



# **An overview of the regulation of digital assets in Antigua & Barbuda**

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# 1. Digital asset laws and regulations in the Antigua & Barbuda

In Antigua and Barbuda, the regulatory landscape for digital assets is governed by a series of key legislations enacted to ensure transparency, security, and compliance within the industry. The Digital Assets Business Act of 2020 (**DABA**), along with the **Digital Asset Business Regulations of 2021**, lay down the foundational framework for overseeing digital asset businesses, providing guidelines on licensing, operational standards, and reporting requirements.

Complementing these laws are the Antigua and Barbuda's **Securities Act of 2020**, which addresses the regulation of digital securities, and the Antigua and Barbuda's Investment Funds Act of 2020 (**IFA**), governing investment funds dealing with digital assets. The Antigua and Barbuda's Money Laundering (Prevention) (Amendment) Act of 2021 (**MLPA**) reinforces anti-money laundering measures specific to digital asset businesses, enhancing regulatory oversight and risk mitigation efforts. Together, these legislations form a comprehensive regulatory environment, fostering responsible growth and innovation while ensuring investor protection and maintaining the integrity of the financial system.

## **What is considered a digital asset in the Antigua & Barbuda?**

According to the DABA, a digital asset is defined as *"anything that exists in binary or digital format and comes with the right to use it and includes, but is not limited to, a digital representation of value that is used as a medium of exchange, money, unit of account, or store of value and is not legal tender, whether or not denominated in legal tender; is intended to represent assets such as debt or equity of any person or entity; is otherwise intended to represent any commodity, security, assets or rights associated with such commodity, security or assets or a derivative thereof; or is intended to provide access to or benefit of an application or service or product by means of distributed ledger technology."*

A digital asset does not include transactions in which a person grants value as part of an affinity or rewards program that value cannot be taken from or exchanged with the person for legal tender, bank credit, or any digital asset and also does not include a digital representation of value issued by or on behalf of the publisher and used within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.

## **Who do such laws and regulations apply to?**

According to the Antigua and Barbuda's DABA, the laws and regulations apply to any person or entity that carries on a digital asset business in or from within Antigua and Barbuda, unless the entity is owned by the Antigua and Barbuda Government.

Digital asset business (**DABs**) as a business that provides any of the listed digital asset services as follows:

- (i) Issuing, selling, or redeeming digital coins, tokens, or any other form of digital asset;
- (ii) operating as a payment service provider business utilizing digital assets which includes the provision of services for the transfer of funds and holding funds in connection with digital asset transactions;
- (iii) operating as an exchange;
- (iv) providing custodial wallet services;
- (v) providing digital asset custody service;
- (vi) operating as a digital assets services vendor;
- (vii) lending, borrowing, providing financial services, advising, or issuing derivatives with respect to, and otherwise dealing with digital assets;
- (viii) special-purpose depository services; or
- (ix) reasonably ancillary activities in connection with the above activities.

## **Who are the relevant regulatory authorities in relation to digital assets in the Antigua & Barbuda?**

The Financial Services Regulatory Commission (**FSRC**) are supervisory and regulatory authority over digital asset businesses and the Inland Revenue Department (**IRD**) of the Government of Antigua & Barbuda oversees tax compliance.

### **What are the penalties for breaches of digital asset laws and regulations in the Antigua & Barbuda?**

The DABA states that a person who commits an offence against any provision of the DABA for which a penalty is not provided may be fined an amount not exceeding \$25,000 or imprisonment for a term not exceeding two years, or both. For specific offences, the DABA specifies the penalties as follows:

- (i) A licensed undertaking that fails to prepare the annual audited financial statements and accounts as required under Section 41 of the Act, commits an offence and is liable to a fine of \$25,000 on summary conviction.
- (ii) A licensed undertaking that intentionally issues false or misleading documents or information commits an offence and is liable to a fine of \$50,000 or imprisonment for a term not exceeding two years, or both.
- (iii) A licensed undertaking that carries on digital asset business in Antigua and Barbuda without a license commits an offence and is liable to a fine of \$250,000.
- (iv) A person who obstructs an investigation under the Act may be fined \$5,000 or to imprisonment for a term not exceeding six months, or both.
- (v) A licensed undertaking that fails to appoint an auditor as required commits an offence and is liable to a fine of \$25,000.
- (vi) A person who intentionally obstructs the exercise of any right conferred by a warrant commits an offence and is liable to a fine of \$50,000 or to imprisonment for a term not exceeding two years, or both.

