



An overview of the regulation of digital assets in Bermuda

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1. Digital asset laws and regulations in Bermuda

The digital asset landscape in Bermuda is governed by a comprehensive regulatory framework comprising key legislative instruments and regulatory guidelines. The Digital Asset Business Act 2018 (**DABA**) is the foundational legislation for overseeing digital asset businesses, while the **Digital Asset Business (Prudential Standards) (Annual Return) Rules 2018** provide specific reporting requirements and financial standards. Additionally, the government has issued a Statement of Principles to outline overarching guidelines for the digital asset industry. Under the **Investment Funds Act 2020**, sector-specific guidance notes have been introduced to elucidate regulatory expectations and compliance standards for digital asset businesses. To facilitate the licensing process, the Assessment and Licensing Committee (ALC) Digital Asset Business Application Process was established in September 2018. Codes of practice for digital asset custody were also promulgated in May 2019, with updates made in April 2023. Bermuda's commitment to international cooperation in regulating digital assets is reflected in the International Cooperation Policy articulated by the regulatory body. Furthermore, the **Digital Asset Issuance Act 2020**, enacted on 23 June 2020, provides a framework for regulating digital asset issuance activities within the jurisdiction. These laws and guidelines collectively contribute to comprehending and regulating the digital asset space in Bermuda, promoting transparency, compliance, and innovation within the sector. Additionally, various rules, including the Digital Asset Issuance Rules 2020 (**DAIA**) and the Digital Asset Business (Custody of Client Assets) Rules 2024, along with statements of principles and codes of practice, establish standards and best practices for entities operating in the digital asset space. The Assessment and Licensing Committee oversees the application process for digital asset businesses, ensuring compliance with prudential standards, client disclosure requirements, and cybersecurity measures outlined in respective rules. Furthermore, regulations such as the **Proceeds of Crime (AML/ATF Financing) Regulations 2008** and international sanctions regulations play a crucial role in combating money laundering and ensuring global regulatory alignment. With policies for international cooperation in place, Bermuda's regulatory framework aims to foster innovation while maintaining integrity and compliance with global standards and regulations.

What is considered a digital asset in Bermuda?

The definition of digital assets is broad and encompasses various forms of digital representation. Digital Assets mean anything which has value that exists in binary format and comes with the right to use it but excludes legal tender such as Central Bank Digital Currencies (**CBDCs**) regardless of whether they are denominated in legal tender.

They are intended to represent ownership in assets such as debt or equity in the entity promoting them and represent any other assets or rights associated with those assets.

It also includes digital assets designed to provide access to applications, services, or products through distributed ledger technology.

Who do such laws and regulations apply to?

All those business entities engaged in Digital asset business (**DAB**), Digital asset services vendor (**DASV**) and digital asset issuance platform (**DAIP**) are under the ambit Bermuda digital asset laws and regulations, these include:

DAB and its associated activities include the following:

- 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 include the provision of services for the transfer of funds;
- iii. operating as a digital asset exchange;
- iv. carrying on digital asset trust services;
- v. providing custodial wallet services;
- vi. operating as a digital asset derivative exchange provider;
- vii. operating as a digital asset services vendor

A DASV encompasses various activities related to digital assets, including:

- i. Facilitating digital asset transactions on behalf of others under a formal agreement as part of its business operations;
- ii. holding power of attorney over digital assets belonging to another individual or entity, thereby possessing authority to manage or act on behalf of those assets;
- iii. operating as a market maker for digital assets, facilitating liquidity by buying and selling assets to maintain market stability;
- iv. serving as a digital asset benchmark administrator, responsible for establishing and maintaining benchmarks or reference points used to assess the performance or value of digital asset.

A DAIP in relation to a digital asset issuance, includes a website or an electronic database or other software platform for the purpose of selling digital assets or providing information to the public with regards to a digital asset issuance or on boarding, processing or otherwise soliciting digital asset acquirers.

Who are the relevant regulatory authorities in relation to digital assets in Bermuda?

The Bermuda Monetary authority (**BMA**) oversees the supervision and regulation of entities involved in DAB activities and Digital Asset Issuance activities.

What are the penalties for breaches of digital asset laws and regulations in Bermuda?

