
Memorandum

Re:	Memorandum on the Virtual Asset Service Providers Bill, 2025
To:	Departmental Committee on Finance and National Planning
From:	Virtual Assets Chamber
Date:	25th April 2025
Our Contacts	policy@virtualassetchamber.com

A. About Us

The **Virtual Asset Chamber (VAC)** is a dedicated policy think tank that strives to create and maintain a favorable business environment for **Virtual Asset Service Providers (VASPs)**. Recognizing the transformative potential of blockchain and virtual assets, VAC acts as a unified voice for diverse stakeholders in the crypto and digital asset ecosystem.

The Chamber is deeply committed to advocating for balanced policies and regulatory frameworks that foster innovation, protect consumer interests, and ensure compliance with global standards. Through collaboration with policymakers, regulators, and industry players, VAC works to address challenges, highlight opportunities, and create a sustainable ecosystem for virtual assets.

B. Members and Partners of the Chamber

We represent a distinguished group of businesses engaged in the virtual asset space, all of whom are actively seeking licensing under the provisions of the Bill. Our members span a broad spectrum of innovative financial services, with an emphasis on global regulatory compliance and advancing the financial ecosystem through blockchain technologies.

- a. **Cryptocurrency Exchanges:** These platforms facilitate the purchase, sale, and trade of cryptocurrencies, with several of our members already licensed in over 18 jurisdictions globally. Their operations ensure regulatory compliance and uphold the integrity of digital asset markets across multiple geographies.
- b. **On-Ramp and Off-Ramp Providers:** These businesses, akin to Forex bureaus but for virtual assets, play a crucial role in bridging the gap between cryptocurrency and local fiat currencies. Many of our members are already licensed in 18+ jurisdictions and serve as the primary conduits for converting cryptocurrencies (e.g., Bitcoin) into local currencies, such as the Kenyan Shilling.
- c. **Stablecoin Issuers:** Our members involved in the issuance of local and USD-pegged stablecoins bring a high degree of financial stability to the market. These stablecoins are pegged to real assets, such as the Kenyan Shilling (KES) or the US Dollar, offering transactional parity with mobile money or traditional banking systems. Many of our members already operate globally and are licensed in top jurisdictions, including those under the European Markets in Crypto-Assets (MiCA) Regulations.
- d. **Custodial Solutions:** Our Chamber includes companies that provide secure software infrastructure for the storage and management of virtual assets. These services are vital for both individual and institutional users seeking to safeguard their digital assets.
- e. **Virtual Asset Payment Solutions Providers:** These companies are integral to enabling seamless transactions using virtual assets in everyday commerce.
- f. **Asset Managers:** Our members are at the forefront of managing virtual asset portfolios, applying sophisticated strategies to optimize returns while adhering to the highest standards of governance and compliance.
- g. **Tokenization:** Our members are exploring innovative ways to fractionalize ownership of tangible assets, such as real estate and commodities, through blockchain technology. This novel approach allows for greater liquidity and democratizes access to asset ownership.

C. Track Record and Stakeholder Engagement

Our ethos is grounded in collaboration and dialogue. As part of our ongoing commitment to advancing the sector, we have engaged with key stakeholders and policymakers on multiple occasions:

- a. **Departmental Committee on Finance and National Planning:** We have had several productive engagements with this Committee throughout 2023 and 2024 to ensure the regulatory landscape supports sustainable growth in the digital asset sector.
- b. **Capital Markets Authority (CMA):** Through the CMA's sandbox initiative, we have successfully onboarded several of our members. Additionally, we have organized and participated in numerous stakeholder workshops to foster better understanding and regulatory clarity.
- c. **Central Bank of Kenya (CBK):** The CBK has been a steadfast ally in addressing key concerns raised by our members, particularly around the VASP Bill. Their support has been instrumental in driving regulatory progress, especially in the areas of consumer protection.
- d. **National Treasury:** We continue to engage with the Treasury to ensure that financial policies remain aligned with the emerging needs of the virtual asset sector while safeguarding national economic interests.
- e. **Kenya Revenue Authority (KRA):** Our Chamber has worked closely with KRA on tax-related issues, striving for clear guidelines on the taxation of virtual assets to ensure fair and efficient revenue collection.
- f. **Financial Reporting Centre (FRC):** The FRC has been an essential partner in tackling anti-money laundering (AML) challenges within the sector. Our discussions with them are focused on developing robust frameworks to mitigate financial crime.
- g. **Ministry of ICT:** Our partnership with the Ministry of ICT is geared towards innovation, job creation, and the attraction of Foreign Direct Investment (FDI) into Kenya's burgeoning digital asset space.
- h. **United Nations Office on Drugs and Crime (UNODC):** The UNODC has been a strong advocate for addressing AML issues, providing valuable insights and support in shaping policies that ensure compliance with international best practices.

D. Commitments to Education, Understanding, and Empowerment

We are unwavering in our commitment to advancing financial literacy, promoting consumer protection, and empowering stakeholders within the virtual asset ecosystem. To this end, we collaborate with a range of partners to facilitate education and awareness initiatives, including:

- **Workshops, Webinars, and Conferences:** We regularly organize events in collaboration with key stakeholders to foster knowledge-sharing and build a deeper understanding of the virtual asset landscape.
- **Blockchain Education Hubs:** In collaboration with various stakeholders, we are finalizing plans to roll out educational and scam awareness programs to protect the youth from falling victim to digital asset scams. We aim to reach over 250 hubs, spreading awareness and empowering the next generation of



digital asset users.

- **Attracting Foreign Direct Investment into Kenya:** We support the development of blockchain incubation hubs in Nairobi, positioning Kenya as a key player in the global blockchain ecosystem. Our discussions with international institutions are focused on attracting capital and expertise to invest in promising local startups.

