



## RULES APPLICABLE TO DIGITAL ASSET SERVICE PROVIDERS

References: Articles 721-1 to 721-1-3, 721-3, 721-4, 721-6, 721-7 to 721-14, 722-1 to 722-4 and 722-9 of the AMF General Regulation

### 1. REGISTRATION AND APPLICATION FOR LICENSE

Pursuant to Articles L. 54-10-3 and D. 54-10-2 of the French Monetary and Financial Code ("**MFC**"), persons who provide the services of custody on behalf of third parties or access services to digital assets<sup>1</sup>, purchasing or selling of digital assets against legal tender<sup>2</sup>, trading digital assets for other digital asset service<sup>3</sup> and operating of a digital asset trading platform<sup>4</sup> **must register with the AMF**. Pursuant to Article L. 54-10-5 of the MFC, service providers established in France may, in order to provide, as their usual profession, one or more services mentioned in Article L. 54-10-2 of the same code, **apply to the AMF for a license**.

The application to be submitted to the AMF shall include the following:

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<sup>1</sup> Article L. 54-10-2 1° of the MFC.

<sup>2</sup> Article L. 54-10-2 2° of the MFC.

<sup>3</sup> Article L. 54-10-2 3° of the MFC.

<sup>4</sup> Article L. 54-10-2 4° of the MFC.

## 1.1 Applicant information

### 1.1.1 Subject of the request

Name of the applicant for which the application is being made:

Provide a copy of the documents of incorporation of the company and, if applicable, the unique identification number referred to in Article D. 54-10-6, I, 3° of MFC<sup>5</sup>.

Date of creation of the application:

Person responsible for preparing the registration/license application			
Name:		Job title(s) / Position(s):	
Phone No.:		Email address:	

Person(s) responsible for the effective management of the applicant and for the application <sup>6</sup>		
Name:		
Signatory's capacity:		
Email address:		
Signature:		

Nature of the application (tick the corresponding box(es)):

Mandatory registration:

service 1 ☐

service 2 ☐

service 3 ☐

service 4 ☐

Optional licence:

service 1 ☐

service 2 ☐

service 3 ☐

service 4 ☐

service 5(a) ☐, (b) ☐, (c) ☐, (d) ☐, (e) ☐, (f) ☐

<sup>5</sup> Unique identification number issued by INSEE in accordance with the law n° 94-126 of 11 February 1994 on initiative and sole proprietorship.

1.1.2 Programme of operations

To enable the AMF and ACPR<sup>7</sup> departments to carry out the appropriate checks, the applicant shall provide:

- 1) the draft of the articles of association or the articles of association;
- 2) where applicable, if the company has already been incorporated, the certificate of registration to the companies register;
- 3) a detailed description of all the activities that are subject of the application for registration and/or licence in order for the AMF services to legally qualify these activities and have an exact knowledge of the business model carried out by the applicant;
- 4) a list of all the activities that the applicant carries out or will carry out, other than those that are subject of the application for registration and/or licence, so as to the AMF services can have an understanding of how the activities on digital assets fit into the applicant's global business model;
- 5) the list and nature of the digital assets and other assets (e.g. electronic money, financial instruments) on which the activities are based;
- 6) the geographical distribution of its activities, specifying the nature of the customer base and the number of clients per geographical area;
- 7) a detailed organisation chart, mentioning the persons in charge of the activities carried out (resume attached) as well as the number of staff assigned to each of these activities for the next two fiscal years; and
- 8) a diagram of the digital asset flows and reverse currency flows, with narrative explanations and detailing the chronology of these flows as well as the nature and names of the intermediaries involved in the process. More precisely, each step should be detailed and the digital asset and currency flows clearly identified (e.g., in different colours), with an explanatory paragraph.

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<sup>6</sup> The authorised signatory affirms the completeness and accuracy of the information contained in this application.

<sup>7</sup> In accordance with Article L. 54-10-3 of the MFC, the AMF shall receive opinion from the ACPR as part of the registration procedure.