The BMA regulates financial institutions in Bermuda and has the authority to impose penalties and other sanctions. Entities operating in the digital asset space are subject to stringent regulations overseen by the BMA, with penalties in place for non-compliance. These regulations cover various aspects, including licensing requirements, client asset protection, and anti-money laundering measures. Businesses operating in digital asset activities without the required license in Bermuda face penalties of up to US\$250,000 in fines and/or up to five years imprisonment. Non-compliance penalties under the DABA can reach a maximum of \$10,000,000 depending upon the severity of the offense determining the penalty extent. The BMA may direct licensed businesses to take actions for client protection if they breach any provisions of the Act, with non-compliance punishable by fines of up to US\$2 million. Furthermore, the BMA conducts investigations into licensed businesses to ensure compliance with the DABA and assesses ownership and control within these entities. Entities can appeal against penalties or request waivers by submitting appeals to the BMA.

2. Regulation of digital assets and offerings of digital assets in Bermuda

Are digital assets classified as 'investments' or other regulated financial instruments in Bermuda?

Any digital asset which is intended to represent assets such as debt or equity in the promoter or is otherwise intended to represent any assets or rights associated with such assets are incorporated in the definition of digital asset.

However, the regulatory framework for digital assets is characterized by a principle of proportionality in evaluating different types of digital assets within the digital asset issuance or business activities. Notably, there are no specific laws, regulations, or restrictions governing the participation of individuals or entities resident or situated in Bermuda in the purchase, holding, or sale of digital assets, unless these assets represent a security in a Bermuda company. In such cases, the Exchange Control Act (**ECA**) and related regulations may apply to regulate these transactions.

If a DAB is issuing securities, they need prior approval from BMA and put additional policies in place to get the approval of BMA as per the requirements for a business issuing securities by the BMA.

Are stablecoins and NFTs regulated in Bermuda?

Stabecoins generally refer to those digital assets which are tethered 1:1 to international currency like US dollar or some other asset which makes stable compared to other digital assets like utility tokens. In Bermuda, stablecoins are regulated and are covered under the definition of digital assets. In May 2024, the BMA issued a

Guidance note to provide clarity for the digital assets industry on the standards the Authority expects when considering whether persons Licensed under the DABA and carrying on business as Single Currency Pegged Stablecoins Issuers (**SCPSIs**) are conducting their business in prudent manner.

NFTs exist in binary format and comes with the right to use it and includes a digital representation of value and therefore possesses the characteristics of digital assets as defined under DABA. NFTs are regulated in the Bermuda.

Are decentralised finance (DeFi) activities (e.g. lending digital assets) regulated in Bermuda?

Decentralized finance (**DeFi**) applications themselves are not DABs, but individuals or entities involved in creating, owning, operating, or maintaining control over DeFi arrangements may fall under the FATF definition of a digital asset service vendor if they provide or actively facilitate digital asset services. The provision of lending digital assets would be covered by the laws and regulation of Bermuda.

The determination of whether an activity falls under the regulations should be made on a case-by-case basis, emphasizing the practical implications and functions of the business activity.

Are there any restrictions on issuing or publicly offering digital assets in Bermuda?

In Bermuda, any offering of digital assets are regulated by DAIA, subject to section 11 of DAIA a person shall not conduct a digital asset issuance in or from within the Bermuda unless it is an authorised undertaking. Every authorised undertaking conducting a digital asset issuance in Bermuda is required to appoint a local representative who meets specific criteria outlined by the regulatory authority. This representative must be appointed from the start of the offering until 120 days after its conclusion. The local representative must be approved by the BMA to act on behalf of the authorised undertaking and must maintain a physical office in Bermuda.

An undertaking cannot offer digital assets to the public through a digital asset issuance without meeting certain requirements, including:

- i. Publishing an issuance document in electronic form before the offer.
- ii. Filing a copy of the issuance document with the BMA, signed by or on behalf of all directors, either before or shortly after its publication.

However, there are exceptions to the requirement of filing an issuance document with the BMA, such as if the digital assets are listed on an appointed stock exchange or an accredited digital asset exchange. Additionally, exemptions may apply if the offering is made solely to non-residents of Bermuda or if the documents have been accepted by relevant authorities or exchanges.

