



RULES APPLICABLE TO DIGITAL ASSET SERVICE PROVIDERS

References: Articles 721-1, 721-6 and 722-9 of the AMF GR

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 custody services on behalf of third parties or access services to digital assets¹ and providers of services of purchase or sale of digital assets against legal tender² **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 MFC³.

Date application prepared:

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

¹ Article L. 54-10-2 1° of the MFC.

² Article L. 54-10-2 2° of the MFC.

³ Unique identification number issued by INSEE in accordance with the law n° 94-126 of 11 February 1994 on initiative and sole proprietorship.

Person(s) responsible for the effective management of the applicant and for the application ⁴		
Name:		
Signatory's capacity:		
Email address:		
Signature:		

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

Mandatory registration: service 1 ; service 2

Optional license:

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 ACPR⁵ departments to carry out the appropriate checks, the applicant shall provide at least:

- a detailed organisation chart, showing the persons in charge of the activities performed (attach their CVs) and the number of employees allocated to each of these activities for the coming two financial years;
- a description of the activities that the applicant performs or will perform;
- the list or categories of digital assets covered by the activities; and
- the geographic breakdown of its activities.

⁴ The authorised signatory affirms the completeness and accuracy of the information contained in this application

⁵ 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 repute and skills of its senior managers and shareholders

1.2.1. Information relating to its senior managers

The applicant shall provide the following information:

- identity of its senior managers ;
- information relating to **the good repute of its senior managers** :
 - a criminal record certificate for the chairman, managing director, assistant managing directors or managers, and any other person performing equivalent duties; 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 senior managers declaring that they are not subject to the prohibitions set out in Article L. 500-1 of the MFC;
- 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 managers:
 - the attestation certifying that the senior managers 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 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 repute of its shareholders:
 - a criminal record certificate for the natural persons or the chairman, managing director, assistant managing directors or managers, and any other person performing equivalent duties on behalf of the shareholders that are legal entities; 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 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.

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

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; and, where appropriate,
- the risk classification established at the group level.

1.3.2. Organisation of the AML/CFT system

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

Resources: Provide a forecast of changes to the workforce allocated to the company's internal controls for the first two years (or the next two years if the activity is pre-existing) and of the corresponding payroll, showing these changes are consistent with the nature, volume and risks of the planned operations.

Procedures: Specify the first and second level control procedures that shall be implemented, including the frequency of controls, the reporting systems and the procedures for adopting the corrective measures provided for in Article R. 561-38-8 of the MFC, specify the periodic control programme, the internal and/or external resources planned to perform the periodic control.

If the company belongs to a group: Provide the procedures developed for the entire group and the name and CV of the person responsible for implementing the group's AML/CFT system, as provided for in Articles L. 561-4-1, L. 561-32 and L. 561-33 of the MFC.

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 2 September 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, in particular in relation to politically exposed persons.

Staff training:

- provide the company's AML/CFT procedures manual for staff;
- specify the procedures for training staff and providing them with information on AML-CFT, as well as the resources allocated for this purpose.

1.3.3. Outsourcing AML/CFT

If the company is considering outsourcing the implementation of AML/CFT or the freezing of assets:

- specify the services concerned;
- provide the name of the service provider(s) providing these services;
- specify the main characteristics of the agreements (duration, respective responsibilities of the parties, audit clauses, access to information, contingency plans, level of quality expected from the service provider, monitoring system for outsourced activities, breach of contract conditions, and potential risks identified);
- forward copies (or drafts) of outsourcing agreements or, failing that, the specifications;
- explain, where appropriate, the procedures and means used to control the provision of outsourced services.

1.3.4. 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 CV of the TRACFIN correspondent referred to in Article R. 561-24 of the MFC;
- provide the name and CV of the TRACFIN reporting person referred to in Article R. 561-23 of the MFC.

1.3.5. System for freezing assets

Provide a description of the system for freezing assets and prohibiting their availability or use and the operational procedures for processing alerts generated by this system, for implementing asset freezing 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:
 - projected charts of accounts for the first three financial years; and
 - 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 GR;
- 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 trading platform for digital assets, 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 18 April 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 27 March 2015 relating to the qualification of security products and trusted service providers for information systems security requirements or Decree 2010-112 of 2 February 2010 adopted for the application of Articles 9, 10 and 12 of Ordinance 2005-1516 of 8 December 2005 relating to electronic exchanges between users and administrative authorities, and between administrative authorities.

1. 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

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 trading platform for digital assets 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 trading platform for digital assets 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.