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LEGAL ALERT

Impact of the Virtual Asset Service Providers Act, 2025 on Kenya's Digital Asset Ecosystem

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The Virtual Asset Service Providers Act, 2025 (the Act) came into force following presidential assent on 15 October 2025, marking a crucial evolution in Kenya's regulatory approach to virtual assets. The Act departs from the position established in 2015 by the Central Bank of Kenya (CBK) in its **Banking Circular** which advised that virtual currencies were unregulated, not legal tender, and cautioned financial institutions against transacting with entities dealing in such currencies.

A. Key Provisions

This landmark piece of legislation establishes a comprehensive legal framework aimed at licensing and regulating the activities of Virtual Asset Service Providers (VASPs) operating in and from Kenya. The Act is structured to define the confines of regulated activity, designate supervisory authorities, impose licensing and fit-and-proper requirements, and create an enforcement regime that integrates VASPs into the existing regulatory architecture.

1. Scope of the Act

At the core of the Act is a clear delineation of scope. The Act defines a "virtual asset" as a digital representation of value that can be digitally traded or transferred and used for payment or investment purposes, specifically excluding digital representations of fiat currencies, securities, and other financial assets. Furthermore, certain non-transferable tokens within a closed ecosystem, digital representations of fiat currencies issued by central banks, and certain non-fungible tokens (NFTs) are explicitly excluded from the Act's application.

2. Designation of Regulatory Authorities and Scope

The Act establishes a dual-regulatory architecture by designating the Capital Markets Authority (CMA) and CBK as the primary supervisors for different categories of activity, with the Cabinet Secretary of the National Treasury empowered to designate additional authorities by notice in the Kenya Gazette.

The regulatory mandate is divided across various virtual asset activities. This allocation of responsibilities separates market-facing functions (exchanges, tokenisation and investment services) and payment-oriented functions (stablecoin issuance, payment processors and custodial wallets) to ensure sectoral expertise drives supervision. CBK is responsible for virtual asset wallet providers (specifically custodial services), virtual asset payment processors and stablecoin issuance. On the other hand, the CMA is responsible for virtual asset exchanges (covering transfer, conversion, trading, clearing, and settlement platforms), virtual asset brokers, virtual assets investment advisors, virtual asset managers, virtual asset offering providers, virtual asset tokenisation, and token issuance platforms.

3. Mandatory Licensing and Operational Requirements

A license is mandatory for any person carrying on or purporting to carry on the business of virtual asset services in or from Kenya. Only a company limited by shares registered under the Kenyan Companies Act is eligible to apply for a license.

Applicants and licensees must satisfy robust governance and prudential standards. Directors, senior officers and beneficial owners are subject to fit-and-proper assessments. Licence-holders must also demonstrate financial and operational integrity by maintaining prescribed capital, solvency and insurance levels, adequate net assets, reliable accounting records and effective internal controls.

Licensees must maintain a physical principal office in Kenya and observe strict transparency and reporting obligations, including preparation of annual audited financial statements to be submitted to the regulator within three months of year-end. In addition, all marketing must be fair, accurate and not misleading. Finally, firms must implement proportionate cybersecurity measures and comply fully with Kenya's Data Protection Act.

4. Consumer Protection and Market Integrity

Consumer protection and market conduct are addressed through mandatory segregation of client assets, transparent marketing and disclosure rules, whistle-blower protections, complaints handling procedures and explicit prohibitions on anonymity-enhancing services where they defeat AML/CFT/CPF objectives. Specifically, the Act institutes the following measures to protect consumer interests:

- **Asset Segregation**
  VASPs are obligated to segregate client holdings of virtual assets from their own holdings or property.
- **Sufficient Holdings**
  Licensees must maintain sufficient amounts of each type of virtual asset in custody to meet their obligations to customers.
- **Prohibition of Anonymity Services**
  To ensure integrity and traceability, the Act explicitly prohibits VASPs from undertaking mixer or tumbler services or anonymity-enhancing services.
- **Conflict of Interest**
  VASPs must have satisfactory policies and procedures in place to avoid, mitigate, and deal with conflicts of interest between the licensee, its service providers, and its clients.

The Act also requires pre-clearance or notification for virtual asset offerings (VAOs). The issuance or promotion of a VAO or seeking admission of such an asset to trading on a virtual asset trading platform, requires approval under the Act. Significantly, natural persons are ineligible to promote or issue a VAO. The relevant regulatory authority retains the power to object to an issuance or require corrective measures if the offering is advertised inconsistently with the application, or if the issuance is undertaken in a manner detrimental to public interest.

5. Anti-Money Laundering and Countering Terrorism Financing (AML/CFT/CPF) Integration

A major focus of the Act is integrating VASPs into the national AML/CFT/CPF framework. The Act vests relevant regulatory authorities with AML supervisory powers, including vetting of significant owners and senior officers, on-site inspections, off-site surveillance, consolidated supervision across groups, compulsory production of documents, and the authority to issue AML instructions and impose sanctions. These powers operationalise the Proceeds of Crime and Anti-Money Laundering Act, Cap. 59A, (POCAMLA) and the Prevention of Terrorism Act, Cap. 59B, in the VASP context.

B. Enforcement

The Act creates an administrative enforcement toolbox that includes, *inter alia*, warnings, directions, licence suspension and revocation. The Act also imposes civil and administrative fines, and criminal sanctions for serious breaches. Individuals in senior positions can be held personally liable where they knowingly authorise or permit contraventions. The statute empowers regulators to make detailed delegated regulations covering prudential standards, custody protocols, cyber audit requirements, capital and liquidity matrices, and the rules governing tokenised securities and stablecoin issuance.

C. Transitional Provisions

The Act contains transitional and consequential provisions to integrate VASPs into existing financial law, including amendments to the POCAMLA, the Central Bank Act and the Capital Markets Act, signalling that virtual assets will be treated as part of the regulated financial ecosystem rather than as an isolated niche.

D. Expected Impact

The Act will materially sharpen legal clarity and reduce regulatory uncertainty for institutional participants, licensed platforms and sophisticated issuers. By defining the permissible activities and designating supervisors, the legislative framework lowers entry-risk for regulated entities and makes Kenya a more predictable jurisdiction for tokenisation, custody and institutional trading infrastructure. The concurrent effect is to attract a higher calibre of market participants while reducing the space for low-quality operators.

Compliance and operating costs, however, will increase. The combination of capital, audit, AML/CFT/CPF, cybersecurity and local-presence requirements may potentially create barriers to entry for potential market participants. Smaller players will need to reassess business models or seek partnerships with licensed entities to remain viable in the Kenyan market.

From a public-policy perspective, the Act strengthens Kenya's AML/CFT/CPF posture by integrating VASPs into existing reporting and supervisory networks and giving regulators direct powers to investigate and sanction non-compliance. That enhanced oversight should improve cross-border cooperation, suspicious-transaction detection and consumer redress, but it will also require regulators to scale technical capabilities in blockchain forensics, custody supervision and cyber incident response to be effective.

Conclusion

In sum, the Virtual Asset Service Providers Act, 2025, represents a strategic pivot from legal ambiguity to structured supervision. It legitimises and integrates virtual asset services into Kenya's financial regulatory architecture while imposing rigorous governance, prudential and AML/CFT/CPF obligations. The near term effects will be greater institutional participation and improved consumer protection, which are counterbalanced by higher compliance costs and the need for coordinated regulator capacity building. Stakeholders should prioritise regulatory gap analyses, engagement with designated regulators, and strategic choices about how to operationalise custody, AML/CFT/CPF and cyber-resilience obligations under the new regime.

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