An undertaking conducting a digital asset issuance in or from within the Bermuda Offerings are broadly classified in two categories; public offering i.e. to the public at large and private offerings where maximum number of acquirers is 150 or institutional acquirers who have a reserve of \$5,000,000 and above.

Entities seeking to publicly offer digital assets in the Bermuda are required to be authorised by the BMA under the DAIA.

Are there any exemptions to the restrictions on issuing or publicly offering of digital assets in Bermuda?

Yes, there are exemptions available for issuers seeking to issue or publicly offer digital assets in Bermuda. These exemptions are outlined in section 16(2) of the DAIA and include provisions for filing an exemption form with the BMA before proceeding with the digital asset issuance.

Specifically, exemptions apply in the following scenarios:

- i. Digital Asset Issuance through an Accredited Digital Asset Business: If an issuer offers digital assets to the public through an accredited digital asset business, only certain rules (5 and 7 to 10) are applicable. However, if the issuer holds digital asset acquirers' assets under custody but not through the accredited digital business, additional rules (14 to 18) apply.

- ii. **Local Issuers:** Local issuers who qualify as such are not required to appoint a local representative as mandated by section 27 of the DAIA. Furthermore, certain rules (11, 12, 13, 15, and 16) are not applicable to these issuers.

Additionally, the BMA has the authority to exempt or modify rules under the DAIA based on determinations made or applications received from authorised undertakings. However, any exemptions or modifications granted are subject to conditions imposed by the BMA, and the authority may revoke or vary them if deemed necessary, ensuring compliance with regulatory standards and considering the nature, scale, and complexity of the authorised undertaking.

3. Regulation of DABs in Bermuda

Are DABs operating in Bermuda subject to regulation?

Yes, the DABs must comply with the laws and regulation in Bermuda regulating their code of conduct and anti-money laundering (AML) anti-terrorism financing (AFT) regulations. DABs must also adhere to Bermuda's international cooperation agreements with international organisation ensuring best practices for businesses involved in digital assets.

Are DABs providing digital asset services from offshore to persons in Bermuda subject to regulation in Bermuda?

Any entity involved in digital asset services either within the jurisdiction or from outside the jurisdiction to the public of Bermuda are required to be licensed under the regulation of DABA or DAIA according to the services provided by them.

What are the main requirements for obtaining licensing / registration as a DABs in Bermuda?

In Bermuda, issuers planning to issue digital assets with the primary purpose of raising capital for a venture or project must obtain authorization from BMA under DAIA. Conversely, issuers intending to issue digital assets with characteristics of a business, such as continuous issuance with the aim of generating profit, are required to obtain a DAB license from the BMA. Entities engaged in digital asset business activities within or from Bermuda are required to acquire a license from the Bermuda Monetary Authority (BMA). The available licenses are categorized into three classes:

- i. Class F (full license)
- ii. Class M (modified license under the 'sandbox regime')
- iii. Class T (test license)

According to the DABA, entities applying for Class M and Class F licenses must meet a minimum net asset requirement of \$100,000. The associated application fee for Class M and Class F licenses is \$2,266. For Class T licenses, the net asset requirement is also \$100,000, with an application fee of \$1000.

Bermuda digital asset legislations sets out detailed requirements for entities seeking license in Bermuda. Below are the general requirements for submitting a comprehensive Digital Asset Business application, the application must include the following documents:

- i. A cover letter providing an executive summary of the application and explaining how the minimum licensing criteria specified in the Schedule to the DABA are satisfied. If required documentation is missing, a written explanation for the omission(s) is necessary;
- ii. copies of the Memorandum of Association, Certificate of Incorporation, or Registration Permit (if available);
- iii. business plan including various details such as ownership structure, board of directors and management information, business purpose for licensing in Bermuda, business strategy, risk assessment, description of business activities and products, financial projections, staffing requirements, risk management procedures, compliance measures, and other relevant information;

- iv. copy of Anti-Money Laundering and Anti-Terrorism Financing policies and procedures as required by Regulation 16 of The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;
- v. information about corporate shareholders and ultimate beneficial owners, including financial statements, regulatory filings, background information, personal declaration forms, bank references, and net worth statements;
- vi. description of the applicant's proposed cybersecurity programme, including policies and procedures related to private key storage;
- vii. description of arrangements to allow the BMA access to monitor digital asset transaction records with online or automated real-time read-only access, and provision of wallet public addresses;
- viii. unconditional acceptance letters from the approved auditor and senior representative;
- ix. curriculum vitae of the applicant's senior representative;
- x. Address of the applicant's head office;
- xi. declaration from an officer of the applicant confirming awareness of and intention to abide by the Code of Practice required pursuant to the DABA.

