

# A BRIEF OF THE VIRTUAL ASSET SERVICE PROVIDERS BILL



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The Virtual Asset Service Providers Bill, 2025, is a legislative Bill proposed and spearheaded by Kenya's National Treasury and Economic Planning aimed at establishing a comprehensive framework for regulating virtual asset service providers (VASPs) within Kenya. This initiative seeks to address potential risks associated with virtual assets, including money laundering, terrorism financing, and threats to financial stability and seeks to protect the consumer when dealing with Virtual Assets such as cryptocurrencies and crypto assets.

## Key Objectives

### 1. Establishment and Licensing of VASPs:

The Bill mandates that any entity offering virtual asset services in Kenya must be licensed by the relevant regulatory authority. This ensures that only authorized firms operate within the sector, prompting transparency and accountability.

### 2. Regulatory Oversight:

The Bill designates specific bodies responsible for overseeing VASPs, including the Central Bank of Kenya (CBK), the Capital Markets Authority, and the Communications Authority (CA). These bodies are tasked with licensing, supervision, and enforcement compliance with the law.

### 3. Prevention of Financial Crimes:

To combat money laundering and terrorism financing, the Bill requires VASPs to implement robust Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) measures. This includes vetting significant shareholders, conducting due diligence, and maintaining detailed transaction records.

## Definition of Virtual Assets

The Bill defines a virtual asset as a digital representation of value that can be digitally traded or transferred and used for payment and investment purposes. It explicitly excludes digital representations of fiat currencies (*i.e. currency not tied to any commodity like gold or silver and is typically declared legal tender by the issuing government through a regulatory authority*), e-money, securities, and other financial assets.

## Definition of Virtual Services

Under the current Schedule of the Bill, virtual asset services encompass services such as virtual asset wallet provision, exchange services, payment processing, brokerage services, investment advisory, management, initial virtual asset offerings, escrow services, and validation/ administration/ mining services.

## Operational Requirements for VASPs

To operate legally in Kenya, VASPs must:

### Maintain a Registered Office:

VASPs are required to establish and maintain a registered office within Kenya, ensuring a physical presence for regulatory and customer engagement purposes.

### Appoint a Chief Executive Officer:

Each VASP must appoint a Chief Executive Officer who meets the eligibility criteria set by the relevant regulatory authority, ensuring competent leadership.

### **Ensure Cybersecurity:**

VASPs must implement robust cybersecurity measures to protect customer assets and data, safeguarding against potential breaches.

### **Maintain Financial Integrity:**

This includes adhering to capital, solvency, and insurance requirements to ensure financial stability and protect customer interests.

## **Enforcement And Penalties**

Non-compliance with the provisions of the Bill can result in significant penalties, including fines and imprisonment. The relevant regulatory authorities are empowered to take enforcement actions, such as revoking licenses, imposing sanctions, and initiating legal proceedings against the violators.

## **Potential Drawbacks Of The Bill**

### **Ambiguous Definitions and Overregulation**

The Bill provides broad and potentially vague definitions of virtual assets and Virtual Asset Service Providers (VASPs). This may lead to regulatory overreach, causing unintended compliance burdens for businesses operating in adjacent industries (such as fintech firms and gaming platforms). Lack of clarity could lead to legal uncertainty, discouraging investment.

### **High Licensing and Compliance Costs**

- The Bill requires all VASPs to undergo extensive licensing procedures, which may be costly and time-consuming.
- Small startups may struggle with these financial and bureaucratic burdens, leading to monopolization by large firms.

- The Bill will arguably create double compliance requirements on existing financial laws. This is because:

1. The Bill mandates strict Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) measures for VASPs. However, existing financial regulations, such as those enforced by Central Bank of Kenya (CBK) and the Financial Reporting Centre (FRC), already impose AML/CFT requirements on financial institutions, including fintech companies. This creates a situation where businesses operating in both traditional and virtual asset spaces may have to comply with two sets of regulations that essentially demand the same controls; and

2. Financial institutions offering virtual asset-related services, such as banks or fintech platforms, may already be licensed under other regulatory regimes (for example the Central Bank of Kenya and the Capital Markets Authority). The Bill's requirement for a separate licensing process for VASPs introduces redundant compliance costs, making it more expensive and time-consuming for entities to operate legally.