## **2. Regulation of digital assets and offerings of digital assets in the Antigua & Barbuda**

### **Are digital assets classified as 'investments' or other regulated financial instruments in the Antigua & Barbuda?**

Digital assets are not classified as securities for the purposes of securities law. However, this does not mean that they cannot be subject to regulation under the DABA, and other laws and regulations that may apply to digital assets.

### **Are stablecoins and NFTs regulated in the Antigua & Barbuda?**

The DABA defines digital assets to include digital coins, tokens, or any other form of digital asset. This would include stablecoins and NFTs, which are both forms of digital assets. Therefore, stablecoins and NFTs businesses operating in Antigua and Barbuda may be subject to licensing and regulation under the Act. However, it is important to note that specific regulations and requirements may vary depending on the particular type of digital asset business, their size, complexity and characteristics.

### **Are decentralised finance (DeFi) activities (e.g. lending digital assets) regulated in the Antigua & Barbuda?**

According to the Antigua & Barbuda's DABA, carrying on the business of lending, borrowing, providing financial services, or issuing derivatives with respect to, and otherwise dealing with digital assets are likely to fall under the category of regulated activity and might require licensing under Antigua & Barbuda's DABA. Therefore, decentralized finance (**DeFi**) activities that involve lending digital assets would likely be subject to regulation and licensing under the DABA if it involves carrying on a business in or from within Antigua and Barbuda.

### **Are there any restrictions on issuing or publicly offering digital assets in the Antigua & Barbuda?**

Yes, there are restrictions on issuing or publicly offering digital assets in Antigua and Barbuda. According to the DABA and regulations, a licensed undertaking shall not participate in or provide financial services related to the issue or offer for sale of a newly issued digital asset without submitting a prospectus to the FSRC for approval at least 30 days before the proposed date of its publication, approval of the prospectus by the FSRC and publishing the approved prospectus prior to the issue or offer for sale as may be required by the FSRC. In addition, the DABA requires that the prospectus includes specific information, including but not limited to, the issuer's general description of business, personnel and project planning, key features of the product or service to be developed, proposed market participants and proposed jurisdiction or jurisdictions, technology to be used, means by which the offering will be financed, and the amount of money equivalent that the offering is intended to raise. The DABA also requires there to be an assessment to include information in addition to the prospectus if the Commission considers it necessary.

### **Are there any exemptions to the restrictions on issuing or publicly offering of digital assets in the Antigua & Barbuda?**

According to the Digital assets regulations in the Antigua & Barbuda there are exemptions to the restrictions on issuing or publicly offering digital assets in or from within Antigua and Barbuda. The crypto regulation i.e. DABA and regulations gives provisions of exemption if the Minister, acting on the advice of the FSRC, issues an exemption order, which provides for a specified person or persons or entities falling within a specified class, to be exempt from the requirement of section 18 of DABA. An exemption order may provide for an exemption to have effect in respect of all digital asset business activities under section 2(2) OF daba or only in respect of one or more of the digital asset business activities or in respect of specified circumstances. An exemption order may be subject to conditions and is subject to the negative resolution procedure.

## **3. Regulation of DABs in the Antigua & Barbuda**

### **Are DABs operating in the Antigua & Barbuda subject to regulation?**

DABs and Crypto Businesses operating in the Antigua & Barbuda are subject to regulation. Any person who wishes to operate a digital assets business in the Antigua & Barbuda needs to obtain a Digital Assets License. DABs are required to comply with the regulations set out in the DABA and the Digital Assets Business Regulations 2021. The licensing is a mandate unless exempted and covers all the regulatory areas such as record keeping requirements, disclosure requirements, licensing requirements, and ongoing obligations of licensed undertakings.

### **Are DABs providing digital asset services from offshore to persons in the Antigua & Barbuda subject to regulation in the Antigua & Barbuda?**

Yes, any offshore DAB that wishes to provide digital asset services to persons in the Antigua & Barbuda will need to be registered or licensed with the FSRC based on the nature of services rendered by DABs and the requirements associated with it the Act.

