



RULES APPLICABLE TO DIGITAL ASSET SERVICE PROVIDERS (VERSION 1.2)

References: Articles 721-1, 721-6 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 assets¹, purchasing or selling of digital assets against legal tender², trading digital assets for other digital asset service³ and operating of a digital asset trading platform⁴ **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:

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 MFC⁵.

Date of creation of the application:

| Person responsible for preparing the registration/license application | | | |
|---|--|--------------------------------|--|
| Name: | | Job title(s) / Position(s): | |

¹ Article L. 54-10-2 1° of the MFC.

² Article L. 54-10-2 2° of the MFC.

³ Article L. 54-10-2 3° of the MFC.

⁴ Article L. 54-10-2 4° of the MFC.

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

| | | | |
|------------|--|----------------|--|
| Phone No.: | | Email address: | |
|------------|--|----------------|--|

| | | |
|--|--|--|
| Person(s) responsible for the effective management of the applicant and for the application⁶ | | |
| 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) ☐

1.1.2 Programme of operations

To enable the AMF and ACPR⁷ departments to carry out the appropriate checks, the applicant shall provide:

- 1) 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;
- 2) 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;
- 3) 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 authorised signatory affirms the completeness and accuracy of the information contained in this application.

⁷ 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.

- 4) the geographical distribution of its activities, specifying the nature of the customer base and the number of clients per geographical area;
- 5) 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
- 6) 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.

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 manager(s);
- 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 service provider’s share capital or voting rights, 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 reputé of its shareholders:
 - a criminal record certificate for the natural persons who either (i) own, directly or indirectly, more than 25% of the service provider’s share capital or voting rights, 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; 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 optional license

1.4.1 Information that applies 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;

- information on the financial position of the applicant on the individual level and, where applicable, the consolidated and sub-consolidated levels, comprising forecast figures including:
 - o projected charts of accounts for the first three financial years; and
 - o the planning assumptions used for the projections referred to above, and explanations concerning the figures, including the expected number and type of clients, the expected volume of transactions and of orders;
- 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, 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;
- 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 description of the human and technical resources allocated to the various activities envisaged, including the internal control function;
- 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;
- the measures taken to ensure the resilience and security of the information system set up for provision of the digital asset service;
- the measures taken to detect, prevent and handle conflicts of interest which may arise on the occasion of the provision of digital asset services;
- a description of the systems for monitoring the company's activities, including, where applicable, backup systems, and risk control systems when the company wants to use automated trading systems;
- information on the systems for verifying internal control and risk management; and
- details regarding the systems for evaluating and managing the risks of money laundering and financing of terrorism.

1.4.2. Additional information specific to each service

For the service of operation of a digital assets trading platform, these information are the operating rules of the digital asset trading platform.

1.4.3. IT security

When requested by the AMF:

- the certificate issued under the conditions provided for by Decree No. 2002-535 of April 18, 2002 on the evaluation and certification of the security offered by information technology products and systems; or
- the security audit performed by a trusted services provider qualified under the conditions provided for by Decree 2015-350 of March 27, 2015 relating to the qualification of security products and trusted service providers for information systems security requirements or Decree 2010-112 of February 2, 2010 adopted for the application of Articles 9, 10 and 12 of Ordinance 2005-1516 of December 8, 2005 relating to electronic exchanges between users and administrative authorities, and between administrative authorities.

2. EQUITY REQUIREMENTS APPLICABLE TO DIGITAL ASSET SERVICE PROVIDERS

2.1 Principles

I. – The digital asset service provider shall have continuous access to equity corresponding to at least the highest amount of the amounts resulting from the following calculation methods:

- a) the equity requirement based on fixed overheads;
- b) the equity requirement based on minimum capital;
- c) the equity requirement based on level of activity.

II. – If a digital asset service provider provides more than one digital asset service, it shall have equity at least equal to the higher of the amounts of equity calculated for each of the services in accordance with paragraph I (c).

III. – 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 shall divide the result of the calculation of the above paragraphs by the number of months reflected in those financial statements and then multiply the result by 12 to produce an equivalent annual amount.