### **Stringent AML/CFT Obligations Without Proportionality**

- All VASPs are required to comply with stringent AML/CFT measures, even though the Bill does not differentiate between different sizes or risk profiles of businesses.
- Small VASPs with limited resources may find it impossible to comply, leading to market exclusion and unfair competition.

- Privacy concerns. Excessive Customer data collection (KYC requirements) may violate user privacy rights.

### **Heavy Penal Provisions for Non-Compliance**

- The Bill introduces severe penalties for minor infractions, which may discourage innovation and overburden VASPs with legal risks.
- Fines may not be proportionate to the nature of the offense, and may lead to unnecessary business closures.
- The Bill in its current form lacks clear dispute resolution mechanisms for companies contesting regulatory actions.

### **Centralization of Regulatory Oversight**

- The Bill grants excessive discretionary powers to the regulatory authority without clear accountability mechanisms.
- There is potential for regulatory abuse, favouritism, or biased enforcement
- The Bill may stifle competition by giving regulators excessive control over licensing approvals and renewals.

### **Restrictions and Decentralized Finance (DeFi) and Peer-to-Peer Transactions**

- The Bill seems to give more power to big, centralized financial platforms while making it harder for decentralized finance (DeFi) systems to grow. This could limit people's ability to send and receive money directly from one another using blockchain technology.
- If passed, the Bill might place strict rules on peer-to-peer (P2P) transactions-where individuals send money directly to each other without needing a bank or middleman. This could hurt people in developing regions who rely on such systems for affordable and easy financial services.

Instead of promoting financial freedom and inclusion, the bill might make it more difficult for ordinary people to access and use digital money.

- The Bill could push users towards unregulated or offshore platforms, increasing systemic risks.

### **Potential Conflict with Global Best Practices**

- While the Bill seeks compliance with global standards such as the FATF standards, it lacks flexibility for emerging technologies and evolving global regulations.
- The Bill may place domestic VASPs at a competitive disadvantage compared to global counterparts operating under more business- friendly regimes.

### **Lack of industry Consultation and Technological Neutrality**

- There are no clear provisions for periodic industry consultation in the Bill, making regulations rigid and slow to adapt to new technologies.
- The Bill risks discouraging block chain innovation by failing to provide a technologically neutral framework.

## **Conclusion**

The Virtual Assets Service Provider's Bill 2025 seeks to address potential risks associated with virtual assets, including money laundering, terrorism financing, and threats to financial stability. It also presents several potential drawbacks mainly revolving around overregulation, high compliance costs, lack of clarity, excessive penalties, and regulatory centralization. These issues could hamper innovation, drive businesses offshore, and reduce competitiveness. A more balanced, industry-friendly approach is needed to ensure compliance without stifling growth.

# Summary Of The Vasps Article

The Virtual Asset Service Providers Bill, 2025, is Kenya's attempt to bring order to the world of digital assets like cryptocurrencies. Spearheaded by the National Treasury, the Bill aims to regulate companies offering virtual asset services, ensuring transparency, consumer protection, and safeguards against financial crimes like money laundering and terrorism financing.

The Bill mandates that all Virtual Asset Service Providers (VASPs) be licensed, follow strict anti-money laundering (AML) rules, and maintain a physical presence in Kenya. Regulators like the Central Bank of Kenya (CBK) and the Capital Markets Authority will oversee compliance, ensuring that only legitimate players operate in the market.

However, the Bill has raised concerns. Critics argue that its broad definitions and strict regulations might overburden startups, discourage innovation, and push businesses offshore. Licensing and compliance costs could be too high, leading to monopolization by large firms. Furthermore, its heavy penalties and strict oversight might stifle the growth of decentralized finance (DeFi) and peer-to-peer transactions, which many rely on for financial inclusion.

In short, while the Bill aims to bring stability and security to Kenya's digital asset space, it risks creating barriers that could slow down innovation and competition. A more balanced approach—one that supports regulation without suffocating growth—might be the key to its success.



217 Kyuna Crescent

Address: P. O. Box 49393 – 00100, Nairobi, Kenya

Mobile: 0720 994 511 | 0736-520767

Email: [info@omlaw.co.ke](mailto:info@omlaw.co.ke)

[omlaw.co.ke](http://omlaw.co.ke)