### **What are the main requirements for obtaining licensing / registration as a DAB in the Antigua & Barbuda?**

The main requirements for obtaining a license as a Digital Assets Business (**DAB**) in the Antigua & Barbuda are:

- (i) Submitting an application form for a DAB license, as set out in FORM 1 of the regulations;
- (ii) payment of the applicable non-refundable application fee, as set out in the Schedule of Fees contained in Schedule II;
- (iii) completing and submitting the supporting documents as set out in the application Form and the regulations, and such other documents as may be requested by the FSRC;
- (iv) being subjected to a due diligence procedure determined by the FSRC;
- (v) the licensed undertaking must comply with all of the requirements of its license, maintain minimum risk capital set out in its Application Form based on the licensed undertaking's client assets under management from time to time, payment of the renewal of a license fee, and conduct an internal technological audit at least annually; and

- (vi) complying with such other requirements the Commission determines to be in the best interest of the beneficial owners of the digital assets held by the licensed undertaking.

Additionally, specific requirements and information depending on the type of digital assets business model (Payment Services Provider, Digital Asset Exchange, Digital Asset Services Vendor, Custodial Wallet Services Provider, Digital Asset Custody Services Provider, Special Purpose Depository Services) must be submitted and met to obtain a license and operate as a DAB.

Initial application fee	Amount
Application for registration as a DAB (Non-refundable)	\$20,000
Due diligence for each director, manager, officer or shareholder	\$6,800
Application fee for Sandbox license	\$10,000
Fee for extension of Sandbox license	\$10,000

#### Annual license fee

Type of activity		Turnover of up to \$1M	\$1 million - \$5 million	Above \$ 5 million
Payment Services Provider	Annual License fee	\$20,000	\$25,000	\$30,000
	Statutory Deposit	\$50,000	\$70,000	\$100,000
Digital Asset Services Vendors	Annual License fee	\$20,000	\$25,000	\$30,000
	Statutory Deposit	\$50,000	\$70,000	\$100,000
Custodial Wallet Services Provider	Annual License fee	\$20,000	\$25,000	\$30,000
	Statutory Deposit	\$50,000	\$70,000	\$100,000
Digital Asset Custody Services Provider	Annual License fee	\$20,000	\$25,000	\$30,000
	Statutory Deposit	\$50,000	\$70,000	\$100,000
Special Purpose Depository Service	Annual License fee	\$20,000	\$25,000	\$30,000
	Statutory Deposit	\$50,000	\$70,000	\$100,000
Digital Asset Exchanges	Annual License fee	\$50,000	\$60,000	\$70,000
	Statutory Deposit	\$100,000	\$200,000	\$300,000

#### What are the main ongoing requirements for DABs regulated in the Antigua & Barbuda?

The main ongoing requirements for Digital Assets Businesses (DABs) regulated in Antigua and Barbuda are as follows:

- (i) Maintain minimum risk capital, which should be held in cash, line of credit from a bank, or liability insurance, and deposited with the Commission as determined by the Commission;
- (ii) conduct an annual internal technological audit if the DAB is a payment services provider, a digital asset exchange, or a digital asset custody services provider. In case any deficiencies are detected, notify the Commission of the deficiencies and proposals for redress;

- (iii) notify the clients of any cyber reporting event, including the impact on the particular client's assets, and promptly notify the Commission of any transaction requests that the licensed undertaking believes could violate the Prevention of Terrorism Act 2005, The Money Laundering (Prevention) Act 1996, or The Proceeds of Crime Act 1993;
- (iv) file quarterly and annual returns as directed by the regulations;
- (v) disclose publicly on its website that it is a licensed entity, the fees charged by the licensed undertaking and any third party to which functions have been outsourced to participants, if it is a digital asset exchange, the types of orders that may be placed on the digital asset exchange and the terms of each, and the rules for participants to access the digital asset exchange;
- (vi) conduct market surveillance regarding the trades on the digital asset exchange to ensure maintenance of the integrity of the market.