For applicants seeking to continue an overseas operation from a foreign jurisdiction into Bermuda, the following additional requirements must be provided:

- i. A Certificate of Good Standing from the relevant regulatory authority in the foreign jurisdiction;
- ii. contact information for the regulatory authority in the relevant foreign jurisdiction, including contact person name/title, organization name/address, email address, and telephone contact details;
- iii. copies of the most recent statutory financial statements and/or any other relevant financial information demonstrating compliance with the capital, solvency, and liquidity requirements of the foreign jurisdiction.

For Class M applications, which involve modified licensing requirements, the following additional information is required:

- i. Inclusion of the roadmap to deploy services and delivery mechanisms on a broader scale once the modified class license has expired in the business plan;
- ii. details of any current or past participation of the applicant in a regulatory sandbox in another jurisdiction/country;
- iii. description of the proposed product, service, or distribution channel to be offered under the Class M license, including how the sandbox eligibility criteria outlined in the Digital Asset Business Regulatory Sandbox Guidance Note are met, differentiation from existing market offerings, benefits, foreseen risks, and any licenses, patents, or copyrights related to the proposed product/service;
- iv. nature of testing during the proof-of-concept stage, including start and end dates of the Class M license, requested modifications to legal and regulatory requirements, test plan, controls and scenarios, involved clients and counterparties, critical success factors, monitoring plan for breaches, and a contingency plan for unsuccessful testing or premature exit from the sandbox, with client protections in place.

Applications must be received by the Bermuda Monetary Authority (BMA) no later than 5:00 p.m. on the relevant Thursday to be considered by the Application Licensing Committee (ALC) four weeks later. Applications should be emailed to innovate@bma.bm, with a hard copy submitted to the BMA's FinTech Department. All documents must be provided in English.

What are the main ongoing requirements for VASPs regulated in Bermuda?

Digital asset businesses operating and licensed by the BMA subject to conditions in the license are required to file the following documents annually within four months after the end of its financial year:

Document	Requirement	Documents Required
Cybersecurity report	Section 3 of the Digital Asset Business (Cybersecurity) Rules 2018	Written report prepared by its chief information security officer assessing its electronic systems, any risk identified and any cyber security program implemented to redress any inadequacies identified.
Annual return	Section 3 of the Digital Asset Business (Prudential Standards) (Annual Return) Rules 2018	Annual returns accompanied with business plan for the next financial year
Audited financial statements	Section 31 of the DABA	Annual audited financial statements audited by an approved auditor of BMA.
Financial accounts	Section 31 of the Digital Asset Business Act 2018 and the Digital Asset Business Account Rules 2021	Annual audited financial accounts audited by an approved auditor of BMA.
Certificate of Compliance	Section 66 of the DABA	A certificate of compliance signed by two directors or one director and one officer of the undertaking certifying to their knowledge the undertaking has complied with the codes of practice

A licensed DAB shall file a declaration signed by two directors or a director and an officer that to the best of their knowledge and belief the information in the annual return is fair and accurate.

BMA advocates for proportionality principle and those DABs having inherently greater risks due to their complexity, size or mode of business would be required to perform such other obligations as required of them in pursuance to the instructions of BMA.

To ensure compliance with AML and ATF regulations, Regulated Financial Institutions (**RFIs**) must identify, assess, and mitigate ML/TF risks across their operations, conduct regular risk assessments, appoint a senior Compliance Officer and Reporting Officer, screen employees rigorously, provide comprehensive training, regularly audit and test AML/ATF policies and controls, and recognize potential personal liability for non-compliance.

