



ANGUILLA

# **DIGITAL ASSETS BUSINESS ACT, 2023**

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**DIGITAL ASSETS BUSINESS ACT, 2023**

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SCHEDULE 1: Minimum Required information in a prospectus for an initial Digital Asset offering

I Assent

Paul H. Candler  
Governor (Acting)4 July 2023  
Date

ANGUILLA

No. 16/2023

**DIGITAL ASSETS BUSINESS ACT, 2023**[Gazette Dated: 5<sup>th</sup> July, 2023] [Commencement: Assent under section 57 of the Constitution]

An Act to provide for the licensing and regulation of persons carrying on digital asset business, the supervision of digital asset business, and connected matters.

ENACTED by the Legislature of Anguilla

**PART I****PRELIMINARY****Interpretation**

1. (1) In this Act, unless the context otherwise requires—

“20% controller”, in relation to a company (being a licensee or an operator of a digital asset business), means a person that alone or together with the person’s associates—

- (a) has an interest in at least 20% of the shares in the company; or
- (b) is in a position to control at least 20% of the votes in the company;

“arrangement” includes any formal or informal scheme, arrangement or understanding, and any trust whether express or implied;

“associate”, in relation to a person, means—

- (a) the spouse, parent, child or stepchild of that person,
- (b) a company of which that person is a director,
- (c) a person who is an employee or partner of that person;

(d) if that person is a company—

(i) any director or subsidiary of that company, and

(ii) any director or employee of the subsidiary; and

(e) if that person has with any other person an agreement or arrangement as to the acquisition, holding or disposal of shares or other interests in a company or under which they undertake to act together in exercising their voting power in relation to a company, that other person;

“attorney-at-law” means an attorney admitted to practise before the Eastern Caribbean Supreme Court in Anguilla;

“auditor” means a person who is in good standing as a member of an association of chartered or public accountants or other similar body approved by the Commission as a reputable auditing association;

“book” includes any record, register, document or other record of information and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or by electronic process or otherwise;

“business day” means any day other than a Saturday, Sunday, public holiday or bank holiday;

“business entity” means—

(a) a company;

(b) a partnership; or

(c) an unincorporated association;

“calendar year” means a period from 1 January to 31 December (both dates inclusive);

“chief executive”, in relation to a company, means a person who, alone or jointly with other persons, is responsible under the immediate authority of the board of the company for the conduct of the business of the company and, in relation to a company whose principal place of business is outside Anguilla, includes a person who, alone or jointly with other persons, is responsible for the conduct of its business in Anguilla;

“Commission” means the Anguilla Financial Services Commission established under section 2 of the Financial Services Commission Act;

“company” means a body corporate wherever incorporated;

“controller” means a 20% controller;

“Court” means the High Court unless the context states otherwise;

“currency” includes currency notes and coins that are legal tender in Anguilla or a country or territory other than Anguilla;

“digital asset” means cryptocurrencies, digital payment tokens and anything that exists in binary format and comes with the right to use it, and “digital asset” includes a digital representation of value that—

- (a) is used as a medium of exchange, unit of account, or store of value and is not legal tender, whether or not denominated in legal tender;
- (b) is intended to represent assets such as debt or equity in the promoter;
- (c) is otherwise intended to represent any assets or rights associated with such assets;
- (d) is intended to provide access to an application or service or product by means of distributed ledger technology; or
- (e) satisfies such other characteristics as may be prescribed;

but “digital asset” does not include—

- (i) a transaction in which a person grants value as part of an affinity or rewards program, which value cannot be taken from or exchanged with the person for legal tender, bank credit or any digital asset,
- (ii) 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, or
- (iii) a utility token;

“digital asset business” means activities carried on by any natural or legal person where such person, as a business, conducts one or more of the following activities or operations for or on behalf of another natural or legal person—

- (a) exchange between digital assets and fiat currencies;
- (b) exchange between one or more forms of digital assets;
- (c) transfer of digital assets;
- (d) safekeeping or administration of digital assets or instruments enabling control over digital assets; and
- (e) participation in and provision of financial services related to an issuer’s offer or sale of a digital asset;

but a person who engages in or performs any of the following activities shall not qualify or be treated as conducting digital asset business—