NOTABLE PROPOSITIONS FROM THE VIRTUAL ASSET CHAMBER ON THE VASP BILL, 2025

S/No	Clause & Subclause	Provisions of the Clause*	Proposed Revision**	Rationale for the revision/ Recommendation
	Section 4	Objects of the Act The main object of this Act is to provide for the legislative framework to license and regulate the activities of virtual asset service providers in and from Kenya.	This is a very relevant provision as it will help define parameters. We commend this inclusion.	Kenyan consumers have lost millions of dollars to crypto scams and related fraud activities with the most recent example being CBEX. It is important to have strong consumer protection mechanisms.
	Section 6	Regulatory Authorities 6. The following entities shall be the relevant regulatory authorities for the purposes of this Act — (a) the Capital Markets Authority established under section 5 of the Capital Markets Act; (b) the Central Bank of Kenya established under Article 231(1) of the Constitution; or (c) any other public body established under a written law that the Cabinet Secretary may, by notice in the Kenya Gazette, designate as such.	6. Establishment of a joint Virtual Asset Regulatory Authority 1. There shall be a joint regulatory authority called the Virtual Asset Regulatory Authority (VARA) 2. The joint regulatory authority shall be made up of: (a) Capital Markets Authority established under Section 5 of the Capital Markets Act; (b) the Central Bank of Kenya established under Article 231(1) of the Constitution; or (c) any other public body established under a written law that the Cabinet Secretary may, by	This provision seeks to create a centralized, harmonized, and efficient regulatory focal point, a “one-stop-shop”, for all matters relating to virtual assets. This is anchored in: 1. Streamlined Regulatory Engagement and Ease of Doing Business. By consolidating the regulatory interface into a single authority, the provision eliminates fragmented oversight and regulatory arbitrage. 2. Preservation of Institutional Mandates and Promotion of Joint Oversight. The provision preserves the constitutional and statutory mandates of the CBK and CMA while enabling them to coordinate and pool their regulatory powers and expertise in a structured and cooperative framework. The joint VARA does not usurp existing authorities but fosters a collaborative mechanism through which cross-cutting regulatory concerns can be addressed with coherence and effectiveness. 3. Optimized Use of Technical and Institutional Resources. The regulation of virtual assets demands substantial technical input, continuous market

			<p>notice in the Kenya Gazette, designate as such.”</p>	<p>surveillance, and dynamic policy responses. Joint regulation through VARA will enable the sharing of institutional resources, infrastructure, and technical know-how, thereby reducing duplicative efforts, enhancing operational efficiency, and allowing for quicker policy implementation and regulatory adaptation.</p> <p>4. Joint Capacity Building and Knowledge Sharing. Given the nascent and highly technical nature of virtual assets, there is a recognized capacity gap within traditional regulatory institutions. The establishment of VARA provides a platform for inter-agency capacity building, thus accelerating the learning curve and ensuring that regulators can respond to emerging risks and innovations with informed judgment.</p> <p>5. Adaptive Governance through Ministerial Designation. The inclusion of a mechanism for the Cabinet Secretary to designate additional public bodies via Gazette notice ensures regulatory adaptability, allowing the Authority’s composition to evolve in response to emerging developments, sectoral overlaps, or the creation of new public institutions relevant to virtual asset regulation.</p> <p>6. Protection of Institutional Integrity and Insulation from Sectoral Backlash. The establishment of VARA as a distinct joint regulatory body provides an institutional buffer between participating regulators and the operational issues, controversies, or potential crises arising from the virtual asset space. This structural separation protects the integrity, reputation, and functional focus of the CBK and CMA, ensuring they are not directly</p>
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				embroiled in sector-specific disputes or backlash that may accompany the evolution of virtual asset markets.
	Section 48	1 year moratorium	This is a great provision that reflects a progressive approach.	The inclusion of a one-year moratorium period upon the commencement of this Act is a prudent transitional measure designed to facilitate an orderly shift from an unregulated to a regulated virtual asset environment.
	Section 25(h)	<i>“Every virtual assets service provider shall at all times - open and operate a bank account in Kenya for the purposes of this Act”</i>	Replace ‘shall’ with ‘may’ as follows: “Every virtual assets service provider <u>may</u> - open and operate a bank account in Kenya for the purposes of this Act”	Crypto companies have for the past 10 years been unable to access banking services due to an existing CBK cautionary notice restricting them from accessing banking services - we wish to celebrate this legislation as a win that would open up such integration
	Section 11(2)	(2) The relevant regulatory authority , in relation to an application received under subsection (1), either -	“(2) The relevant regulatory authority , in relation to an application received under subsection (1), <u>within 90 Days</u> , either -”	<p>The proposed insertion of a specific timeline—“within 90 days”—into subsection (2) is intended to align the licensing framework for Virtual Asset Service Providers with established regulatory best practices.</p> <p>It is a common feature of licensing regimes for regulators to provide a clear timeframe within which applicants can expect feedback on the status of their applications. This approach is exemplified in Regulation 5(1) of the Digital Credit Providers Regulations, 2021, which imposes a 60-day window for the Central Bank of Kenya to make a determination on a licensing application.</p> <p>Depending on the type of license, the time period may vary but a minimum period of 90 days response is a good place to start.</p>

	Section 12(k)	12 (k) if the applicant is already operating in a regulated sector, a no-objection shall be required from the relevant regulator.	Delete this requirement	VASPs often operate in multiple jurisdictions. Requiring no-objection letters from each regulator would create unnecessary delays and administrative burdens, especially where no formal process exists to issue such letters. This does not add meaningful oversight in Kenya. Instead, require disclosure of existing licenses and any regulatory actions, allowing local authorities to assess suitability without undue hurdles.
	Section 14	A license issued under this Act shall be valid from the date it is issued and shall expire on the 31st December of the year it is issued.	“A license issued under this Act shall be valid from the date it is issued and shall expire after 12 months from the date issued.”	<p>Recommendation: Remove the license's definite calendar month expiry date and use a time period format where, unlike a fixed date like 31 December, the license should expire instead after 12 months <u>from the date of issuance</u>.</p> <p>Requiring licenses to be renewed on the 31st December of the year it is issued may create unnecessary administrative burdens for both the regulator and the VASPs. Extending the validity period to 12 months allows VASPs to focus on compliance and operations rather than frequent renewals, while still enabling regulators to maintain oversight through periodic reporting and compliance checks similar to requirements under the Data Protection Act.</p>
	Section 21(1)	21. (1) Subject to subsection (2) and section 19, the business and affairs of a licensee shall be managed by at least three directors of the board of whom at least three shall be natural persons; Provided that a director shall not serve in more than two boards of a licensee under this Act.	<p>Delete “Provided that a director shall not serve in more than two boards of a licensee under this Act.”</p> <p>“21. (1) Subject to subsection (2) and section 19, the business and affairs of a licensee shall be managed by at least three directors of the board of whom at least three shall be natural persons”</p>	The restriction allowing directors to serve on only two VASP boards may unduly limit access to experienced professionals and stifle growth, particularly for startups. Some investors may have an interest in more than two VASPs and would need directorship as a consideration for their investments. Some innovators may also have various VASP services they want to roll out to market. Therefore restricting one director to once licensed VASP potentially inhibits both investment appetite and innovation.

