



Bermuda Updates its Digital Asset Business Regulatory Regime

The Digital Asset Business Amendment Act 2019 (**DAB Amendment Act**) was brought into force on 8 October 2019 and amends the Digital Asset Business Act 2018 (**DABA**) to adapt to market expectations and ensure the regulatory regime remains fit for purpose. The DABA legislation regulates digital asset business carried on in or from within Bermuda and protects the interests of clients or potential clients of persons conducting digital asset business.

The most noteworthy updates contained within the DAB Amendment Act are with respect to the expansion of the scope of regulated digital asset business activities, a brief summary of which is set out as follows:

- The definition of “exchange” was replaced with “digital asset exchange” which means a centralized or decentralized electronic marketplace used for digital asset issuances, distributions, conversions and trades, including primary and secondary distributions, with or without payment. Under DABA, operating such an exchange is a regulated digital asset business activity.
- The definition of “market maker” was expanded to include any operator who is (i) fulfilling digital asset trade orders initiated by, or in response to, clients’ requests for trades, or (ii) hedging positions arising from quoting trade prices or fulfilling trade orders of digital assets. Under DABA, operating as a market maker for digital assets is a regulated digital asset business activity.
- The concept of a “digital asset benchmark administrator” was added and includes any person that has control over the provision of a digital asset benchmark including administering the arrangements for determining a benchmark, collecting, analysing or processing input data for the purpose of determining a benchmark, and determining a benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose. Under the DAB Amendment Act, operating as a digital asset services vendor (which is deemed a digital asset business activity subject to regulation) now includes acting as a digital asset benchmark administrator.
- The list of deemed digital asset business activities was expanded to include carrying on digital asset trust services. Under the DAB Amendment Act, being a “digital asset trust services provider” means acting as a fiduciary, agent, or trustee on behalf of another person for the purpose of managing, safeguarding or administering digital assets, as well as offering or agreeing to manage, safeguard or administer digital assets.

- The list of regulated digital asset business activities was also widened to include being a digital asset derivative exchange provider. Under the DAB Amendment Act, being a “digital asset derivative exchange provider” means a person operating a centralized or decentralized marketplace for digital asset derivatives (including any options, swaps, futures, contracts for difference, or any other contract or instrument whose market price, value or delivery or payment obligations are derived from reference to or based on a digital asset underlying interest); and (i) creating, selling or otherwise entering into digital asset derivatives contracts; or (ii) clearing and settling digital asset derivatives.

Any undertaking carrying on digital asset business prior to the commencement of the DAB Amendment Act is required to submit an application to the Authority within two months of the date of commencement of the legislation. Where such an application is submitted, the undertaking may continue to carry on the relevant digital asset business activities without a license until its application is approved, declined or withdrawn.

By bringing into force the DAB Amendment Act, Bermuda has again, demonstrated its commitment to encouraging innovation in the fintech sector as well as its ability to adapt efficiently to international industry standards and market expectations.

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