

Digital Assets in Bermuda

AN OVERVIEW



BUSINESS DEVELOPMENT AGENCY
BERMUDA

INTRODUCTION

Firms conducting digital asset business under the Digital Asset Business Act (DABA) and Digital Asset Issuance Act (DAIA) are regulated by the Bermuda Monetary Authority (BMA).

What is a Digital Asset Business?

As defined under the DABA Act, a digital asset business means it provides one, or all, of the following services to the public:

- Issuing, selling or redeeming virtual coins, tokens or any other form of digital asset
- Operating as a payment service provider business utilising digital assets which include the provision of services for the transfer of funds
- Operating as an electronic exchange
- Carrying on digital asset trust services
- Providing custodial wallet services
- Operating as a digital asset derivative exchange provider
- Operating as a digital asset services vendor

The Digital Asset Business Act 2018

The Digital Asset Business Act (DABA) is designed to provide regulatory certainty, consumer confidence, and compliance, and to make sure Bermuda maintains its position as a premier jurisdiction for the advancement of digital assets. It lays out the basis for regulating financial institutions that are driving the digital asset ecosystem.

DABA regulates the following 'digital asset business' activities where they are conducted by any entity in or from within Bermuda (whether or not incorporated or formed in Bermuda):

- issuing selling or redeeming virtual coins, tokens or any other form of digital asset
- payment service provider business utilising digital assets
- operating an electronic exchange whereby digital assets of any type are exchanged for cash or other digital assets
- provision of digital assets custodial wallet services
- digital asset services vendors

The Act was amended in 2019 to extend the scope of digital asset business activities which require a licence from the BMA to include:

- Digital asset trust services providers
- Digital asset derivative exchange providers
- Digital asset benchmark administrators

The amendment also introduced two forms of exchanges, digital asset derivative exchanges and digital asset exchanges.

Digital Asset Issuance Act (DAIA)

Under this Act, a potential digital asset issuer will have to file its white paper with the Bermuda Monetary Authority (BMA), which has a duty to ensure that all appropriate disclosures are provided for acquirers to take an informed decision and to make sure issuers are held accountable for misrepresentations, therefore, specific rules clearly lay out the appropriate disclosure requirements and compliance obligations.

The BMA's fintech team will review the issuance document as well as the arrangements for the management of the offering and under the Act, the BMA can also make rules about the digital assets issuance such as risk management, record keeping and financial reporting.

The DAIA has provided for other protections, such as the requirement to appoint a local representative who has been approved by the BMA. In addition, the BMA can also ultimately cancel authorisation to act as a digital asset issuer. Some of the inherent benefits of DAIA include additional flexibility for smaller issuers, issuers that have received an approval in a recognized jurisdiction or issuers looking to list through an accredited digital asset business.

	SANDBOX ENVIRONMENT		REGULAR ENVIRONMENT
Licence Class	Class T (test)	Class M (modified)	Class F (full)
Business model maturity	Testing and piloting a business model, a product or a service which is still unproven generally or in a specific context	Scaling up a business model that has previously been tested and building full compliance programme	Proven business model at scale with fully developed compliance programme
Limitations on licence	Very limited scale, pre-set number or category of participants	Limited scale or volume of business	Usually none
Supervision	Limited reporting, important emphasis on disclosure of risks and limitations of test to prospective customers	Monthly supervisory meeting and returns with pre-determined key indicators	Yearly annual returns with on-site supervision
Minimum net assets	\$10,000	\$100,000	\$100,000+
Insurance requirements	No	Yes	Yes
Head office requirements	Local incorporation only	Proportional expectations as the licensee grows in scale and complexity	Yes
Duration	3 to 12 months with the potential to extend	12-24 months with the potential to extend	No pre-determined duration
Application filing cost	\$1,000	\$2,266	\$2,266
Licence cost (annual for F or for the predetermined period for M and T)	\$1,000	Regular fee structure applies	Regular fee structure applies



THE PATH TO GETTING A LICENCE

An application for a licence must be made to the BMA for one or two classes: Class F, a full digital asset business licence, or Class M, a sandbox licence. Bermuda is the first jurisdiction in the world to have a three tier digital asset licence model to facilitate the transition from start-up to scale-up to mature financial institution (Sandbox to a full licence).

Whether applying for either the Class F or Class M licence, the following information must be submitted to the BMA: policies and procedures to be implemented in order to meet the obligations under DABA as well as Bermuda's Proceeds of Crime regulations; a business plan setting out the nature and scale of the digital asset business; arrangements for the management of the business and any other information which the BMA may reasonably request.

It is also important to note that a digital asset business must have a physical presence in Bermuda, from which the digital asset business has to be directed and managed. To ensure that the entity complies, the BMA will consider: where the risk management, strategy and operational decision-making takes place; where the Board of Directors meetings take place and whether the senior executives who are involved in the digital asset business decision-making are located in Bermuda.

The ecosystem—which includes government, professionals, other licensed entities and the regulator—is here to support the development of digital asset companies. The BMA has a rich history of supporting innovation and is always willing to enter into early dialogue.

FOR MORE INFORMATION, PLEASE CONTACT:

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