	Section 27(2)(l)	(2) For the purposes of subsection (1), the following changes are material; (l) a change in the target market.	Delete this from the bill	This is inconsistent with lean startup approaches that encourage experimentation, iteration and pivoting as start-ups seek product market fit. The section therefore increases the difficulty of doing business.
	Section 28(1)	(1) No shares in a licensee shall be issued and no issued shares shall be voluntarily transferred or disposed of, without the approval of the relevant regulatory authority.	(1) No shares in a licensee shall be issued, and no issued shares representing at least ten percent (10%) of the total issued share capital of the licensee shall be voluntarily transferred or otherwise disposed of, whether in a single transaction or a series of related transactions, without the prior written approval of the relevant regulatory authority.	Introduce a threshold for the percentage of shares that require reporting, such as transfers exceeding 10% of issued shares. Requiring approval for all share transfers creates unnecessary administrative burdens. A threshold ensures that only significant ownership changes are subject to regulatory scrutiny, aligning with practices in other regulated industries.
	Section 31(1),(2), (3)	A virtual asset service provider who intends to appoint or designate a person as a chief executive officer, shall apply to the relevant regulatory authority for its approval.	Strike off this entire clause 31 from the bill.	This provision imposes undue administrative burdens by requiring regulatory approval for internal leadership decisions. Companies should retain the autonomy to appoint their chief executive officers, subject to existing fit-and-proper criteria. Whereas it may be important to have a senior manager in Kenya, some CEOs have already been appointed and oversee operations across multiple countries.
	Section 33(2)(a)	Section 33(2): In carrying out its AML/CFT/CPF mandate, the relevant regulatory authority shall: (a) Vet significant shareholders, beneficial owners, directors, senior officers of a virtual asset service provider;	Delete 33(2)(a): Remove the requirement to vet significant shareholders . Delete 33(2)(c): Remove the requirement for off site surveillance .	For Removing 33(2)(a) – Vetting Significant Shareholders <ul style="list-style-type: none"> ● Impractical for Global Structures: Many VASPs are part of international corporate groups with complex and changing shareholder compositions, making local vetting of all significant shareholders administratively burdensome and impractical.

		(c) Conduct offsite surveillance.		<ul style="list-style-type: none"> • Regulatory Focus Should Be Local: Vetting should prioritize locally responsible persons (e.g., directors, senior officers) who directly oversee operations and compliance in Kenya. • Redundant in Presence of Beneficial Ownership Disclosures: Existing obligations under AML laws already require disclosure of beneficial ownership, which regulators can act on if needed. <p>For Removing 33(2)(c) – Off Site Surveillance</p> <ul style="list-style-type: none"> • Overly Prescriptive with no clear definition or boundaries on what off site surveillance entails.
	Section 35(1)	“A person shall not issue or purport to issue a virtual asset offering, in or from Kenya, or seek an admission of such asset to trading on a virtual asset trading platform unless that issuance is approved under this Act or any other relevant law.”	<p>Strike out Section 35(1):</p> <p>Replace with:</p> <p>“A virtual asset trading platform shall establish and maintain rules and procedures governing the listing, suspension, and delisting of virtual assets. Such rules may be made available to the regulator upon request and include due diligence, risk assessment, and disclosure requirements proportionate to the nature of the virtual asset.”</p>	<p>Exchanges already manage listing risks through robust internal vetting, continuous monitoring, and liquidity assessments.</p> <p>A principles-based approach avoids overly prescriptive regulation and gives room for innovation. This aligns with global best practices, where exchanges self-regulate under clear accountability frameworks.</p> <p>Requiring regulatory approval for each token would impose an unmanageable administrative burden, given the thousands of tokens in circulation, it is neither practical nor efficient for the regulator to review every listing.</p>

	<p>Section 35(2), (3) and (4)</p>	<p>35(2): "...a natural person shall not be eligible to promote or issue a virtual asset offering..."</p> <p>35(3): "...desiring to issue or promote a virtual asset offering..."</p> <p>35(4): "...shall not issue or promote a virtual asset offering... unless..."</p>	<p>Remove all references to the word "promote" from Section 35.</p>	<p>Overly Broad and Ambiguous</p> <ul style="list-style-type: none"> • The term "promote" is vague and could unintentionally capture a wide range of lawful marketing, advertising, or communication activities related to virtual assets. • It could be interpreted to include media reporting, analyst commentary, education campaigns, or even investor discussions on social media, creating unnecessary legal uncertainty. <p>Disproportionate Restrictions on Individuals</p> <ul style="list-style-type: none"> • Prohibiting natural persons from "promoting" virtual asset offerings (as in 35(2)) could bar founders, developers, or early-stage innovators from discussing or sharing information about their own projects. • This stifles innovation and limits early-stage ecosystem growth. <p>Existing Laws Already Cover Misleading Promotion</p> <ul style="list-style-type: none"> • Kenya's existing consumer protection and anti-fraud laws already prohibit deceptive or misleading marketing, including in the financial sector. • There's no need to duplicate or extend prohibitions under this Bill, especially with ambiguous language. <p>Focus Should Be on the Issuance and Listing Process</p> <p>Regulatory attention should remain on the formal issuance and listing of virtual assets, not general promotional activity, which can be managed under</p>
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				<p>standard advertising and disclosure rules.</p> <p>Global Norms Do Not Criminalize Promotion</p> <ul style="list-style-type: none"> Major jurisdictions regulate how virtual assets are promoted (e.g., via disclosure requirements or risk warnings), not whether they can be promoted at all. A complete ban on promotion is out of step with global best practices and could chill legitimate industry activity.
	Sections 40 & 41 on enforcement	The Bill provides for fines up to 10 million per infraction and prison time of up to 5 years for violators.	Reduce the monetary penalties and jail time to align with penalties for similar infractions in other financial sectors.	<p>The penalties are disproportionately high compared to those imposed on other financial institutions. For instance, operating a payment service provider without a license attracts a fine of 500,000 KES or a three-year prison term. Excessive penalties discourage innovation and the growth of the virtual asset sector.</p> <p>Recommendation:</p> <p>Reduce the monetary penalties and jail time to align with penalties for similar infractions in other financial sectors such as the payments service providers and banking sector.</p>
	FIRST SCHEDULE	Virtual Asset Services	<p>Introduce Unified licence regime as new category -</p> <p>Unified Virtual Asset Service Provider Licence</p>	<p>Rationale</p> <ul style="list-style-type: none"> Many VASPs perform multiple activities across the value chain (e.g., custody, exchange, payments).

