

**Our Ref:**

**23<sup>rd</sup> May 2025**

**Mr. Samuel Njoroge**

Clerk of the National Assembly

Parliament building

P.O Box 41842, 00100

**NAIROBI**

Dear Samuel,

**RE: MEMORANDUM FOR PROPOSALS FOR THE VIRTUAL ASSETS SERVICE PROVIDERS BILL 2025.**

I refer to the notice dated 13<sup>th</sup> May 2025 inviting the public for participation in amendments to the Finance Bill, 2025 and the Virtual Assets Service Providers Bill, 2025.

We attach herein our Memorandum with respect to proposed changes affecting the Virtual Asset Service Providers Bill, 2025 for your consideration.

For additional information or clarification, you can reach us by email at [legal@yellowcard.io](mailto:legal@yellowcard.io), or Telephone number 0786305387.

Thank you for your continued support.

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Yours Faithfully

*Edline E. Murungi*

**Edline E. Murungi**

Senior Legal Counsel

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## **EXECUTIVE SUMMARY**

Our proposed amendments are intended to ensure that the Virtual Assets industry remains innovative while still managing risks within the industry.

The proposed regulatory framework is a significant milestone for the industry and our proposals seek to make Kenya a competitive market that nurtures innovation, and avoids over regulation/misregulation. Other nations, such as South Africa with over 300 licenses issued, have already capitalized on this space, while we risk Kenya falling behind. Misregulation or over regulation could lead to the collapse of local startups, the exodus of existing businesses out of Kenya, and exclusion from global standards and opportunities. Our request for amendments is to ensure continued innovation, investment, and that Kenya remains competitive in this ever agile industry.

## **OUR REQUEST**

We request that the National Assembly make the following amendments to the Virtual Assets Service Providers Bill, 2025

1. Expanding the interpretation of Stablecoin;
2. Expanding the interpretation of Virtual Asset;
3. Change of designation Authority to the Virtual Assets Regulatory Authority of Kenya;
4. Clarification on renewal and duration of issuance of the license;
5. Changes in periodic reporting requirements;
6. Clarification on requirements of Fit and proper Persons;
7. Clarification on what constitutes Acquisition and Controlling Interest;
8. Amendment of Penalties and Fines;
9. Inclusion of insurance matters as an area for regulations;
10. Provide for detailed provisions on Issuance of Stablecoins within Kenya;
11. Provide for Tokenisation of Real World Assets (RWA);

**THE VIRTUAL ASSETS SERVICE PROVIDERS BILL, 2025**  
**MEMORANDUM OF PROPOSED AMENDMENTS AND JUSTIFICATIONS**

	The Clause No.	Current Clause	Proposed Amendment	Rationale and Justification
1.	Title	The Virtual Asset Service Providers Bill, 2025	Delete "Service Providers"  Maintain Virtual Assets Bill, 2025	<ul style="list-style-type: none"> <li>For the Bill to cover the usage of Virtual Assets as a whole and not only the service providers for example, it also covers the regulators, the assets and the service providers.</li> <li>Some jurisdictions such as Botswana have adopted this approach and it creates a broader title rather than only the service providers and would apply to other financial service providers that may venture into this industry.</li> </ul>
We request for the Amendment of this Bill by changing the Title to Virtual Assets Bill, 2025.				
2.	Part 1 - Preliminary  2. "Stablecoin"	"stablecoin" means a virtual asset designed to or that aims to have its value fixed or pegged relative to one or more reserve assets,	Define Stablecoins as  "stablecoin" means a virtual asset designed to have its value pegged to a specific reserve asset or a pool of reserve assets such as fiat	<ul style="list-style-type: none"> <li>The current provision excluded a pool of reserves and the virtual currency should be one with legal tender otherwise it takes away the purpose of the stable value.</li> </ul>

