



Bermuda Is Set to Be Global Leader in Fintech

Virtual currency, initial coin offerings, and blockchain are at the forefront of the newest emerging financial industry: Fintech. As jurisdictions grapple with the optimal way to regulate Fintech activity, many developers and innovators are eagerly seeking jurisdictions in which they can operate efficiently and legally under a stable regulatory regime. With its size and ample industry expertise, Bermuda is uniquely positioned to spearhead the implementation of a regulatory structure that effectively balances the innovative drive of the Fintech industry and compliance with prudential international legal and regulatory standards. To this end, with the cooperation of industry stakeholders, the Government of Bermuda has announced various developments as Bermuda quickly becomes the global leader in the Fintech industry.

1. Initial Coin Offerings (ICOs)

On 13 April 2018, the House of Assembly tabled the first of many anticipated statutes in the Fintech space, the Companies and Limited Liability Company (Initial Coin Offering) Amendment Act 2018 (**ICO Amendment Act**). This represents the first advance towards becoming the international jurisdiction of choice for companies in the Fintech sector. Under the ICO Amendment Act, ICOs will be treated as a 'Restricted Business Activity' (as defined in the Companies Act 1981) and will be subject to consents from a specialised advisory committee and compliance reporting. The ICO Amendment Act also considers and upholds international requirements surrounding KYC/AML documentation, as well as "white paper" requirements, including risk warnings, confidentiality and liability for falsified statements and claims. The ICO Amendment Act received House approval on April 27, 2018 and is expected to come into force sometime in May 2018.

2. Digital Asset Business Act

On 11 May 2018, the House of Assembly also tabled the Digital Asset Business Act (**DAB Act**), which also includes Minimum Criteria for Licensing, Consequential Amendments and an Explanatory Memorandum. Only a month prior, the BMA published a Consultation Paper, which included an initial version of the DAB Act, along with associated Code of Practice, Statement of Principles, Client Disclosure Rules, Prudential Standards Annual Returns Rules and Cybersecurity Rules.

The DAB Act intends to create a dynamic regulatory regime for the development and operation of DABs in Bermuda. The BMA has already welcomed comment and input on the proposed legislation from industry stakeholders. The most notable features of the proposed DAB Act include:

- Two classes of licenses: Class F (full license) and Class M (temporary license);
- Mandatory submission of DAB business plan and ongoing reporting obligations;
- Disciplinary matters and civil penalties for breach of requirements;
- Minimum criteria for licensing; and
- Appointment of an advisory panel.

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3. Insurtech Sandbox

The BMA has also published a consultation package in relation to an Insurance Regulatory Sandbox (**Sandbox**). The Sandbox is a mechanism by which licensed insurance companies under the Insurance Act 1978 would be able to apply for a license from the BMA to allow them to test new technologies and offer new products, services and other delivery methods to certain policy holders (for a set amount of time). The BMA would need to review the company's proposal, and determine appropriate regulatory requirements and modifications to allow the Sandbox testing. Upon successful completion of the Sandbox testing, the company would be re-licensed under the relevant legal and regulatory requirements.

When assessing the Sandbox application, the BMA will consider various factors, including, but not limited to, (i) the product and the solutions it offers, (ii) the research and due diligence prepared and considered by the applying company, (iii) the company's objective and expected outcome, (iv) the company's understanding and assessment of the risks and mitigation concepts, and (v) the company's intention, ability and resources to deploy the proposed Sandbox, if approved.

In granting a Sandbox license, the BMA will also have the authority to modify certain requirements under the Insurance Act 1978, namely:

- Capital requirements;
- Approved auditor;
- Approved loss reserve specialist/actuary;
- Prudential filings;
- Fees; and
- Paid up capital.

The BMA will not have the authority to modify the following requirements under the Insurance Act 1978:

- Principal representative;
- Material change;
- Fit and proper and minimum criteria;
- Reportable event;
- Shareholder controller; and
- Requirements to keep records in Bermuda.

4. Bermuda Technology Hub

To facilitate the development of Sandbox applications, the BMA has formed an insurance innovation working group (**BMA IWG**) that is dedicated to providing a space where Insurtech companies can network, exchange ideas and eventually cultivate Sandbox-ready products and services. This enables companies to develop innovative concepts simultaneously ensuring that the BMA IWG is actively engaged in open dialogue with Insurtech companies throughout the development of broader insurance solutions.



5. Electronic Identification Ledger (E-ID)

Using blockchain technology, the Government of Bermuda intends to develop a national identification ledger referred to as a E-ID as early as July 2018. This national ledger will create a uniform platform for KYC/AML requirements in Bermuda accessible to both public and private institutions. Once operational, the E-ID has the potential to reduce duplication of efforts in relation to obtaining hard copies, 'wet signatures', supporting documents, background check, and more. The goal is to ensure that the E-ID complies with international KYC/AML standards and regulations, including the incoming Personal Information Protection Act (**PIPA**) in Bermuda and the General Data Protection Regulation (**GDPR**) in Europe. At the core of the E-ID is the individual's ability to control third-party access to their information, creating a secure log of personal information and a more efficient way to conduct business in Bermuda.

6. Virtual Currency Exchanges

Bermuda is developing a legal and regulatory framework for virtual currency exchanges with the aim of having this completed by September 2018.

7. New Immigration Policy for Fintech Companies

Further to the approval in the House on April 27, 2018 of legislation to regulate ICOs and the expectation to pass legislation in respect of digital assets in the near future, the Bermuda Government has announced that they will implement a new Immigration policy for Fintech companies desirous of setting up businesses in Bermuda. The policy which is titled the "Fintech Business Work Permit Policy," is aided by an application form under the same name. The Fintech Business Work Permit Policy almost mirrors the Department of Immigration's New Business Work Permit policy, and it allows a Fintech company that is new to Bermuda to receive immediate approval of five (5) work permits within the first six (6) months of obtaining the first Fintech Business Work Permit.

8. Ongoing Support and Community Engagement

Undertaking to regulate one of the fastest evolving technological trends is no easy feat, but Bermuda is committed to taking the global stage as an international leader in Fintech. The Bermuda Government and the BMA have repeatedly demonstrated their tenacity and the Government continue to affirm their dedication to establishing an effective regulatory and legal framework for the development and operation of Fintech activities in the jurisdiction.

The milestones identified are evolving as quickly as the technology and, with that, we anticipate many modifications and adaptations throughout the implementation process.

As the Fintech space continues to evolve, BeesMont's dedicated Fintech Team is actively engaging with relevant Government entities, the BMA and advising clients who operate or intend to operate in the Fintech environment. For more information, please contact one of our Fintech Team members, who would be happy to assist you.



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