			<p>(1) A person may apply for a unified licence to conduct one or more virtual asset services under this Act.</p> <p>(2) A unified licence shall authorise the licensee to offer multiple virtual asset services, including but not limited to:</p> <ul style="list-style-type: none"> (a) custody and safekeeping of virtual assets; (b) operation of a virtual asset trading platform; (c) exchange between virtual assets and fiat currency; (d) transfer or settlement of virtual assets on behalf of others. <p>(3) The Authority may impose conditions or limitations within the unified licence based on the applicant's risk profile, operational capacity, and compliance history.</p>	<ul style="list-style-type: none"> • Requiring a separate licence for each service is duplicative and inefficient. • A unified licence, similar to how a banking licence operates, would streamline oversight while maintaining appropriate regulatory safeguards. • This approach reduces compliance complexity and supports innovation, especially for global or full-stack VASPs.
NEW PROPOSED SECTIONS				
	New Proposed Section	Rationale	New Proposed Provisions	

	Insert a new Part VII - (Foreign Licensed Stablecoin Issuer)	Rationale: Our overall sentiment is that Kenya should adopt a policy of mutual recognition and regulatory equivalence, recognizing trusted foreign frameworks, so that foreign stablecoin issuers don't have to comply with very different rules in every country they operate in. The Central Bank's mandate is to regulate the issuance of Kenya Shillings. With regard to fiat and bond-backed stablecoins, the Central Bank of Kenya (CBK) is likely to focus its oversight mainly on KES-backed stablecoins, it's important to include clear legal recognition for stablecoins backed by other major fiat currencies like the USD, EUR and other G8 currencies, especially when they are already licensed in well-regulated markets e.g stablecoins already licensed under European Union (EU) <i>Markets in Crypto Assets (MiCA)</i> Regulations.	Add the below definitions Interpretation Section <i>"Recognized Jurisdiction" means any foreign jurisdiction whose regulatory framework for Virtual Assets Service Providers has been deemed equivalent by the Relevant Authority in accordance with Part VII herein.</i> <i>"Reserve Assets" means the financial instruments held to back a stablecoin, including cash, cash equivalents, and government bonds denominated in the reference currency.</i> PART VII (NEW PART) FOREIGN LICENSED STABLECOIN ISSUERS	
		Key benefits of this approach include: 1. Participation by Trusted International Issuers: By recognizing foreign currency stablecoins already licensed in well-regulated jurisdictions, Kenya becomes a more attractive market for global issuers. This reduces entry barriers and encourages responsible actors to participate without needing to duplicate compliance processes already satisfied elsewhere. 2. Promotes Financial Stability and Consumer Protection: Through alignment with global standards, such as reserve backing, clear redemption rights, and transparency in operations, Kenya can ensure that only high-integrity stablecoins operate in its market. This safeguards consumers while maintaining systemic financial resilience. 3. Strengthen Kenya's Global Positioning in Digital Finance: Taking a progressive, cooperative approach boosts Kenya's credibility as a leader in digital asset regulation across emerging markets. It sends a strong signal that Kenya is open for business, interoperable with major financial systems, and committed to responsible innovation.	36. Recognition of Foreign-Issued Stablecoins <i>(1) The Relevant Authority may recognize a stablecoin where—</i> <i>(a) the stablecoin is backed by a currency other than the Kenyan shilling;</i> <i>(b) the issuer of the stablecoin is licensed in a Recognized Jurisdiction; and</i> <i>(c) the stablecoin is backed by reserve assets which—</i> <i>(i) meet the prudential standards prescribed by the regulatory authority of the Recognized Jurisdiction; and</i> <i>(ii) satisfy the reserve requirements set by the Relevant Authority.</i> <i>(2) Where the requirements under subsection (1) are met to the satisfaction of the Relevant Authority, the Relevant Authority shall issue a letter of no objection to the foreign licensed issuer of the stablecoin.</i>	Foreign Licensed Stablecoin Issuers

		<p>4. Creates a Pathway for Future Reciprocity: By recognizing non-KES stablecoins today, Kenya lays the groundwork for its own KES-backed stablecoins to be accepted abroad. This fosters fair access and positions Kenyan financial products for international scalability.</p> <p>We thus recommend the following:</p> <p>a. Introduce Framework for Recognition Foreign Currency Stablecoins already licensed elsewhere: We propose provisions that allow recognition (not licensing) of USD, EUR, and other foreign currency-backed stablecoins to circulate locally. This shows openness and fairness, making it more likely that other countries will also allow future KES-backed stablecoins in their markets. This kind of two-way access is already allowed under both the EU's MiCA regulation and proposed U.S. stablecoin laws.</p> <p>b. Foreign Licensed Stablecoin Issuers May Hold Reserves Where They're Licensed: Stablecoin issuers should be allowed to hold their reserves in the countries where they are already licensed and issuing stablecoins, as long as those reserves meet Kenya's standards. This avoids forcing issuers to split up or duplicate their reserves unnecessarily, making operations more efficient and safer.</p>	<p>37 (1) <i>The Relevant Authority shall, by notice in the Gazette, publish a list of jurisdictions whose legal and regulatory frameworks for stablecoin issuance and reserve management are deemed Recognized Jurisdictions in Kenya.</i></p> <p>(2) <i>In determining a Recognized Jurisdiction, the Relevant Authority shall consider—</i></p> <p>(a) <i>alignment with global standards;</i></p> <p>(b) <i>transparency and reserve management requirements under the Recognized Jurisdiction's framework;</i></p> <p>(c) <i>supervisory and enforcement capabilities of the foreign regulator; and</i></p> <p>(d) <i>participation in international financial cooperation agreements.</i></p> <p>(3) <i>The list of Recognized Jurisdictions shall be subject to periodic review and may be amended or revoked by notice of the Central Bank.</i></p>	<p>Recognized Jurisdictions for Foreign Licensed Stablecoin Issuers</p>
			<p>38 (1) <i>A Foreign Licensed Stablecoin Issuers shall be permitted to maintain Reserve Assets in the Recognized Jurisdiction of its primary license, provided that—</i></p> <p>(a) <i>the Reserve Assets have met the criteria prescribed the Recognized Jurisdiction; and</i></p> <p>(2) <i>The Relevant Authority may require third-party attestation or audit reports verifying such compliance prior to approval of such Foreign Licensed Stablecoin Issuers.</i></p>	<p>Reserve Assets Held by Foreign Licensed Stablecoin Issuers</p>