RFIs must implement appropriate levels of customer due diligence (**CDD**) measures tailored to different customer types, applying proportionate risk-mitigation measures to prevent the misuse of products, services, customer information, and delivery channels for money laundering and terrorism financing. This includes determining the scope and frequency of ongoing monitoring of business relationships and transactions, conducting periodic reviews of customer files based on risk rating or score and customer type, and implementing measures for monitoring, detecting, and reporting suspicious activities to the relevant authorities, while also monitoring activities that may elevate a customer's risk profile.

In the event of a "cyber reporting event," defined as any unauthorized access, disruption, or misuse of electronic systems or stored information of a licensed undertaking, including breaches of security resulting in loss, destruction, disclosure, or unauthorized access, a senior representative must promptly notify the Authority. This notification should include a description of the event, the categories and approximate number of digital assets affected, timing and method of occurrence, likely consequences, any mitigating actions, impact on clients, and details of any communications. Within 14 days, the senior representative must submit a detailed report to the Authority, including root-cause and impact analyses, based on available information.

RFIs should be aware that under Section 16 of the Financial Intelligence Agency Act 2007, the Financial Intelligence Agency may, in the course of enquiring into a suspicious transaction or activity relating to money laundering or terrorist financing, serve a notice in writing on any person requiring the person to provide the Financial Intelligence Agency with such information as it may reasonably require for the purpose of its enquiry.

What are the main restrictions on DABs in Bermuda?

The Bermuda imposes certain restrictions on a person engaged in DABs or digital asset issuance in or from within the jurisdiction, these include:

- i. DABs are prohibited from carrying out digital asset business activities in or from within Bermuda without obtaining the necessary license.
- ii. Any person intending to become a 10% shareholder controller or a majority shareholder controller of a licensed undertaking (company) must serve a written notice to the BMA.
- iii. Individuals associated with DABs are restricted from disclosing confidential information obtained in the course of their duties, unless authorized by the relevant parties.
- iv. Digital Asset Issuance entities are restricted from conducting digital asset issuances in or from within Bermuda without authorization from the BMA.

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

Under the powers granted by DABA, the BMA has established the Digital Asset Business (Client Disclosure) Rules 2018 to address the significant risks associated with digital assets, particularly their speculative and volatile nature. These rules are designed to protect consumers by ensuring transparency and disclosure of material risks associated with digital asset products, services, and activities.

Key provisions of the Digital Asset Business (Client Disclosure) Rules 2018 include:

- i. Licensees must disclose to customers all material risks associated with their products, services, and activities, as well as any additional disclosures deemed necessary by the BMA for client protection.
- ii. Before entering into a business relationship with a client, licensees must disclose information such as the class of license held, fee schedules, insurance coverage against loss of customer assets, irrevocability of digital asset transfers or exchanges, governance or voting rights regarding client assets, and liability for unauthorized or mistaken transactions.
- iii. Licensees are obligated to confirm certain transaction details with clients at the conclusion of each transaction, ensuring transparency and clarity regarding the terms and outcomes of digital asset transactions.

What market misconduct legislation/regulations apply to digital assets?

A brief overview of the various market misconduct provisions in Bermuda legislation that may apply to digital assets is set out below:

- i. *DABA & DAIA*: for the minimization of fraud, money laundering, and terrorist financing risks, alongside the promotion of top-tier corporate governance standards and robust risk management practices throughout the industry.
- ii. *AML/AFT*: The BMA has issued sector-specific guidance notes on anti-money laundering and anti-terrorist financing tailored for digital asset financial institutions. These guidelines are aligned with FATF regulations to ensure compliance and uphold the integrity of Bermuda's digital asset sector.
- iii. *International Cooperation Policy*: This policy outlines clear targets, procedures, and actionable goals that adhere to global standards for international cooperation with foreign supervisors and law enforcement agencies. Developed in alignment with the BMA's objective of offering a broad spectrum of international cooperation techniques, the policy establishes effective gateways to facilitate prompt and constructive exchanges directly between counterparts. By promoting transparency, collaboration, and adherence to global standards.

4. Regulation of other crypto-related activities in Bermuda

Are managers of crypto funds regulated in Bermuda?