## **1.2 Information relating to the good reputation and skills of its senior managers and shareholders**

### **1.2.1 Information relating to its senior managers**

Pursuant to Articles L. 54-10-3 and D. 54-10-2 of the MFC, at least one senior manager heads the digital asset service provider. The applicant shall provide the following information on the senior manager(s):

- identity of the senior managers;
- for non-corporate officers, the nature and limits of the special authorizations granted to the company representatives need to be specified. These must be explicitly mentioned in the articles of association or draft articles of association or
- minutes of the collegiate bodies attached to the file;
- information relating to **the good reputation of the senior manager(s)**:
  - a criminal record certificate for the chairman, managing director, assistant managing directors or managers, and any other person performing equivalent duties; and, where appropriate,
  - complaints filed and proceedings instituted that may have an impact on his or her good reputation, that are less than five years old and of which he or she may have knowledge and that could be transmitted without violating any applicable law or regulation;
  - sanction decisions of an administrative, civil, or criminal nature against that person;
  - any other information concerning any refusal of registration, license, affiliation or granting of a license required to perform commercial or professional activities, and concerning any withdrawal, revocation or cancellation of a registration, license, affiliation or professional license, or any delisting by a public authority in the financial sector or not, or by a professional association, whether French or from a third country (including the identity of such an authority or association, the date of the assessment and proof of the result of this assessment);
  - any assessment of the person's reputation as a senior manager that has already been carried out by another competent authority, whether French or from a third country (including the identity of such authority, the date of the assessment and proof of the result of this assessment);
  - the financial and business performance of the entities owned or managed by the DASP senior manager over the past five years;
  - any amicable settlement or legal proceedings in France or abroad aimed at settling the debts of a

company of which one of the senior managers was or still is a manager, significant shareholder or partner dating back less than five years;

- personal bankruptcy or any other prohibition measure provided for in Articles L. 653-1 et seq. of the French Commercial Code, or even any prohibition from directing, managing, administering or controlling a company dating back less than five years.
- an attestation by the senior manager(s) declaring that he or she is/they are not subject to the prohibitions set out in Article L. 500-1 of the MFC;
- an attestation from the senior manager(s) declaring that he or she is/they are not registered in one of the files of the France central bank (“Banque de France”) or its foreign equivalents, i.e. :
  - the Central Cheque Register (“Fichier central des cheques, FCC”), which centralizes payment incidents and bans on the issuing of cheques and the withdrawal of bank cards for improper use;
  - the Personal Credit Repayment Incidents national register (“Fichier national d’incidents de remboursement, FICP”) which concerns credit and over indebtedness;
- information **on the minimum time** that will be devoted to the performance of their duties by these persons; and
- information relating to knowledge and skills of the senior manager(s):
  - the attestation certifying that the senior manager(s) have sufficient knowledge and skills to perform their duties so as to be able to understand the main risks to which the service provider is exposed, and to comply with the requirements that are applicable to it by virtue of Chapters I and II of Title VI of Book V of the MFC;
  - a resume specifying their studies, the relevant professional training they have undertaken, their professional experience, including in particular the names of all the organisations for which they have worked and the nature and duration of the positions held, indicating those they consider relevant to the position for which they are applying.

#### 1.2.2 Information relating to its shareholders

The information requested concerns natural persons who either (i) own, directly or indirectly, more than 25% of the share capital or voting rights of the service provider applying for a registration, or more than 10% of the share capital or voting rights of the service provider applying for a license, or (ii) exercise, by any other means, a power of control over the said service provider within the meaning of Article L. 233-3, I, 3° and 4° of the French Commercial Code:

- the identity of its shareholders ;
- information relating to the good reputation of its shareholders:
  - a criminal record certificate; or
  - any other information concerning any refusal of registration, license, affiliation or granting of a license required to perform commercial or professional activities, and concerning any withdrawal, revocation

or cancellation of a registration, license, affiliation or professional license, or any delisting by a public authority or by a professional association;

- an attestation by the shareholders declaring that they are not subject to the injunctions set out in Article L. 500-1 of the MFC;
- information relating to knowledge and skills:
  - the attestation that the shareholders have sufficient knowledge and skills to perform their duties so as to be able to understand the main risks to which the service provider is exposed, and to comply with the requirements that are applicable to it by virtue of Chapters I and II of Title VI of the MFC;
  - a resume.