	<p>Insert a new Part IX - (License Passporting)</p>	<p>What Is License Passporting?</p> <p>License passporting refers to a regulatory mechanism that allows a financial service provider, licensed in one jurisdiction to operate in another, without needing to obtain a new license in the second jurisdiction.</p> <p>This is typically allowed under frameworks where jurisdictions have mutual recognition or regulatory equivalence agreements, meaning they trust each other's regulatory standards to be sufficiently aligned.</p> <p>In the context of VASPs, license passporting would enable a VASP or a stablecoin issuer licensed in a well-regulated country (e.g. under the EU's MiCA framework, or South Africa's FSCA) to operate in Kenya with limited additional licensing requirements, subject to certain local compliance obligations (e.g. Licensing Fees, AML/CFT, Tax, or consumer protection laws).</p> <p>Key Benefits of License Passporting include:</p> <p>Positions Kenya as the 'Silicon Savannah' of Regulated Digital Finance:</p> <ol style="list-style-type: none"> Supports the African Continental Free Trade Area (AfCFTA) and PAPSS Integration: A passporting framework complements AfCFTA goals by reducing regulatory barriers to intra-African digital trade and cross-border payments. It also aligns with the Pan-African Payment and Settlement System (PAPSS), enabling smoother currency interoperability and financial inclusion across member states. License passporting reinforces Kenya's position as the Silicon Savannah, home of innovation: By offering a clear, efficient pathway for international firms to operate across Africa via Kenya, the country can consolidate its role as a launchpad for regulated innovation—amplifying its reputation as the continent's "Silicon Savannah." Simply, any products launched in Kenya will be able to seamlessly scale through Passporting Partner Countries without needing to obtain a full license there. Encourages Participation by High-Quality Global Issuers: By reducing duplicative licensing requirements, Kenya opens the door for reputable international stablecoin and fintech providers to operate in the region, expanding access to trusted financial tools for businesses and consumers. Accelerates Innovation and Access to Digital Capital: With easier market entry, firms can rapidly deploy innovative solutions for payments, lending, remittances, and savings, addressing local financial needs and enhancing digital infrastructure across East Africa and beyond. 	<p>Add the below definitions Interpretation Section:</p> <p><i>"Passporting" means the right of a foreign-licensed Virtual Asset Service Provider or Stablecoin Issuer to provide services within Kenya without obtaining a separate domestic license, subject to recognition of its foreign license under Part IX of this Act.</i></p> <p>PART IX (NEW PART) LICENSE PASSPORTABILITY</p> <p>43 (1) A Virtual Asset Service Provider shall be eligible for passporting under this Act if—</p> <ol style="list-style-type: none"> It is duly licensed or authorized in a <i>Recognized Jurisdiction</i>; and It submits a passporting notification to the designated authority in the prescribed form; and It agrees to comply with the applicable provisions of this Act, including all obligations of a license-holder under this Act. Appoint a local representative or establish a local point of contact for supervisory correspondence; Provide such additional information as may be prescribed by the Authority, including documentation of compliance with applicable Kenyan standards. <p>(2) The Relevant Authority, <i>may, by notice in the Gazette, publish a list of jurisdictions</i> deemed to be <i>Recognized Jurisdictions</i> for the purposes of this section.</p>	<p>Passportability Eligibility</p>
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	<p>Insert new section under Miscellaneous provisions. (Appointment of Compliance Officer)</p>	<p>Rationale for Appointment of Compliance Officer</p> <p>The introduction of a Compliance Officer for VASPs serves as a critical safeguard in ensuring oversight, risk management, and adherence to regulatory obligations within an evolving sector.</p> <ol style="list-style-type: none"> A dedicated Compliance Officer ensures that each licensee actively implements and monitors compliance frameworks aligned with national and international standards, including obligations under the Proceeds of Crime and Anti-Money Laundering Act and the Prevention of Terrorism Act. Alignment with Best Practices Globally, jurisdictions regulating virtual assets, including the EU, Singapore, and the UK, require VASPs to maintain compliance functions, often under the oversight of qualified personnel. Including this requirement ensures Kenya's regulatory framework remains internationally competitive and FATF-compliant. 	<p>48A. Appointment of Compliance Officer</p> <p>(1) A licensee shall appoint a Compliance Officer, who shall possess such qualifications or certifications as may be prescribed or recognised by the relevant regulatory authority.</p> <p>(2) The Compliance Officer shall—</p> <ol style="list-style-type: none"> be responsible for ensuring the licensee's compliance with the provisions of this Act and all applicable laws, including but not limited to the Proceeds of Crime and Anti-Money Laundering Act, the Prevention of Terrorism Act, and the Data Protection Act; oversee the implementation and effectiveness of internal compliance policies and procedures. 	<p>Appointment of Compliance Officer</p>

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BOWMANS – DIGITAL ASSET TAX – SUBMISSIONS ON THE FINANCE BILL, 2025 (NATIONAL ASSEMBLY BILL NO. 19 OF 2025)

No	Clause	Description of the Clause	Proposal	Justification
1.	28(d)	The Finance Bill proposes to decrease the rate of digital asset tax (DAT) from 3% to 1.5%.	<p>The proposal to reduce the DAT rate from 3% to 1.5% will not address the challenges of implementing the DAT provisions as currently contained under the Income Tax Act. We propose the following options in respect of DAT:</p> <p>Proposal 1: To safeguard the nascent and growing virtual asset sector</p> <p>(a) Repeal digital asset tax provisions by repealing section 12F and paragraph 13 of the Third Schedule of the Income Tax Act as there have been numerous compliance difficulties with the provisions as currently enacted. The</p>	<p>I. Introduction</p> <p>DAT is applicable to virtual assets that are generated through cryptographic means (or otherwise) and provide a digital representation of value, cryptocurrencies, non-fungible tokens or other similar tokens.</p> <p>Digital asset tax as currently enacted requires: (a) the owner of a platform; or (b) the person who facilitates the exchange or transfer of a digital asset to deduct DAT and remit it within five (5) working days to the Kenya Revenue Authority (the KRA).</p> <p>After a user completes registration of an account on a cryptocurrency exchange website or app (Platform), such as Binance, under the P2P service - which is the only on-ramp/off-ramp mechanism currently available for Kenyan users, given the restrictive regulatory environment - the user is able to: (a) post an advertisement offering the sale of digital assets; or (b) respond to an advertisement to purchase the offered digital asset.</p>