- (i) providing ancillary infrastructure to allow another person to offer a service, such as cloud data storage provider or integrity service provider responsible for verifying the accuracy of signatures,

- (ii) providing service as a software developer or provider of unhosted wallets whose function is only to develop or sell software or hardware,
- (iii) solely creating or selling a software application or digital asset platform,
- (iv) providing ancillary services or products to a digital asset network, including the provision of services like hardware wallet manufacturer or provider of unhosted wallets, to the extent that such services do not extend to engaging in or actively facilitating as a business any of those services for or on behalf of another person,
- (v) solely engaging in the operation of a digital asset network without engaging or facilitating any of the activities or operations of a digital asset service provider on behalf of customers,
- (vi) providing closed-loop items that are non-transferable, non-exchangeable, and which cannot be used for payment or investment purposes, and
- (vii) accepting digital assets as payment for goods and services (such as the acceptance of digital assets by a merchant when effecting the purchase of goods);

“digital asset custody services” means the business of safe keeping or administration of digital assets or the instruments that enable the holder to exercise control over digital asset;

“digital asset exchange” means a digital market, exchange, place or facility which provides for bringing together users, on a regular basis, for the purpose of the pairing and trading of digital assets against other listed digital assets or money, and sets rules for the execution of such transactions or for the negotiation or conclusion of such pairing and trading;

“digital custodial wallet services” means provision of the services of storing or maintaining digital assets or a digital wallet on behalf of a client for the purposes of trading, exchange or payment; but does not include client managed facilities provided by regulated banking institutions or trust accounts provided by a regulated general trust company;

“digital asset service provider” means any natural or legal person who operates a business which conducts one or more of the following activities or operations for or on behalf of another natural or legal person—

- (a) exchange between digital assets and fiat currencies
- (b) exchange between one or more forms of digital asset
- (c) transfer of digital assets
- (d) safekeeping or administration of digital assets or instruments enabling control over digital assets; or
- (e) participation in and provision of financial services related to an issuer’s offer or sale of a digital asset.

“digital asset services vendor” means a person that—

- (a) under an agreement as part of its business—
  - (i) manages digital assets on behalf of another person,
  - (ii) can undertake a digital asset transaction on behalf of another person, or
  - (iii) has power of attorney over another person’s digital asset;
- (b) operates as a market maker for digital assets;
- (c) provides intermediary, brokerage or agency services with respect to digital assets;

“digital payment token” means any digital representation of value (other than an excluded digital representation of value) that—

- (a) is expressed as a unit;
- (b) is not denominated in any currency, and is not pegged by its issuer to any currency;
- (c) is, or is intended to be, a medium of exchange accepted by the public, or a section of the public, as payment for goods or services or for the discharge of a debt;
- (d) can be transferred, stored or traded electronically; and
- (e) satisfies such other characteristics as may be prescribed;

and “digital payment token” includes a digital asset but does not include an excluded digital representation of value or a utility token;

“digital payment token account” means any account, or any device or facility (whether in physical or electronic form), that contains digital payment tokens;

“digital payment token instrument” means any password, code, cipher, cryptogram, private cryptographic key or other instrument that enables a person—

- (a) to control access to one or more digital payment tokens; or
- (b) to execute a transaction involving one or more digital payment tokens;

“digital payment token service” means any of the following services—

- (a) any service of dealing in digital payment tokens (other than any prescribed service);
- (b) any service of facilitating the exchange of digital payment tokens (other than any prescribed service);
- (c) any service of accepting (whether as principal or agent) digital payment tokens from one digital payment token account (whether in Anguilla or elsewhere), for the purposes of transmitting, or arranging for the transmission of, the digital payment



tokens to another digital payment token account (whether in Anguilla or elsewhere);

