

New Virginia Law Permits Banks to Provide Virtual Currency Custody Services

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On April 11, Virginia enacted a new law ([HB 263](#)), which goes into effect on July 1, 2022, permitting “banks” to provide customers with “virtual currency custody services so long as the bank has adequate protocols in place to effectively manage risks and comply with applicable laws.” The law, in a first for Virginia, defines “virtual currency” as “an electronic representation of value intended to be used as a medium of exchange, unit of value, or store of value,” which “does not exist in a physical form; it is intangible and exists only on the blockchain or distributed ledger associated with a particular virtual currency.”

A bank is defined under Virginia law as “a corporation authorized by statute to accept deposits and to hold itself out to the public as engaged in the banking business in the Commonwealth.” For a bank chartered under Virginia law to offer virtual currency custody services, it must have “adequate protocols in place to effectively manage risks and comply with applicable laws” and “carefully examine the risks involved in offering such services through a methodical self-assessment process.” At the federal level, the Office of the Comptroller of the Currency issued [Interpretive Letter #1170](#) on July 22, 2020, which permits national banks to offer cryptocurrency custody services.

If a bank decides to offer virtual currency custody services, it “shall:

1. Implement effective risk management systems and controls to measure, monitor, and control relevant risks associated with custody of digital assets;
2. Confirm that it has adequate insurance coverage for such services; and
3. Maintain a service provider oversight program to address risks to service provider relationships as a result of engaging in virtual currency custody services.”

The law allows Virginia banks to offer virtual currency custody services either in a nonfiduciary or fiduciary capacity.

- In a nonfiduciary capacity, a bank acts “as a bailee, taking possession of the customer’s asset for safekeeping while legal title remains with the customer, meaning that the customer retains direct control over the keys associated with their virtual currency”;

- In providing virtual currency custody services in a fiduciary capacity, a bank must “possess trust powers” and have a “trust department” as required under Virginia law, and “require customers to transfer their virtual currencies to the control of the bank by creating new private keys to be held by the bank,” which permit a bank “to have authority to manage virtual currency assets as it would any other type of asset held in such capacity.”

The law also provides that “[t]he owner of virtual currency holds cryptographic keys associated with the specific unit of virtual currency in a digital wallet, which allows the rightful owner of the virtual currency to access and utilize it.”

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