology systems and, if so, details of any disruption caused by this downtime;
- (t) the number of hours of planned downtime of critical information technology systems during the reporting period;
- (u) an overview of any instances of market abuse encountered by the licence holder during the reporting period;
- (v) details of any changes to the controls in place to monitor potential market abuse;
- (w) the number of marketing campaigns issued during the reporting period;
- (x) the results of the review of cybersecurity strategy and framework and operational resilience performed in accordance with the Cyber Security Rules published under the Act;
- (y) the results of the review of how the licence holder meets the general prudential requirement in accordance with the Risk Management Rules published under the Act;
- (z) any material changes to the assessment of the major sources of risks to which licence holder may be exposed and how the licence holder is managing those risks, in accordance with the Risk Management Rules published under the Act; and
- (aa) any other information as the Regulatory Authority may require and communicate in writing to the licence holder.

PART 3

ENFORCEMENT

Enforcement

6. 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, or impose administrative sanctions or institute criminal proceedings in terms of the Act.

PART 4

SHORT TITLE

Short title

7. These rules may be cited as Statutory Returns Rules.

PART 5

EFFECTIVE DATE

Effective date

8. These rules become effective on the date of publication in the *Gazette*.
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