



Digital Asset Business Act Marks a New Chapter in Bermuda's Fintech Revolution

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Bermuda's recently passed *Digital Asset Business Act, 2018* ("DABA") adds a new layer to the Island's fintech transformation. The legislation, which is likely to come into force in September, covers the licensing of entities which will carry on digital asset business in or from Bermuda. It is completely separate from the new [initial coin offering \(ICO\) legislation](#) and its regulations, which are already in force and regulate coin and token offerings being made by Bermuda issuers for public crowdfunding purposes.

What is 'Digital Asset Business'?

As defined in the DABA, 'digital asset business' means the business of providing any or all of the following services to the general public:

- (a) issuing, selling or redeeming virtual coins, tokens or any other form of digital asset;
- (b) operating as a payment service provider business utilising digital assets which includes the provision of services for the transfer of funds;
- (c) operating as an electronic exchange;
- (d) providing custodial wallet services; or
- (e) operating as a digital asset services vendor.

Companies which are merely setting up in Bermuda in order to raise funds through a token or coin offering, which fall within the ambit of the ICO legislation, are not subject to ongoing regulation once the offering is approved. However, entities which carry on digital asset business under the DABA are regulated on an ongoing basis by the Bermuda Monetary Authority (BMA), similar to the way commercial reinsurers are regulated pursuant to the *Bermuda Insurance Act, 1978* and its regulations.

Indeed, when drafting the DABA, the Government, the BMA and their advisors looked at not only many of the recommendations which had been set out by the Financial Action Task Force (FATF) and the OECD, but also at Bermuda's already tried and tested insurance legislation. Bermuda is the second largest reinsurance jurisdiction in the world, after Lloyd's of London, with legislation and regulations which are Solvency II equivalent.

The Licensing Process

Unless exempted under the DABA, before engaging in digital asset business, one must apply to the BMA and obtain a licence of either one or two classes: a full digital asset business licence (**Class F**) or a sandbox licence (**Class M**). The intention for allowing a sandbox licence is to promote innovation and allow novelty start-ups to establish in Bermuda and test their new products or services for a defined period of time (which can be extended), with modified requirements—all under the supervision of the BMA. The idea is to attract innovation to the Island while ensuring customer protection.

In either case, those applying for either the Class F or Class M licence must submit the following information to the BMA:

- a business plan setting out the nature and scale of the digital asset business activity which is to be carried on by the applicant;
- particulars of the applicant's arrangements for the management of the business;
- policies and procedures to be adopted by the applicant to meet the obligations under DABA and Bermuda's Proceeds of Crime regulations; and
- any other information or documentation which the BMA may reasonably require from the applicant in order to approve the application.

An application fee will also be required in an amount determined by the BMA - which will depend on the nature, scale and complexity of the digital asset business to be carried on. The fee will be set out pursuant to the Island's *Bermuda Monetary Authority Act, 1969*.

In line with insurance legislation, the digital asset business is required to have a physical presence on the Island, from which it will be directed and managed, and must appoint a local representative who has certain statutory duties to report matters to the BMA (e.g. whether there is a likelihood that the business may become insolvent, or has breached a condition of its licence). There are also requirements for certain risk management and compliance standards, and a requirement for an internal audit.

DABA grants the BMA certain enforcement powers, which include the authority to demand information or reports from a licensee, as well as to remove members of a licensee's management team. DABA also contains criminal offences and imposes civil penalties of up to BD\$10 million for non-compliance.

Following hard on the heels of the ICO legislation, DABA is a further signal that Bermuda wants to become a true fintech leader. This is certainly not the last legislation we are likely to see in this space.

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