### **What are the main restrictions on DABs in the Antigua & Barbuda?**

The main restrictions on DABs in the Antigua & Barbuda are:

- (i) Unless granted an exemption in advance by the FSRC, no digital asset may be offered or sold to persons in the Antigua & Barbuda without registration or an exemption from registration in accordance with the Securities Act of Antigua & Barbuda;
- (ii) no DAB shall engage in any activity related to digital currencies outside Antigua & Barbuda or permit its activities to have any effect outside Antigua & Barbuda;
- (iii) no DAB or its employees, agents, or intermediaries shall engage in any market manipulation, insider trading, or fraudulent conduct, including misleading or deceptive conduct;
- (iv) DABs shall not disclose a client's confidential information except where required by law, or where they have obtained the written consent of the client.

### **What are the main information that DABs have to make available to its customers?**

In the event of an unlawful interference or if the client's digital assets are compromised, the VASP must notify its customer of such circumstances and further inform the client of the steps it has taken or is taking to restore the client's digital asset and protect the digital assets from any further unlawful interference or from otherwise being compromised.

A VASP providing custodian services must enter into safekeeping arrangements with the owner of a digital asset and related instruments which should set out relevant including, amongst others, the duration, terms of renewability, manner of holding, transaction engagement conditions, required disclosures on associated risks and the steps taken to mitigate them, fees, terms of client access, termination conditions, provision of security measures information, available remedies in case of theft or loss, and any other matters agreed upon by the client and the VASP or specified by the FSC from time to time.

The main information that DABs have to make available to their customers as per Antigua & Barbuda's Digital Assets rules and regulation are:

- (i) That it is a licensed entity;
- (ii) the fees charged by the licensed undertaking and any third party to which functions have been outsourced to participants including for listing and trading;
- (iii) if it is a digital asset exchange, the types of orders that may be placed on the digital asset exchange and the terms of each; and the rules for participants to access the digital asset exchange.;
- (iv) the manner in which the digital assets are to be held;
- (v) the transactions that the custodian is permitted to engage in, which may include lending, borrowing, providing financial services, or issuing derivatives with respect to, and otherwise dealing with, digital assets, and the manner in which the transactions are to be conducted;

- (vi) disclosures relating to the risks present in the safekeeping of the digital assets and any mitigating factors;
- (vii) fees, spreads, or other remuneration to the custodian;
- (viii) the manner in which the client may access the digital assets and how the custodial arrangement may be terminated;
- (ix) information related to the licensed undertaking's security safeguards; and
- (x) remedies available to the owner upon the unforeseeable loss of the digital assets by the custodian.

#### **What market misconduct legislation/regulations apply to digital assets?**

The misconduct legislation that applies to digital assets in the Antigua & Barbuda include:

- (i) The Prevention of Terrorism Act, 2005 which criminalizes the financing of terrorism.
- (ii) The Money Laundering (Prevention) Act, 1996 which criminalizes the laundering of the proceeds of criminal conduct in the Antigua & Barbuda and internationally.
- (iii) The Proceeds of Crime Act, 1993 which provides for the tracing, forfeiture, and confiscation in respect of the proceeds of crime.
- (iv) The DAB Regulations, 2021 which prevent DABs or their employees, agents, or intermediaries from engaging in any market manipulation, insider trading, or fraudulent conduct, including misleading or deceptive conduct.
- (v) The Securities Act of Antigua & Barbuda, which requires that any digital asset sold to persons in the Antigua & Barbuda be registered or exempted from registration.

These pieces of legislation aim to ensure that digital assets are not used for illicit purposes and promote a regulated, secure, and transparent digital asset ecosystem in the Antigua & Barbuda.

## **4. Regulation of other crypto-related activities in the Antigua & Barbuda**

#### **Are managers of crypto funds regulated in the Antigua & Barbuda?**

Yes, managers of crypto funds are regulated in Antigua and Barbuda. The DABA defines a "digital asset fund administrator" as a person who conducts the business of managing digital asset funds. Such a person is required to have a license from the Office of National Drug and Money Laundering Control Policy (**OND**CP), which is an administrative sub-unit within the Prime Minister's Ministry and acts as the Supervisory Authority for financial institutions under the MLPA. It is also responsible for enforcing Antigua and Barbuda's Prevention of Terrorism Act (**PTA**), including its provisions related to combating the financing of terrorism.