### **1.3 Information relating to the anti-money laundering and terrorist financing system (AML-CFT)**

Since the entry into force of the Ordinance No. 2020-1544 of December 9, 2020, pursuant to Article L. 54-10-3 of the MFC, the digital asset service providers of the services mentioned in 1° to 4° of Article L. 54-10-2 of the MFC are subject to registration. However, only the services mentioned in 1° and 2° of Articles L. 54-10-2 of the MFC are subject to a prior control of some elements of the AML/CFT system.

#### **1.3.1 Risk classification**

The applicant shall include in its programme of operations details of (i) the information relating to its target clients (characteristics, legal nature, geographical aspects, etc.) and (ii) the distribution channel planned for each service provided.

If the company belongs to a group, it shall present the group's organisation chart, indicating in particular the capital links between the various entities of the group and, for each entity, its company name, the country in which its registered office is located and the nature of its business.

It shall provide a classification of the money laundering and terrorist financing risks, in accordance with Article L. 561-4-1 of the MFC, taking into account in particular the risks associated with clients, the nature of the products and services provided, the distribution channels planned and the geographical areas of operation.

#### **1.3.2 Organisation of the AML/CFT system**

Name and resume of the person in charge of the AML/CFT system referred to in Article L. 561-32 of the MFC.

##### **AML/CFT internal controls:**

- provide the name of the person responsible for permanent control;
- provide the name of the person responsible for periodic control.

**Client due diligence:**

- describe the procedures for distinguishing between business relationships and occasional clients, particularly for foreign exchange activities;
- describe the procedures for identifying and verifying the identity of clients and, where applicable, effective beneficiaries, including where a relationship is entered into remotely;
- describe the procedures for identifying operations carried out by occasional clients mentioned in Article R. 561-10, II, 5° of the MFC;
- describe which items of information are collected and analysed, from those mentioned in the Order of September 2, 2009 adopted pursuant to Article R. 561-12 of the MFC (obligation of due diligence with regard to the business relationship), for the purpose of knowing clients through a risk-based approach, and the procedures for updating them;
- provide an operational description of the due diligence measures that the institution plans to implement in the cases provided for in Articles L. 561-10 and L. 561-10-1 of the MFC.

**1.3.3 System for suspicious transactions**

- describe the procedures for (i) detecting atypical or suspicious transactions with regard, where applicable, to the business relationship profile, based on criteria and materiality thresholds; (ii) processing alerts by means of documented analysis, leading to a duly justified decision to take no further action, to an enhanced review of the case within the meaning of Article L. 561-10-2 of the MFC, or to a suspicious transaction report;
- describe the operational procedures for complying with the reporting requirements of TRACFIN;
- provide the name and resume of the TRACFIN correspondent referred to in Article R. 561-24 of the MFC;
- provide the name and resume of the TRACFIN reporting person referred to in Article R. 561-23 of the MFC.

**1.3.4 System for assets freeze**

Provide a description of the system for assets freeze and prohibiting their availability or use and the operational procedures for processing alerts generated by this system, for implementing assets freeze measures and measures prohibiting their availability or use and for lifting these measures, and for informing the Minister for the Economy as provided for in Articles L. 562-4 and R. 562-3 of the MFC.

## 1.4 Additional information required for reinforced registration and optional license

### 1.4.1 Information that applies to all services

In addition to the information provided in 1.1.2, the applicant **shall provide the following information in addition to his programme of operations:**