2.3 Equity requirement based on minimum capital (share capital)

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

- €50,000 for the provision of the services referred to:
 - o in Article L. 54-10-2 2° and 3° of the MFC, under the conditions stipulated in Article 722-5 2° of the AMF General Regulation;
 - o in Article L. 54-10-2 4° of the MFC, except in the case referred to in Article 722-14 of the AMF General Regulation;
 - o in Article L. 54-10-2 5° a), c) and f) of the MFC.
- €150,000 for the provision of the services referred to:
 - o in Article L. 54-10-2 1° and 5° b), d), and e) of the MFC;
 - o in Article L. 54-10-2 2° and 3° of the MFC, under the conditions stipulated in Article 722-5 1° of the AMF General Regulation;
 - o in Article L. 54-10-2 4° of the MFC for the sole case referred to in Article 722-14 of the AMF General Regulation.

2.4 Equity requirement based on level of activity

2.4.1 Principle

The licensed digital asset service provider shall have an amount of equity which must at all times exceed 4.5% of the digital assets it holds on its own account.

In addition, as long as it has closed at least one financial year, it shall have a minimum amount of equity corresponding to its level of activity in the category of services provided.

Where a financial year lasts more than or less than 12 months, the service provider shall divide the result of the calculation of the paragraphs below by the number of months reflected in those financial statements and then multiply it by 12 to produce an equivalent annual amount.

Where the digital asset service provider provides more than one licensed service, the minimum amount of equity required shall be the highest amount of equity required for each of its activities.

2.4.2 Provision of the custody service referred to in Article L. 54-10-2 1° of the MFC

The digital asset service provider licensed to provide the digital asset custody service on behalf of third parties as referred to in Article L. 54-10-2 1° of the MFC shall calculate the level of activity as follows:

The sum in euros of the amount of assets held on behalf of clients as recorded on the last business day of each full quarter during the most recent financial years ended, up to a maximum of three financial years, divided by the number of quarters taken into account. The level of equity required is determined by multiplying the level of activity by 0.02.

2.4.3 Provision of the service of purchase or sale of digital assets against legal tender and the service of trading digital assets against other digital assets referred to in Article L. 54-10-2 2° and 3° of the MFC

The digital asset service provider licensed to provide the service of purchase or sale or trading of digital assets as referred to in Article L. 54-10-2 2° and 3° of the MFC shall calculate the level of activity as follows:

The level of activity is equal to the sum in euros of the transactions carried out during the most recent financial years ended, up to a maximum of three financial years, divided by the number of financial years taken into account. The level of equity required is determined by multiplying the level of activity by 0.0005.

2.4.4 Provision of the service of operation of a digital asset trading platform referred to in Article L. 54-10-2 4° of the MFC

The digital asset service provider licensed to provide the service of operation of a digital asset trading platform as referred to in Article L. 54-10-2 4° of the MFC shall calculate the level of activity as follows:

The sum in euros of the transactions carried out during the most recent financial years ended, up to a maximum of three financial years, divided by the number of financial years taken into account. The level of equity required is determined by multiplying the level of activity by 0.0005.

2.4.5 Provision of the service of management of digital asset portfolios on behalf of third parties referred to in Article L. 54-10-2 5° b) of the MFC

The digital asset service provider licensed to provide the service of management of digital asset portfolios on behalf of third parties as referred to in Article L. 54-10-2 5° b) of the MFC shall calculate the level of activity as follows:

The average digital assets under management in euros as recorded on the last business day of each full quarter during the most recent financial years ended, up to a maximum of three financial years, divided by the number of quarters taken into account. The level of equity required is determined by multiplying the level of activity by 0.0005.

2.4.6 Provision of the service of digital asset underwriting referred to in Article L. 54-10-2 5° d) of the MFC

The digital asset service provider licensed to provide the service of digital asset underwriting as referred to in Article L. 54-10-2 5° d) of the MFC shall calculate the level of activity as follows:

The sum in euros of the amount of digital asset underwriting transactions during the most recent financial years ended, up to a maximum of three financial years, divided by the number of financial years taken into account. The level of equity required is determined by multiplying the level of activity by 0.0005.

2.4.7 Provision of the service of placing of digital assets on a firm commitment basis referred to in Article L. 54-10-2 5° e) of the MFC

The digital asset service provider licensed to provide the service of placing digital assets on a firm commitment basis as referred to in Article L. 54-10-2 5° e) of the MFC shall calculate the level of activity as follows:

The sum in euros of the amount of digital assets not invested at the closing date of each placement transaction on a firm commitment basis during the most recent financial years ended, up to a maximum of three financial years, divided by the number of financial years taken into account. The level of equity required is determined by multiplying the level of activity by 0.0005.

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 |