- (d) any service of arranging (whether as principal or agent) for the transmission of digital payment tokens from one digital payment token account (whether in Anguilla or elsewhere) to another digital payment token account (whether in Anguilla or elsewhere);
- (e) any service of inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to buying or selling any digital payment token in exchange for any money or any other digital payment token (whether of the same or a different type);
- (f) any service of safeguarding a digital payment token, where the service provider has control over the digital payment token;
- (g) any service of carrying out for a customer an instruction relating to a digital payment token, where the service provider has control over the digital payment token;
- (h) any service of safeguarding a digital payment token instrument, where the service provider has control over one or more digital payment tokens associated with the digital payment token instrument;
- (i) any service of carrying out for a customer an instruction relating to one or more digital payment tokens associated with a digital payment token instrument, where the service provider has control over the digital payment token instrument;

“director”, in relation to a business entity, means a person appointed to direct the affairs of the business entity and includes—

- (a) a person who is a member of the governing body of the business entity; and
- (b) a person who, in relation to the business entity, occupies the position of director, by whatever name called;

“distributed ledger” means a consensus of replicated, shared and synchronized digital data geographically spread across multiple sites, countries and institutions;

“distributed ledger technology” means a database system in which—

- (a) digital assets for fiat currency, bank credit or one or more forms of digital assets;  
or
- (b) fiat currency or bank credit for one or more forms of digital assets;

“dollar” or “\$” means a dollar in the currency of the United States of America;

“entity” means any body corporate or unincorporate, whether incorporated, formed or established in or outside Anguilla;

“excluded digital representation of value” means a digital representation of value that is prescribed as an excluded digital representation of value;

“financial institution” means any natural or legal person that conducts a digital asset business for or on behalf of a customer;

“financial statements”, in relation to a financial year of a person, means—

- (a) a statement of the financial position of the person as at the last date of the financial year;
- (b) a statement of the financial performance of the person in relation to the financial year;
- (c) a statement of cash flows for the person in relation to the financial year;
- (d) a statement of changes in equity in relation to the financial year; and
- (e) such other statements as may be prescribed, together with any notes or other documents giving information relating to the matters specified in paragraph (a), (b), (c) or (d);

“financial year”, in relation to a person, means a period of not more than 12 months for which the audited financial statements of a person are prepared in accordance with this Act;

“fit and proper” has the meaning given by section 2;

“Governor” means the Governor in Council;

“indirect controller”, in relation to a company (being a licensee)—

- (a) means any person, whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in the company—
  - (i) in accordance with whose directions, instructions or wishes the directors of the company are accustomed or under an obligation, whether formal or informal, to act, or
  - (ii) that is in a position to determine the policy of the company; but
- (b) excludes any person—
  - (i) who is a director or other officer of the company and whose appointment has been approved by the Commission, or
  - (ii) in accordance with whose directions, instructions or wishes the directors of the company are accustomed to act by reason only that they act on advice given by the person in the person’s professional capacity;

“licence” means a licence granted under section 5;

“licensee” means a digital asset business who holds a licence;

“limited partnership” means a limited partnership formed and registered under the Limited Partnership Act;

“money” does not include any digital payment token and any excluded digital representation of value;

“officer” includes—

- (a) a director, alternate director, the president, a vice-president, compliance officer and any other person designated as an officer of a company by by-law, by resolution of the directors or by any other instrument; and
- (b) a partner of a partnership;

“operator”, in relation to a digital asset business, means a person that operates the digital asset business;

“partner”, in relation to a limited partnership, has the meaning given by section 1(1) of the Limited Partnership Act;

“partnership” means—

- (a) a partnership established under the Partnership Act;
- (b) a limited partnership registered under the Limited Partnership Act; or
- (c) a partnership constituted under the laws of a country other than Anguilla;

“payment service” means the operating of a digital payment token service;

“permanent place of business”, in relation to a licensee, means each fixed location in Anguilla used by the licensee for carrying on its business, regardless of whether the business is carried on within a single building or at a single business address;

“place of business”, in relation to a licensee, means any location (including a kiosk that can be moved from one location to another) in Anguilla used by the licensee, for carrying on its business;

“prescribed” means prescribed by regulations;