- a description of the systems and means put in place to comply with the provisions of Chapter X of Title IV of Book V of the MFC and Title II of Book VII of the AMF General Regulation;
- a description of the governance arrangements;
- a description of the human and technical resources allocated to the various activities envisaged;
- an plan for the cessation of its activities;
- a description of the system of security and internal control including informations relating to:
  - the organizational structure, specifying the reporting lines and the allocation of duties and responsibilities;
  - internal control mechanisms designed to ensure respect of the decisions on each level of the DASP;
  - measures taken to ensure the resilience and security of the information system set up to provide the digital asset services, as well as a description in non-technical language;
  - policies on the continuity of activities that ensure, in the event of the interruption of the system or the process, the data back-up and essential duties as well as the continuity of services and activities or, if not possible, in order to enable the recovery in due course of these datas and duties, and the resumption of activities and services;
  - procedures to ensure that the persons involved are well informed of the procedures to be followed to proper exercise of their responsibilities;
- a list of the services or other essential or important operating tasks entrusted, long-term and on a regular basis, by the service provider to a third party, or intended to be so, and contracts signed or planned with said service providers;
- items set out in the instruction 2019-24 on the cybersecurity system of requirement;
- the measures taken to detect, prevent and handle conflicts of interest which may arise on the occasion of the provision asset services under the conditions stipulated in Article 721-9 of the AMF General Regulation including the following informations:
  - procedures, organization and systems set up by the DASP in order to monitor, evaluate and review the effectiveness of its conflicts of interest policy and, where necessary, remedy to nay identified shortcomings or, where it has not been possible to avoid them, inform the customer(s) involved;
  - the mapping of potential conflicts of interest identified by the DASP, as well as the measures put in place to avoid and manage them where necessary;
  - procedures for recording conflicts of interest that have arisen, including the way they have been identified, assessed, corrected and, if appropriate, disclosed to the customer and the follow-up carried out;
  - measures taken to ensure that policies and practices of remuneration or incentive do not favor the interests of the DASP or any other client to the potential detriment of another client;
  - procedures for transactions by the DASP staff that could give rise to a conflict of interest;
  - the frequency of review of procedures, the organization and systems relating to conflicts of interest;
  - the organization and resources allocated to the functions responsible for monitoring, evaluating and reviewing of the DASP's conflict of interests managements policy and for annual reporting on conflict



- a description of systems and risk controls when the company uses automated trading systems;
- a description of internal control and risk management systems;
- a description of the systems for assessing and managing the anti-money laundering and combating financing of terrorism obligations;
- the complaints management procedure and a description of the organization and resources allocated to handling complaints; and
- the pricing policy.

#### 1.4.2 Custody policy

For the service mentioned in 1° of Article L. 54-10-2 of the MFC, the service provider also provides a description of the custody policy providing rules and internal procedures to ensure the custody and control on these digital assets, or the means of access to these digital assets, such as cryptographic keys. These rules and procedures do not minimize the risk of loss of clients' digital assets or any right relative to such assets, or of the means of access to digital assets due to fraud, cyber threat or negligence.

This custody policy describes, at a minimum:

- operational procedures for implementing Article 722-1 of the AMF General Regulation;
- procedures and deadlines for returning client assets;
- where applicable, criteria for selecting sub-custodians and evaluating the risks associated with these sub-custodian;
- its accounting organization for digital asset accounts and, where applicable, cash accounts held on behalf of its clients, making if possible to justify the transactions and balances appearing in these accounts;
- controls put in place to ensure the accuracy of entries made on client accounts, and to ensure compliance with the obligation set out in paragraph 8 of Article 722-1.

### 1.5 **Others éléments requis au titre de l'agrément optionnel**

#### 1.5.1 Elements common to all services

- **the identity of the shareholders**, direct and indirect, natural or legal persons, who own at least 10% of the capital or the voting rights of the service provider, or have any other possible means of exerting a significant influence over the management of the company, and the amount of their stake;
- where applicable, calculations of estimated equity requirements.

**For companies that are already operational:** the statutory financial statements, on the individual level and, where applicable, the consolidated and sub-consolidated levels for the last three financial years, approved, when they are audited, by a statutory auditor, including the balance sheet, profit and loss account, annual reports and financial notes and, where applicable, the report of a statutory auditor covering the last three years or the period elapsed since the start of operations.

In addition to the information provided in 1.1.2 and 1.1.4, the applicant **shall provide the following information in addition to his programme of operations:**

- an insurance certificate and a professional indemnity insurance policy, or any means of ensuring that the applicant has the minimum level of equity required;

- a policy relating to externalization;
- a description of the commercialization conditions of digital assets; and
- financial informations on the service provider on an individual basis and, where applicable, consolidated and sub-consolidated including provisional informations datas as:
  - provisional accounting system for the first three accounting exercices; and
  - the planning assumption used for the said provisional informations and details on figures, including the number and the type of expected clients, the expected volume of transactions and orders.

#### 1.5.2 Additional information specific to each service

For the services mentioned in 2° and 3° of Article L. 54-10-2 of the MFC, the service provider also provides a description of its execution policy and a commercial policy non discriminatory, organizing the relationship with its clients as well as a description of the methods to determine the price of digital assets.