		including fiat currency, commodities or other virtual assets, for the primary purpose of maintaining a stable value of the stablecoin	currency, commodity or any other virtual currency with legal tender, for the purpose of maintaining its stable value.	<ul style="list-style-type: none"> <li>Other regulators have gone ahead to specifically state that algorithm-based stablecoins are excluded. An Algorithm-based stablecoin is a stablecoin that purports to maintain a stable value via protocols that provide for the increase or decrease of the supply of the stablecoins in response to changes in demand;</li> </ul>
	We request for the amendment of this Bill by expanding the interpretation and definition of “stablecoin” as suggested.			
3	Part 1 - Preliminary  2. “ <b>virtual asset</b> ”	<p>“<b>virtual asset</b>” means a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes and does not include</p> <p>digital representation of fiat currencies, securities and other financial assets</p>	<p>“<b>virtual asset</b>” means a digital representation of value that may be digitally traded, or transferred, and may be used for payment or investment purposes. It also includes digital representation of value that is —</p> <p>intended to represent a real-world asset on blockchain or any other technology, whether cryptographically-secured or otherwise, and that may confer rights, obligations, claims, or benefits associated with the underlying real-world asset; or</p>	<ul style="list-style-type: none"> <li>The current provision excludes digital representation of real world assets which are an integral part of virtual assets and also seems to exclude stablecoins which even if they are pegged to a value and do not fluctuate in value are still virtual assets.</li> </ul>

			backed up by assets held as collateral or reserved assets for the purpose of maintaining a stable value	
	We request for the amendment of this Bill by expanding the interpretation and definition of “virtual assets” as suggested.			
4.	Part 11- Designation of Regulatory Authority  Clause 6(a) (b) and (c)  First Schedule	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	Delete, “Capital Markets Authority” and “Central Bank of Kenya”  Add... There shall be an Authority called the “Virtual Assets Regulatory Authority of Kenya”  The Virtual Assets Regulatory of Kenya shall be made of expertise from the Capital Markets Authority, the Central Bank, other financial services regulators and virtual Assets Industry experts.	<ul style="list-style-type: none"> <li>• The current provision makes both the Capital Markets Authority and the Central Bank of Kenya as the regulatory Authorities which is going to be very bureaucratic for a start up industry.</li> <li>• Having two regulators is against global standards of innovation and makes it uncertain for the industry players creating an issue of over regulation.</li> <li>• The Virtual Assets Industry falls outside both the Capital Markets and Central bank mandate and while both regulators might have aspects of their mandate to oversee the Virtual Asset industry, it does not fall within traditional finance and therefore a non-bank regulator is the better option. Although still within the financial services industry, it is not traditional finance and therefore introducing a new regulator is the better</li> </ul>

				option for the industry for quick results and better management.
	We request for the amendment of this Bill by appointing the Regulatory Authority as the Virtual Assets Regulatory Authority of Kenya.			

5.	Clause 19(2) Fit and Proper Assessment	Entire Clause 19 (2)	Amendment of the entire clause	<ul style="list-style-type: none"> <li>- The “fit and proper” test and approval requirements could inadvertently create high entry barriers for young, local entrepreneurs who may not have extensive professional track records or prior leadership experience in regulated sectors.</li> <li>- Emerging founders, especially in developing markets, may struggle to meet stringent financial or professional standards, discouraging local innovation and participation in the VASP sector</li> </ul>
	We request for the amendment of the Fit and Proper Assessment to be more inclusive for start ups in the industry.			



6.	Clause 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	<p>Section should be HEADED AS <u>DURATION AND RENEWAL OF A LICENSE</u></p> <p>(1) A licence 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.</p>	<ol style="list-style-type: none"> <li>1. The Clause does not provide for renewal and grace period within which to renew.</li> <li>2. We propose that all licensees have 90 days from the date of expiry of the license to apply for renewal. So all renewals should be granted by 31st March.</li> <li>3. And roll over the ones that are granted in the last 90 days prior to 31 December and considerations for pro rated fees.</li> </ol>
We request for the amendment of this Bill by having a roll over period after licensing date of 31st December as suggested.				
7.	Clause 26(1) (f), (k)	The chief executive officer, appointed or designated under section 31(1) of this Act, shall, in writing notify the relevant regulatory authority where that chief executive officer becomes aware or has reason to believe that	<p>Delete the following from Clause 21(f) "including banking arrangements: and change 21 (k) to "a cyber-security incident that has occurred that leads to significant loss or creates a significant security incident.</p>	<ul style="list-style-type: none"> <li>- Deleting banking arrangement avoids licenses from reporting Day to Day incidents to the regulator. Current banking arrangements can be reported in a quarterly report.</li> <li>- Companies experience many cyber security incidents and it is only significant incidents that should be reported.</li> <li>- This might also bring confusion with the mandate of the Data Protection Office and reporting incidents with that office.</li> </ul>