“public authority” means—

- (a) the Government of Anguilla, including any ministry, department or agency of the Government; or
- (b) any body established or constituted by or under an Act to perform or discharge any public function;

“regulated financial institution” means a person that carries on a business, the conduct of which is regulated or authorised by the Commission or, if it is carried on in Anguilla, would be regulated or authorised by the Commission;

“regulatory authority”, in relation to a foreign country, means a regulatory body of the foreign country exercising any function that corresponds to a regulatory function of the Commission under this Act or the Financial Services Commission Act;

“senior officer”, in relation to a company, means any individual (however designated) who—

- (a) is in the direct employment of, or acting for or by arrangement with, the company; and
- (b) is concerned with or takes part in the management of the company on a day-to-day basis;

“share” means share in the share capital of a company and includes—

- (a) an interest in a partnership; and
- (b) in the case of a company limited by guarantee, an interest of a member of the company;

“special purpose depository services includes—

- (a) the provision of any digital asset business activity by an entity solely for the purposes of its business operations or the business operations of any subsidiary of it;
- (b) accepting and making payments using digital assets solely for the purposes of its business operations or the business operations of any subsidiary of it;

“utility token” has the same meaning assigned to it in the Anguilla Utility Token Offering Act;

“voting share”, in relation to a company, means an issued share in the company, not being—

- (a) a share to which, in no circumstances, is there attached a right to vote; or
- (b) a share to which there is attached a right to vote only in one or more of the following circumstances—
  - (i) during a period in which a dividend (or part of a dividend) in respect of the share is in arrears,
  - (ii) upon a proposal to reduce the share capital of the company,
  - (iii) upon a proposal that affects rights attached to the share,
  - (iv) upon a proposal to wind up the company,
  - (v) upon a proposal for the disposal of the whole of the property, business and undertakings of the company,

(vi) during the winding up of the company.

(2) In this Act, unless the context otherwise requires—

- (a) a person has an interest in a share if the person has any legal or equitable interest in that share;
- (b) a reference to the control of a percentage of the votes in a company (being a licensee) is a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the company;
- (c) a person has a substantial shareholding in a company if—
  - (i) the person has an interest in one or more voting shares in the company; and
  - (ii) the total votes attached to that share, or those shares, is at least 20% of the total votes attached to all the voting shares in the company.

(3) In any case where the functions of the digital asset business are assumed by or shared among 2 or more operators, a reference in this Act to the operator is a reference to each such operator.

(4) For the purposes of section 3(2), a payment service, or the provision of a payment service, is incidental to any other business carried on by a person, if the payment service—

- (a) is carried on, offered or provided by that person to support that other business; and
- (b) is provided by that person in connection with the carrying on of that other business.

### **Meaning of “fit and proper”**

2. (1) For the purposes of this Act, “fit and proper” means a determination by the Commission taking into account a person’s—

- (a) financial status or solvency;
- (b) education or other qualifications or experience, having regard to the nature of the functions that the person performs or will perform;
- (c) the ability to carry on the activity for which a person is responsible competently, honestly and fairly; and
- (d) the reputation, character, reliability and financial integrity of—
  - (i) where the person is an individual, the individual, or
  - (ii) where the person is a company or partnership, an officer of the company or partnership;
- (e) satisfactory completion of any examination requirements specified by the Commission; and

(f) any other matter that the Commission may consider relevant.

(2) Without limiting subsection (1), the Commission may, in considering whether a person is a fit and proper person, take into account—

- (a) a decision made in respect of the person by the Commission or by any regulatory authority relating to a foreign country; and
- (b) any information in the possession of the Commission, whether provided by the person or not, relating to—
  - (i) the person,
  - (ii) any other person who is or is to be employed by or associated with the person for the purposes of the activity under consideration by the Commission,
  - (iii) any other person who will be acting for or on behalf of the person in relation to the activity under consideration by the Commission, and
  - (iv) where the person is a company in a group of companies—
    - (A) any other companies in the same group of companies,
    - (B) whether the person has established effective internal control procedures and risk management systems to ensure compliance with all applicable regulatory requirements, and
    - (C) the state of affairs of any other business that the person carries on or proposes to carry on.