			<p>tax on gain/income should be paid under self-assessment regime as either capital gains tax or income tax regime on the person realizing the gain. Disclosure would be done by platforms under a report framework such as the OECD's CARF, allowing KRA to collect the tax due from users (this is the standardized approach chosen by most countries) ;</p> <p>(b) Amend digital asset tax provisions by repealing subsection 12F(2) and (3) and providing that the Cabinet Secretary for Treasury and National Planning shall implement regulations to provide for the definition of DAT, the scope of transactions chargeable to DAT and exclude stable coins from the ambit of DAT as they are not held for</p>	<p>The owner/operator of the Platform acts as an escrow that holds the digital assets pending the confirmation by the buyer and seller that the required payment (which could be cash or another digital asset) has been transferred to the wallet (in the case of digital assets) or preferred payment option (such as bank account) of the seller.</p> <p>Accordingly, the owner/operator of the Platform does not have sight of the fiat currency payments exchanged between the buyer and seller of the digital asset since these payment options are not owned or operated by the Platform owner.</p> <p>II. Platform owners/operators do not have access to the fiat currency transactions between users on its platform</p> <p>As set out above, Platform owners/operators are unable to withhold and remit DAT in fiat currency for digital asset trading transactions because Binance offers escrow services for digital assets in a trading transaction. Accordingly, the fiat currency element of the transactions occur between the buyer and seller of the digital assets outside the Platform through their preferred third-party payment service providers such as bank accounts.</p> <p>III. DAT is significantly higher than Platform fees for a transaction and therefore Platforms are not able to fund DAT payment from its fees</p>
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			<p>value but used as a means of payment;</p> <p>(c) Introducing VAT exemption for services offered by virtual asset service providers to attract these players to Kenya.</p> <p>We propose amending the First Schedule of the VAT Act to expressly provide that services provided by virtual asset service providers would be exempt from VAT.</p> <p>Virtual asset service providers would have the meaning assigned to it under section 3 of the Virtual Asset Service Providers Bill, 2025 which is also before the Committee.</p> <p>Examples include virtual asset wallet providers, exchanges, payment</p>	<p>Platform owners/operators' fees on transfer of a digital asset (whether in exchange for fiat or for crypto) is lower than 3%.</p> <p>See https://flipster.io/en/blog/crypto-exchanges-ranked-by-lowest-fees-comparison-guide link here and https://www.investopedia.com/tech/how-much-does-it-cost-buy-cryptocurrency-exchanges/ for general fees charged by crypto Platforms.</p> <table><tr><th>Platform</th><th>Maker's Fee</th><th>Taker's Fee</th></tr><tr><td>Coinbase</td><td>0.4%</td><td>0.6%</td></tr><tr><td>Bybit</td><td>0.15%</td><td>0.2%</td></tr><tr><td>Kraken</td><td>0.25%</td><td>0.4%</td></tr></table> <p>DAT tax risk is up to 15 times Binance's fees.</p> <table><tr><th>Particulars</th><th>Amount</th></tr><tr><td>Assume a seller places an offer to sell Bitcoin which a buyer agrees to purchase at the selling price. Assuming 1 Bitcoin = KES 13,544,507.47</td><td>KES 10,000,000 of Bitcoin (0.74 bitcoins)</td></tr></table>	Platform	Maker's Fee	Taker's Fee	Coinbase	0.4%	0.6%	Bybit	0.15%	0.2%	Kraken	0.25%	0.4%	Particulars	Amount	Assume a seller places an offer to sell Bitcoin which a buyer agrees to purchase at the selling price. Assuming 1 Bitcoin = KES 13,544,507.47	KES 10,000,000 of Bitcoin (0.74 bitcoins)
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			<p>processors, brokers, investment advisors, among others.</p> <p>(d) Introducing excise duty at a rate of five percent (5%) on the fees/commissions charged by virtual asset service providers.</p> <p>We propose a new provision introducing excise duty at a rate of five percent (5%) on the fees/commissions charged by virtual asset service providers.</p> <p>Virtual asset service providers would have the meaning assigned to it under section 3 of the Virtual Asset Service Providers Bill, 2025 which is also before the Committee.</p>	<table><tr><td>The transaction (@0.1% of the virtual asset)</td><td>0.00074 Bitcoins (approx. KES 10,031.83).</td></tr><tr><td>Digital asset tax (DAT) (@3% of the transfer value)</td><td>0.0222 Bitcoins (approx. KES 301,359.25)</td></tr></table> <p>IV. Challenges faced when accounting for DAT</p> <p>In Kenya tax payments are required to be made in KES, while the transfers and transactions subject to DAT will be in the respective cryptocurrencies/tokens.</p> <p>In order to account for DAT, the Platform owner/operator would have to source for market and liquidate the digital assets in order to finance the tax.</p> <p>The liquidation by the Platform owner/operator on its platform would amount to a transfer under the current regime.</p> <p>Given the volatility of the crypto market, it is possible for the value of the digital assets to reduce between the time of transfer and subsequent liquidation by Platform owners/operators.</p> <p>If the liquidation is done and the proceeds subsequently converted into foreign currency and translation of the same into KES amounts to exchange losses, it would result in the Platform owner/operator bearing the cost arising from the exchange losses.</p>	The transaction (@0.1% of the virtual asset)	0.00074 Bitcoins (approx. KES 10,031.83).	Digital asset tax (DAT) (@3% of the transfer value)	0.0222 Bitcoins (approx. KES 301,359.25)
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			<p>Regulations should prescribe how excise duty would be computed and remitted to KRA.</p> <p>Proposal 2: Define what falls within the ambit of digital assets – Exclude stable coins from the ambit of digital assets as ordinarily they are not held for value but used as a means of payment.</p> <p>Proposal 3: Introduce tax on value of crypto assets held - Introduce a tax, akin to wealth tax at the rate of 0.2% on the value of crypto assets held by Kenyan users at the end of the year. This would be similar to Italy's wealth tax on crypto which applies on the value of crypto assets held at the end of the year at the rate of 0.2%</p>	<p>Proposal 1: To safeguard the nascent and growing virtual asset sector</p> <p>1. Repealing DAT</p> <p>The repeal of DAT would ensure that there is no double taxation of income earned by persons trading in digital assets and remove the withholding tax burden (per the above challenges) for exchange owners. Further DAT is also applicable as a withholding tax, however, there is no credit offered to the persons who have been subject to DAT.</p> <p>The tax on gain/income should be paid under self-assessment regime as either capital gains tax or income tax regime on the person realizing the gain. Disclosure would be done by the platform under a report framework such as the Organization for Economic Cooperation and Development (OECD) Crypto-Asset Reporting Framework (CARF) and amendments to the Common Reporting Standards (CRS) (CARF will be implemented in at least 67 jurisdictions; in Europe it will be implemented through a directive, DAC 8). The CARF and CRS will allow the KRA to have access to information on the trading of crypto assets.</p> <p>2. Expressly requiring regulations implementing DAT</p> <p>The DAT provisions as currently drafted are vague as it is not clear the type of assets subject to tax, how income from DAT transactions is deemed to have accrued or derived from Kenya for tax purposes, the term transfer is not defined to</p>
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				<p>clearly specify transactions that would be deemed taxable and those that would not be taxable. Some trading transactions involve exchange of cryptocurrency from one type to another, such as from Ethereum to Bitcoin. Fiat is not needed to trade. This approach of introducing regulations for the digital sector has resulted in significant benefits in terms of revenue generation as has been the case with digital service tax and VAT on digital marketplace supplies.</p> <p>3. Introducing VAT exemption</p> <p>The virtual asset sector in Kenya has not yet been regulated by way of legislation and therefore, it is still in its developmental phase. This exemption proposal is intended to encourage leading sector players to register in Kenya to offer virtual asset services.</p> <p>Other financial services provided by traditional financial institutions such as banks are exempt from VAT. This proposal has significantly encouraged the growth of the financial sector in Kenya as it encourages transactions through the financial institutions.</p> <p>Implementation of DAT with similar features in other countries has had negative impact as follows:</p>
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				<p>a) Indonesia: trading volume decreased by approximately 60% post the implementation; and</p> <p>b) India: trading volume of crypto exchanges dropped from the highs of USD 500M weekly to the lows of USD 2M weekly post implementation.</p> <p>Further, from the comparison of jurisdictions below, only Indonesia charges VAT on services provided by virtual asset service providers. Leading economies such as the United States of America, United Kingdom, Germany and France do not impose VAT on virtual asset transactions</p> <p>Below is a comparison with other jurisdictions.</p> <table border="1"> <thead> <tr> <th>Jurisdictions</th><th>Subject to CGT?</th><th>Income Tax Rate</th><th>Subject to VAT?</th><th>Tax Collected Upfront / at source</th></tr> </thead> <tbody> <tr> <td>Australia</td><td>Yes</td><td>0% - 45% depending on personal income tax bracket. Long term capital gain from crypto asset</td><td>No</td><td>No</td></tr> </tbody> </table>	Jurisdictions	Subject to CGT?	Income Tax Rate	Subject to VAT?	Tax Collected Upfront / at source	Australia	Yes	0% - 45% depending on personal income tax bracket. Long term capital gain from crypto asset	No	No
Jurisdictions	Subject to CGT?	Income Tax Rate	Subject to VAT?	Tax Collected Upfront / at source										
Australia	Yes	0% - 45% depending on personal income tax bracket. Long term capital gain from crypto asset	No	No										