		(f) there is a material change to the business including change to banking arrangements (k) a Cyber-security incident has occurred		
	We request for the amendment of this Bill by deleting clauses that will lead to over reporting of day to day activities as suggested.			
8.	Clause 27(2)(e)	(2) For the purposes of subsection (1), the following changes are material—  “the acquisition of a controlling interest in another company or other entity;”	Clarification of what constitutes acquisition and controlling interest.	<ul style="list-style-type: none"> <li>- In the case of a subsidiary VASP operating in Kenya, where the parent company is undergoing an IPO, does this constitute “material change” and does the relevant local regulator need to be notified for approval?</li> <li>- Is it events only related to the Kenya subsidiary level or also events at the parent level?</li> <li>- We also seek that approval of share transfers should be for instances where there will be a majority controlling interest in the VASP and not for every transfer even the minor small ones.</li> <li>-</li> </ul>
	We request for the amendment of this Bill by providing clarity on acquisition and controlling interest as suggested.			

9.	Clause 33(1)	<p>“Pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act and section 42A of the Prevention of Terrorism Act, the relevant regulatory authority shall regulate, supervise and enforce compliance for AML/CFT/CPF purposes by all virtual asset service providers.</p> <p>”</p>	<p>Amendment of the Proceeds of Crime and Anti-Money Laundering Act, and the Prevention of Terrorism Act.</p>	<ul style="list-style-type: none"> <li>- Section 33 requires that we refer to POCAMLA for all AML CFT and CPF matters including reporting suspicious transactions/activities(STR/SARs) to the Financial Reporting Center (FRC), however, POCAMLA does not recognize VASPS as reporting institutions.</li> </ul>
	<p>We request for the amendment of this Bill by amending the Proceeds of Crime and Anti-Money Laundering Act, and the Prevention of Terrorism Act as suggested.</p>			

10.	Clause 34(2)	Penalties for violations relating to money laundering, terrorism financing.  “A person who violates or fails to comply with the provisions of subsection (1) shall be liable to the penalty provided under section 41”	Include penalties for violations related to Money Laundering (ML), Terrorism Financing (TF), and Proliferation Financing (PF), as well as breaches of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) and the Prevention of Terrorism Act (POTA) under Section 41.	<ul style="list-style-type: none"> <li>- The specific penalties related to violations related to ML TF PF were not captured in section 41 as indicated in section 34(2).</li> <li>- Ensure these penalties are harmonized and aligned with those stipulated under these respective laws and regulations.</li> </ul>
We request for the amendment of this Bill by including penalties for violations to Money Laundering (ML), Terrorism Financing (TF), and Proliferation Financing (PF), as well as breaches of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) and the Prevention of Terrorism Act (POTA) under Section 41 as suggested.				
11.	Clause 41(1) (a) and (b); 41(2)(a) and (b); 41(3) (a) and (b)	41. (1) A person who commits an offence under section 28(5) is liable, upon conviction (a) in the case of an individual, to a fine not exceeding three million shillings or to imprisonment for a term not exceeding three years, or to both	<p>To delete current section and Add penalties as:</p> <ul style="list-style-type: none"> <li>- 41(1)(a); Kenya Shillings not exceeding 1,000,000 for individuals</li> <li>- 41(1)(b); Kenya Shillings not exceeding 2,000,000 for a company</li> <li>- 41(2)(a) - Not exceeding 2,000,000 for individuals</li> <li>- 41(2)(b) - Not exceeding 5,000,000 for a company</li> </ul>	<ul style="list-style-type: none"> <li>- To ensure punitive measures but also bear in mind startup industry and allow for growth of the industry. Penalties can be increased as the industry grows.</li> <li>- To ensure global standards and also national standards with other Fintech laws.</li> </ul>