Managers of crypto funds in Bermuda are regulated, depending on the type of fund structure they are managing. For instance, managers of open-ended Bermuda exempted companies, which focus on trading digital assets and allow investors to redeem their investments at their own initiative, fall under the regulatory purview of the BMA and need to obtain the necessary licensing or exemptions under the DABA.

On the other hand, managers of closed-ended Bermuda exempted limited partnerships, which typically invest in long-term digital asset startups or projects and have illiquid investment strategies, are also regulated by the BMA. However, instead of requiring licensing under the DABA, these closed-ended funds need to be registered with the BMA.

When it comes to client assets, they must ensure strict separation from its own assets, act as a fiduciary for clients' holdings, maintain accurate accounting records, and establish effective controls aligned with the business's characteristics.

However, certain types of funds may qualify for an exemption from licensing under the DABA if they appoint an investment manager licensed under the Investment Business Act 2003 or authorized by a recognized regulator. This exemption is provided under the Digital Asset Business Exemption Order 2023, contingent upon the submission of an annual notice to the BMA.

Are distributors of digital asset funds regulated in Bermuda?

In Bermuda, distributors planning to distribute digital assets with the primary purpose of raising capital for a venture or project must obtain authorization from the BMA under the DAIA. Conversely, distributors intending to distribute digital assets with characteristics of a business, such as continuous issuance with the aim of generating profit, are required to obtain a DAB license from the BMA.

Distributors handling open-ended Bermuda exempted companies, which engage in trading digital assets and offer investor redemption must acquire the necessary licensing or exemptions DABA to operate compliantly. Similarly, distributors of close-ended funds in Bermuda exempted limited partnerships, which typically invest in long-term digital asset startups or projects with illiquid strategies must register with the BMA to ensure regulatory compliance.

Are there requirements for intermediaries seeking to provide trading in digital assets for clients or advise clients on digital assets in Bermuda?

Intermediaries seeking to provide in digital assets or digital asset derivatives in or from within the Bermuda are required to be licensed by the BMA to engage in the trading activities for clients.

However, the regulation of Bermuda does not encompass entities involved in advisory of clients on digital assets and the requirement for registration or licensing of such entities would be based on case to case basis depending upon the scope of activities, complexity etc on a proportional basis.

5. Government outlook on digital assets and crypto-related activities in Bermuda

The Bermuda government's mindset in framing legislation on digital assets is an approach to addressing the high risks of ML/TF associated with the DAB sector. Recognizing the inherent vulnerabilities, legislations are designed to mitigate these risks by implementing robust regulatory measures. Understanding that DAB transactions are often fast, irreversible, and may involve cash or digital assets outside traditional financial institutions, Bermuda's legislation aims to establish regulatory oversight with detailed analysis of this new technology. Acknowledging the cross-border nature of DAB activities and the potential for anonymity or false identities to be exploited, the government emphasizes the importance of stringent AML/ATF policies, procedures, and controls.

6. Advantages of setting up a DAB in Bermuda

Financial & Tax Incentives:

In Bermuda, there are no taxes levied on digital assets, including income taxes, capital gains taxes, withholding taxes, or any other taxes related to transactions involving digital assets. This tax-friendly environment is conducive to fostering the growth and development of the digital asset industry within the jurisdiction.

Additionally, exempted companies or limited liability companies engaged in digital asset business activities, including digital asset issuers, have the opportunity to apply for an undertaking from the Minister of Finance. This undertaking ensures that in the event Bermuda enacts legislation imposing taxes on profits, income, capital gains, or other related areas, such taxes will not apply to the company or its operations.

This favorable tax regime further enhances Bermuda's attractiveness as a jurisdiction for digital asset businesses, providing certainty and stability for companies operating within its borders. It also aligns with Bermuda's broader efforts to encourage innovation and economic diversification through the facilitation of digital asset-related activities.

Pro-Business Legal Framework:

Bermuda's legal framework is based on the common law principles of England and Wales, owing to its status as a British Overseas Territory and governance under a Westminster-style government. The judicial system includes the Court of Appeal, Supreme Court, Magistrates' Court, and various tribunals. Most cases can be appealed to the Privy Council in England, which serves as the final appellate authority.

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