						held more than 1 year receives 50% capital gain tax reductions.		
				Brazil	Yes	15% - 22.5% depending on personal income tax brackets - only taxable after BRL 35k (USD 6.5k) transaction threshold is reached each month .	No	No
				France	Yes	Tax at 30% when crypto is converted into fiat. Crypto-to-crypto transactions are not taxed.	No	No



BOWMANS – TELECOMMUNICATIONS – SUBMISSIONS ON THE FINANCE BILL, 2025 (NATIONAL ASSEMBLY BILL NO. 19 OF 2025)

					Germany	Yes	Tax up to 45% on short term gain only. Capital gain from crypto-assets held for periods longer than 1 year is exempt of income tax	No	No
					India *	Yes (30%)	1% of Transactions Value ("TDS")	No	Yes
					Indonesia	Yes (tax collected by agent)	0.1% of Transaction Value 0.2% of Transaction Value (if exchange is not registered with relevant government authority)	Yes at 0.11%	Yes

					Malaysia	No	Malaysia does not tax capital gain, except active trader	No	No
					Singapore	No	Singapore does not tax capital gain, except active trader	No	No
					Thailand	Yes	Up to 35%	No	No
					United Kingdom	Yes	Up to 20% depending on the personal tax bracket.	No	No
					USA	Yes	Depending on personal tax bracket, short term capital gain (held less than a year) are taxed up between 0% - 37%	No	No

						Long term capital gain are taxed between 0-20%		
				South Africa	Yes	18% of net gains based on the income tax rates	Exempt – financial services	No
				Nigeria	Yes	Net gains. The percentage of gains that are taxable depends on an individual's overall income for the tax year	Yes – 7.50%	No
				4. Introducing excise duty Excise duty based on the fee charged by the virtual asset service providers would provide relatively quick and easy access to revenue for the government. However, to ensure that the virtual asset sector players are incentivized to offer				

			<p>their services to Kenyans, the repeal of DAT and introducing a VAT exemption is crucial.</p> <p>According to Chainalysis, https://www.chainalysis.com/blog/subsaharan-africa-crypto-adoption-2024/</p> <p>Sub-Saharan Africa accounts for 2.7% of transaction volume in cryptocurrency (approximately USD 125 billion). Kenya ranked as 28th globally in adoption of cryptocurrencies.</p> <p>In the Virtual Assets and Virtual Asset Service Providers Money Laundering and Terrorism Financing Risk Assessment Report for Kenya , 2023, 86% of respondents were familiar with cryptocurrency. The common cryptocurrencies owned include Bitcoin (20%), Ether (17%), Tether (10%). 53% of respondents had invested funds below KES 100,000, however, other respondents had invested above KES 100,000 including amounts as high as more than KES 10 million.</p> <p>There is opportunity for revenue to be raised, however, the law introducing the tax has to be clear on the scope, how to attribute the transactions to Kenyan users, and compliance measures.</p> <p>Proposal 2: Define what falls within the ambit of digital assets</p> <p>Stable coins would be excluded from the ambit of digital assets as ordinarily they are not held for value but used as a means of payment.</p>
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			<p>Proposal 3: Introduce tax on value of crypto assets held</p> <p>Introduce a tax, akin to wealth tax at the rate of 0.1% on the value of crypto assets held by Kenyan users at the end of the year. This is the case in Italy where tax applies on the value of crypto assets value held by Italian tax resident persons at the end of the year where (a) the crypto assets are held with a foreign intermediary or (b) held in self-custody.</p> <p>This tax regime would be easier to enforce as it would be based on the value of crypto assets held as at a specific time. In addition, tax would apply on the entire value of the crypto assets as opposed only to the gain. This regime would also have the merit of achieving the desired outcome of DAT - taxing individuals with wealth accumulated from crypto-assets -, but avoiding the controversy on the constitutionality of DAT, notably on the fact that it may target transactions where no real income is obtained by entities selling the asset.</p>
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Digital Asset Tax

Submissions prepared on behalf of VAC

20 May 2025



Background

Finance Act, 2023 introduced section 12F of the Income Tax Act which effective 1 September 2023 introduced digital asset tax (**DAT**) at the rate of three percent (3%) of the **transfer or exchange value** of a digital asset.

The obligation to deduct and remit DAT (within 5 working days) is on **the owner of a platform** or **the person who facilitates the exchange or transfer** of a digital asset.

A digital asset is defined as follows:

*“(i) **anything of value that is not tangible** and cryptocurrencies token code, number held in digital form and generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration that can be transferred, stored or exchanged electronically; and (ii) a non-fungible token or any other token of similar nature, by whatever name called.”*

Income derived from transfer or exchange of a digital asset is defined as:

“the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset.”

The Finance Bill, 2025 proposes to reduce the rate of digital asset tax from 3% of the transfer or exchange value of the digital asset to 1.5%.



Overview of Binance operations

challenges may be smaller
in size, not in number

the Platform

On-ramp: P2P

The proposed reduction of DAT from 3% to 1.5% will not address the compliance challenges facing Binance.