		<p>(b) in the case of a company, to a fine not exceeding five million shillings</p> <p>(2) A person who commits an offence under section 11(8), 35(6), 38(5) or 39(6) is liable, upon conviction</p> <p>(a) in the case of an individual, to a fine not exceeding seven million shillings or to imprisonment for a term not exceeding three years, or to both</p> <p>(b) in the case of a company, to a fine not exceeding twenty million shillings</p> <p>(3) A person who commits an offence under section 9(3), 22(2), 34(2) or 35(7) is liable, upon conviction</p> <p>(a) in the case of an individual, to a fine not exceeding</p>	<ul style="list-style-type: none"> <li>- 41(3)(a) - Not Exceeding 5,000,000 for individuals</li> <li>- 41(3)(b) - not exceeding 7 million for a company.</li> </ul>	
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		ten million shillings or to imprisonment for a term not exceeding five years, or to both (b) in the case of a company, to a fine not exceeding twenty-five million shillings		
	We request for the amendment of this Bill by amending the penalties and fines as suggested.			
	<b>NOT INCLUDED IN THE BILL</b>			
1	Issuance of Stablecoins	N/A	<b><u>To Add in the Bill</u></b>  <b>Issuance of Stablecoins</b>  1. Any legal entity wishing to issue stablecoin within Kenya, or seeking an admission or listing of such stablecoin to be traded on the trading platform operated by a licensed virtual asset exchange in Kenya, seeks approval of the Regulatory Authority  2. A stablecoin issuer appoints a qualified asset valuer to demonstrate the reserve asset	<ul style="list-style-type: none"> <li>- Addition of this clause will ensure proper guidelines for issuance of stable coins in Kenya.</li> </ul>

			<p>underlying the stablecoin and how the stablecoin is pegged to it.</p> <ol style="list-style-type: none"> <li>3. The valuation confirms that stablecoins are 100% collateralized to ensure fully backed reserve assets are maintained at all times, and are to be ring-fenced and not lent out for additional yield. The regulatory authority may issue regulations specifying the conditions under which reserve assets may be invested.</li> <li>4. The independent auditor confirms that the reserve assets are sufficiently liquid to cover in a reasonable and timely manner redemption requests of all outstanding stablecoins.</li> <li>5. Stablecoin issuer provides means for verification of underlying reserve assets.</li> <li>6. Reserve assets are safeguarded by a professional and licensed custodian, and are subject to regular audits</li> <li>7. Reserve assets are segregated from the stablecoin issuer's assets or other creditors of the</li> </ol>	
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			<p>stablecoin issuer to protect stablecoin holders in the event of the issuer's insolvency or bankruptcy.</p> <p>8. The Regulatory Authority's regulations may determine additional requirements for issuance and trading of stablecoins.</p>	
	We request for the amendment of this Bill by providing for issuance of stablecoins as suggested.			
2	Tokenisation of Real World Assets	N/A	<p><b>"real-world asset"</b> refers to an asset that exists in the physical or traditional financial world, but which can be represented, tokenized, or traded in digital form on blockchain network</p> <p><b>Tokenisation of Real World Assets</b></p> <p>1. Any legal entity wishing to issue tokens representing real-world assets within Kenya or seeking admission or listing of such tokens to be traded on the trading platform operated by a licensed virtual asset exchange in Kenya, seeks approval from the Regulatory Authority.</p>	



			<ol style="list-style-type: none"> <li>2. A qualified asset valuer properly values the asset underlying a token, and the valuation must be transparent, periodic and regularly updated.</li> <li>3. The valuation confirms that tokens are 100% collateralised, and the underlying assets are to be ring-fenced and not lent out for additional yield.</li> <li>4. Underlying real-world assets are held by a professional and licensed custodian and are subject to regular audits.</li> <li>5. The issuer provides verifiable documentation proving the issuer's ownership of the underlying asset.</li> <li>6. For the purposes of this law, real-world assets eligible for tokenisation do not include sovereign assets, public infrastructure, Personal Identifiable Information, artworks, and any other asset or category of assets that cannot be transparently valued, legally enforced and ethically justified.</li> </ol>	
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			7. The Regulatory Authority may, from time to time, designate real-world assets which are inappropriate or unlawful for tokenisation based on public interest or regulatory risk considerations.	
	We request for the amendment of the Bill by inclusion of provisions on Tokenisation of Real world Assets as suggested.			

**-THE END-**

# CERTIFICATE *of* SIGNATURE

REF. NUMBER

JTVZZ-SJAGH-TMUEZ-EB5LM

DOCUMENT COMPLETED BY ALL PARTIES ON

25 MAY 2025 21:38:24 UTC

## SIGNER

**EDLINE MURUNGI**

EMAIL

EDLINE@YELLOWCARD.IO

## TIMESTAMP

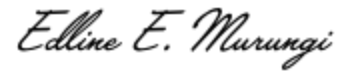
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