

Alert

Bermuda Amends Licensing Regime for Digital Assets Businesses

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The Digital Asset Business Amendment Act 2019 (“DABA Amendment Act”), which became operative on 8 October, amends the existing legislation governing digital assets businesses in Bermuda, including expanding the scope of the licensing regime to include digital assets derivatives, digital asset benchmark administrators and digital asset trust service providers. The DABA Amendment Act is intended to ensure that Bermuda remains a leading jurisdiction in the regulation of digital assets and provides a framework for the regulation of financial products for which the underlying interests are digital assets.

The amendments to the Digital Asset Business Act 2018 (“DABA”) were passed by the Bermuda Parliament on 2 October. The DABA Amendment Act makes provision for the enhancement of oversight by the Bermuda Monetary Authority (BMA) of digital asset service providers and brings the following into scope of those requiring a licence from the BMA to conduct digital assets activities in Bermuda:

- Digital asset derivative exchange providers, meaning persons operating a digital asset derivative exchange and that provide the services of (a) creating, selling or otherwise entering into digital asset derivatives contracts and/or (b) clearing and settlement of digital asset derivatives. Digital asset derivatives include options, swaps, futures, contracts for differences or any other instrument based on a digital asset underlying interest.
- Digital asset benchmark administrators, meaning persons that have control over the provision of a digital asset benchmark, which is defined as “any rate, index or figure, made available to the public or published that is periodically or regularly determined by the application of a formula to, or on the basis of, the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates or other values, or surveys, and by reference to which the amount payable under a digital asset or the value of a digital asset is determined”.
- Digital asset trust services providers, meaning persons who carry on the business of acting as a fiduciary, agent or trustee on behalf of another person for the purpose of administration and management of a digital asset.

In addition, the DABA Amendment Act overhauled the concept of “electronic exchanges” and introduced instead two forms of exchanges: *digital asset exchanges* and *digital asset derivative exchanges*.

Digital Asset Exchanges

The notion of an “electronic” exchange has now been refined to become a “*digital asset exchange*” meaning “a centralized or decentralized electronic marketplace used for digital asset issuances, distributions, conversions and trades, including primary and secondary distributions, with or without payment”.

Digital Asset Derivative Exchanges

The “*digital asset derivative exchange*” is a new concept, a marketplace used for digital asset derivative issuances, distributions and trades, with or without payment.

The Bermuda Government has made these changes because (a) the definition of an “electronic exchange” was in need of refinement and (b) it recognised that popular crypto derivatives such as Bitcoin futures required specific regulation by the DABA.

The definition of a “market maker” was also refined as a “person conducting the business of trading in digital assets including (a) quoting buy and sell prices in furtherance of profit or gain on the bid offer spread; (b) fulfilling orders initiated by clients or in response to clients’ requests to trade; or (c) hedging positions arising from the fulfilment of tasks under points (a) and (b)”.

Companies already conducting digital asset activities that are now within scope of the DABA Amendment Act have two months to make an application to the Bermuda Monetary Authority for digital assets business licence.

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