For the services mentioned in 4° of Article L. 54-10-2 of the MFC, he provides the operating rules of the digital asset trading platform.

For the services mentioned in 5°b and 5°c of Article L. 54-10-2 of the MFC, proof that the natural persons who provide advice or manage portfolios on behalf of applicants have the knowledge and expertise required to fulfil their obligations.

## 2. EQUITY REQUIREMENTS APPLICABLE TO DIGITAL ASSET SERVICE PROVIDERS

### 2.1 Principles

I. – The digital asset service provider shall have continuous access to equity at least equal to the highest amount of the following amounts:

- a) A quarter of the fixed equity requirement of the previous year, reviewed annually;
- b) the equity requirement based on minimum capital;

II. The service provider shall carry out the calculations referred to in paragraph I at the latest within three months after the end of the previous financial year. If necessary, it shall rectify any irregularity in its equity no later than the last working day of the six months following the end of the previous financial year.

Where exceptional circumstances require it, the digital asset service provider shall carry out the above calculations and, if necessary, rectify any irregularity in its equity promptly.

## **2.2 Equity requirement based on fixed overheads**

The service provider for digital assets shall have an amount of equity at least equivalent to one quarter of the fixed overheads determined as follows:

I. – The service provider shall calculate its fixed overheads based on the annual financial statements at the end of the previous financial year by subtracting the following items from the total expenses for the financial year after distribution of profits to shareholders:

- a) fully discretionary staff bonuses;
- b) employees', senior managers' and partners' shares in profits, to the extent that they are fully discretionary;
- c) other appropriations of profits and other variable remuneration, to the extent that they are fully discretionary;
- d) shared commission and fees payable which are directly related to commission and fees receivable, which are included within total revenue, and where the payment of the commission and fees payable is contingent upon the actual receipt of the commission and fees receivable;
- e) interest paid to customers on client money;
- f) non-recurring expenses from non-ordinary activities;
- g) research and development expenses.

II. – Where fixed expenses have been incurred on behalf of the digital asset service provider by third parties and are not already included in the total expenses referred to in the above paragraph, the service provider shall take one of the following measures:

- a) where a breakdown of the expenses of such third parties is available, the service provider shall determine the amount of fixed expenses incurred by such third parties on its behalf and add that amount to the figure resulting from the above paragraph;
- b) where the breakdown referred to in point a) is not available, the service provider shall determine the amount of expenses incurred on its behalf by such third parties in accordance with the service provider's business plans and add that amount to the figure resulting from the above paragraph.

III. – Where the digital asset service provider's annual financial statements for the end of the previous financial year do not reflect a 12-month period, the service provider uses the fixed equity requirements expected in their projections for the first twelve months of service providing, as they have been submitted with their application of registration.

## **2.3 Equity requirement based on minimum capital (share capital)**

The minimum capital required for a digital asset service provider is:

Class 1: €50,000 for the provision of the services referred to in Article L. 54-10-2 5° a), b), c), e) and f) of the MFC.

Class 2: €125,000 for the provision of the services referred to in 1°, 2° and 3° of Article L. 54-10-2 of the MFC.

Class 3: €150,000 for the provision of the service referred to in 4° of Article L. 54-10-2 of the MFC.

### 3. POST-TRADE TRANSPARENCY

#### 3.1 Liquidity criterion for digital assets

Where digital assets meet the following criterion, the digital asset service provider is not subject to the publication requirement provided for in Article 722-9 I of the AMF General Regulation:

The total sum of digital asset capitalisations recorded on the last business day of the last four quarters divided by 4 is less than €200,000,000.

For digital assets that have been issued for less than one year, the calculation is performed by adding the capitalisation on the last business day of each available quarter and dividing this total by the number of available quarters.

For digital assets issued less than 3 months previously, the capitalisation on the day of issue must be used.

The capitalisation is calculated by multiplying the number of digital assets by the euro value of the digital asset.

#### 3.2 Calculation date

The digital asset service provider shall carry out the calculation provided for in Article 3 by the fifth working day of the quarter at the latest.

### Version history

Version number	Version date
<u>Version 1.0</u>	December 20, 2019
<u>Version 1.1</u>	April 23, 2021
<u>Version 1.2</u>	December 15, 2022