Exchanges offer a Platform on which users can exchange cryptocurrencies and virtual tokens

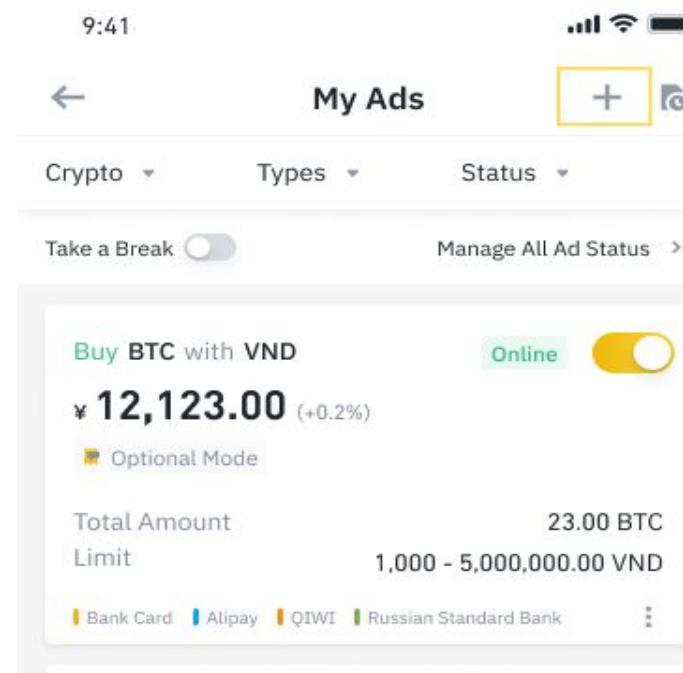
On-ramp available in Kenya is only P2P which allows direct interaction between the Maker and the Taker. Binance has no access or visibility to fiat funds

The Maker publishes an offer to sell a digital asset and the Taker responds to the Advertisement by placing an order to acquire the digital asset.

Fiat-payments made outside the Exchange's ecosystem through 3rd party PSPs

the Advertisement

No access to user's fiat





Key compliance difficulties under the current DAT framework

Ambiguity in the current provisions

No definition of transfer - The term transfer is not defined in respect of DAT and therefore, it is unclear whether other transactions using crypto would be deemed to be transfers.

Some of the Digital assets such as stable coins (e.g USDT) are ordinarily not held for value but used as a means of payment

Not all activities amount to a taxable gain

Some trading transactions involve exchange of cryptocurrency from one type to another, such as from Ethereum to Bitcoin. Fiat is not needed to trade.

Numerous service offerings that do not include trading or exchange of digital assets

Exchange numerous service offering available to persons in other jurisdictions (not in Kenya) and the scope of DAT (how to determine applicability to Kenya) is not clear.

CBK's Cautionary Notice

The **CBK** has publicly warned against the use, holding, and trading of virtual currencies such as Bitcoin and similar products including the dealing in virtual currencies or transacting with entities engaged in virtual currencies.

In particular, the CBK Banking Circular which in 2015 expressly cautioned all financial institutions against transacting with entities that are engaged in virtual currencies has not been withdrawn by the CBK.

Therefore, even if Binance were to obtain fiat currency, it would not be able to use Kenyan bank accounts or payment service providers to remit DAT.

Potential loss of business

Investors tend to trade small amounts, many times, rather than one large trade: hence, DAT means millions of WHT deductions/year with huge compliance costs

Exchanges that implement DAT first are likely to lose users **and ultimately all revenue may be lost**

Impact of DAT with similar features in other countries:

- Indonesia: trading volume decreased by approximately 60% post the implementation ; and
- India: trading volume of crypto exchanges dropped from the highs of USD 500M weekly to the lows of USD 2M weekly post implementation.



Key compliance difficulties under the current DAT framework

P2P means exchanges offer **escrow services** on the digital assets in a trading transaction to ensure that the relevant digital assets are only transferred after the exchange of respective fiat funds take place between the Taker and a Maker and is confirmed by the Maker.

Exchanges **do not have any access or relation whatsoever to the fiat funds** transferred between a Taker and a Maker using their preferred payment methods (Exchange is merely informed by user receiving fiat funds that the funds were well received, in order to release the cryptocurrency held in escrow).

Withholding tax generally works smoothly where **the withholding tax agent is in possession or has control over funds** that should be paid over to or for the benefit of the withholder.

Since exchanges **has no control over the fiat currency payment** methods, it is practically impossible to withhold any portion of the fiat currency transferred by the Taker to the Maker.



Key compliance difficulties under the current DAT framework

Accounting for Tax

- In Kenya tax payments are required to be made in KES, while the transfers and transactions subject to DAT will be in the respective cryptocurrencies/tokens.

Liquidation

- In order to account for DAT, Binance as the owner of the Platform would have to source for market and liquidate the digital assets in order to finance the tax.
- The liquidation by Binance on its platform would amount to a transfer under the current regime.

Volatility of market

- Given the volatility of the crypto market, it is possible for the value of the digital assets to reduce between the time of transfer and subsequent liquidation by the Platform owner.

Exchange differences

- If the liquidation is done and the proceeds subsequently converted into foreign currency and translation of the same into KES amounts to exchange losses, it would result in the Platform owner bearing the cost arising from the exchange losses.



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13,552,530.96 KES

-220,225.45 (1.60%) ↓ today

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13,548,848.69 KES

-222,101.11 (1.61%) ↓ today

19 May, 16:39 UTC · [Disclaimer](#)

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Key compliance difficulties under the current DAT framework

Exchange's fee on transfer of a digital asset (whether in exchange for fiat or for crypto) is lower than 3%. The rate is usually 0.1% - 0.2% of the digital asset transferred, which is payable in the relevant digital asset.

DAT tax risk is up to 15 times Exchange's revenue: Risk is extremely disproportionate to the benefit obtained

Particulars	Amount
Assume a Maker places an Advertisement to sell Bitcoin which a Taker agrees to purchase at the Advertisement price.	KES 10,000,000 of Bitcoin (0.74 bitcoins) Assuming 1 Bitcoin = KES 13,544,507.47
The transaction (@0.1% of the virtual asset)	0.00074 Bitcoins (approx. KES 10,031.83).
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COMPARISON WITH OTHER JURISDICTIONS

Jurisdictions	Subject to CGT?	Income Tax Rate	Subject to VAT?	Tax Collected Upfront / at source
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USA	Yes	Depending on personal tax bracket, short term capital gain (held less than a year) are taxed up between 0% - 37% Long term capital gain are taxed between 0-20%	No	No



RECOMMENDATIONS

Proposal 1: To safeguard the nascent and growing virtual asset sector

Repeal of digital asset tax in the Income Tax Act

The tax on gain/income should be paid under self-assessment regime (**supported by** a prescribed reporting framework such as the OECD's CARF and amended CRS) as either capital gains tax or income tax regime on the person realizing the gain

Excise duty on commissions/fees charged by virtual asset service providers

VAT exemption on services provided by virtual asset service providers



Proposal 2: Define what fall within the ambit of digital assets

Exclude stable coins from the ambit of digital assets as ordinarily they are not held for value but used as a means of payment



Proposal 3: Reduced DAT rate

Reducing the rate of digital asset tax say 0.1% to take into account that the commissions earned by virtual asset service providers are between 0.1% - 0.5%



Proposal 4: Introduce tax on value of crypto assets held at the end of the year
Introduce a tax, akin to wealth tax at the rate of 0.1% on the value of crypto assets held by Kenyan users at the end of the year, **either assessed via WHT by the platform or self-assessed by user - (e.g. Italian model)**

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