In addition, as per the DAB Regulations, 2021, any person or entity carrying on the business of a fund administrator must comply with the regulations for Digital Assets Businesses (DABs), including those related to licensing, record-keeping, and ongoing obligations.

#### **Are distributors of digital asset funds regulated in the Antigua & Barbuda?**

Yes, distributors of digital asset funds are regulated in Antigua and Barbuda. According to the DABA, a "digital asset service vendor" means a person who carries on the business of distributing, selling, or transferring digital assets.

An applicant seeking to carry on the business of distributing, selling, or transferring digital assets must submit an application for a license to the ONDCP, which is an administrative sub-unit within the Prime Minister's Ministry and acts as the Supervisory Authority for financial institutions under the MLPA. It is also responsible for enforcing Antigua and Barbuda's PTA along with the digital asset business sector in Antigua and Barbuda. The



applicant must also comply with the necessary requirements for obtaining a license, which include submitting to a background check and demonstrating that they have the necessary qualifications and experience to carry on the business of a digital asset service vendor.

Furthermore, in accordance with the DAB Regulations, 2021, digital asset service vendors are required to comply with various regulations related to licensing, record-keeping, ongoing obligations, and disclosures, including those related to the protection of client assets and the prevention of money laundering and terrorist financing.

Therefore, distributors of digital asset funds are subject to regulation in Antigua and Barbuda, and they must comply with the relevant laws and regulations related to digital asset business activities.

### **Are there requirements for intermediaries seeking to provide trading in digital assets for clients or advise clients on digital assets in the Antigua & Barbuda?**

Yes, there are requirements for intermediaries seeking to provide trading in digital assets for clients or advise clients on digital assets in Antigua and Barbuda.

The DABA defines a digital assets business as including, but not limited to, carrying on the business of a digital asset exchange, a digital asset custodian, a digital asset broker, a digital asset dealer, a digital asset fund administrator, and a digital asset service vendor.

Persons or entities who wish to carry on the business of trading in digital assets for clients or advising clients on digital assets must obtain a license from the ONDCP, which is the regulatory body responsible for overseeing the digital asset business sector in Antigua and Barbuda.

In addition, in accordance with the DAB Regulations, 2021, licensees are required to comply with various regulations related to licensing, record-keeping, ongoing obligations, and disclosures, including those related to the protection of client assets and the prevention of money laundering and terrorist financing.

Therefore, intermediaries seeking to provide trading in digital assets for clients or advise clients on digital assets are subject to regulation in Antigua and Barbuda.

## **5. Pending litigation and judgments related to digital assets in the Antigua & Barbuda (if any)**

The courts of Antigua and Barbuda have not specified their view or adjudicated any matter related to digital assets.

## **6. Government outlook on digital assets and crypto-related activities in the Antigua & Barbuda**

Antigua and Barbuda has become a top choice for digital asset businesses. With its stable economy, strategic location, and straightforward regulations, it's an attractive spot for entrepreneurs. The quick licensing process, tax benefits, and skilled workforce add to its appeal. Plus, its Digital Asset Business License offers legitimacy and access to global markets. As the cryptocurrency industry grows, Antigua and Barbuda offers a promising environment for business growth.

## **7. Advantages of setting up a DABs in the Antigua & Barbuda**

The main advantages of setting up a DABs in the Antigua & Barbuda are:

- (i) Antigua and Barbuda has developed an intricate yet flexible regulatory framework for digital asset-related businesses. This framework provides clarity and stability for businesses operating in the cryptocurrency space, fostering confidence among investors and entrepreneurs. The streamlined process for obtaining digital asset licenses in Antigua and Barbuda enables businesses to enter the market rapidly, allowing them to capitalize on opportunities without significant delays.
- (ii) *tax benefits*

The absence of taxes on capital gains in Antigua and Barbuda makes it an attractive location for establishing a digital asset business. This favorable tax environment helps businesses minimize their tax burden and maximize their profits.
- (iii) The Antigua Digital Asset Business License not only provides legitimacy but also grants holders access to global markets, including international exchanges and payment services based on blockchain technology. This recognition enhances the credibility of businesses operating in the cryptocurrency space and facilitates their integration into the global digital economy.

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