## PART 2

### LICENSING OF DIGITAL ASSET BUSINESS

#### **Carrying on digital asset business**

3. (1) For the purposes of this Act, a person carries on digital asset business in Anguilla if it is incorporated or formed in Anguilla and carries on any digital asset business activity set out under section 4(2) in or from within Anguilla.

(2) Notwithstanding subsection (1), a person shall be regarded as carrying on digital asset business in or from within Anguilla where such person has been specifically regarded for such purposes in accordance with an order made by the Governor under subsection (3).

(3) The Governor acting on the advice of the Commission may make an order specifying the circumstances in which a person is to be regarded for the purpose of this section as—

- (a) carrying on digital asset business in Anguilla; or
- (b) not carrying on digital asset business in Anguilla.

(4) An order made under subsection (3) is subject to the negative resolution.

**Licensing of digital asset business**

4. (1) A person shall not carry on a digital asset business in Anguilla, unless that person has in force a licence that entitles the person to carry on a digital asset business in one of the activities specified in subsection (2).

(2) The Commission may, if it considers it not to be contrary to the public interest, license an entity to carry on one or more of the following digital asset business activities for the period specified in the licence—

- (a) selling or redeeming digital assets but does not include utility tokens;
- (b) operating as a payment service business utilising digital assets which includes the provision of services for the transfer of funds and holding funds in connection with digital asset transactions;
- (c) operating as a digital asset exchange but does not include a digital asset exchange for utility tokens;
- (d) providing digital custodial wallet services;
- (e) operating as a digital assets services vendor;
- (f) providing digital asset custody services;
- (g) lending, borrowing, providing financial services, advising or issuing derivatives with respect to, and otherwise dealing with digital assets; or
- (h) special purpose depository services.

(3) A person that contravenes subsection (1) commits an offence and is liable on summary conviction—

- (a) in the case of an individual, to a fine of \$75,000 or to imprisonment for a term of 3 years or to both; or
- (b) in any other case, to a fine of \$125,000.

**Application for licence**

5. (1) A person that wishes to carry on a digital asset business may apply to the Commission, in such form and manner as the Commission may require, for the appropriate licence under this section and the application shall be accompanied by—

- (a) full particulars of the entity and of each officer of the entity which particulars shall be certified by an Accountant or Attorney-at-Law;
- (b) a business plan setting out the nature and scale of the digital asset business activity which is to be carried on by the applicant.
- (c) particulars of the applicant's arrangements for the management of the business;

- (d) policies and procedures to be adopted by the applicant to meet the obligations of a financial institution under this Act and the Proceeds of Crime Act;
  - (e) such other information and documents as the Commission may reasonably require for the purpose of determining the application; and
  - (f) an application fee which shall be an amount determined by the Commission commensurate to the nature, scale and complexity of the digital asset business to be carried on by the entity.
- (2) The types of licences that may be applied for under subsection (1) are as follows—
- (a) Class A - a licence to carry on the activity under section 4(2)(a);
  - (b) Class B - a licence to carry on the activity under section 4(2)(b);
  - (c) Class C - a licence to carry on the activity under section 4(2)(c);
  - (d) Single - a licence to carry on one of the activities under section 4(2)(d) to (h); or
  - (e) Composite - a licence to carry on the activities under section 4(2)(a) to (h).
- (3) A person applying for a Class A, Class B or Class C licence may apply to add on another activity not covered by that licence on approval of the application and payment of the specified fee for that activity.
- (4) Upon receiving an application under subsection (1), the Commission may—
- (a) grant a licence to the applicant, in respect of one or more types of digital asset business activities, with or without conditions; or
  - (b) refuse to grant a licence.
- (5) Where an applicant has applied for a Class A, Class B, Class C, Single or Composite licence, the Commission shall not grant the licence to the applicant unless—
- (a) the applicant is a company formed or incorporated in Anguilla;
  - (b) the applicant has a permanent place of business;
  - (c) a senior officer of the applicant is resident in Anguilla -
  - (d) the applicant satisfies such financial requirements as may be prescribed;
  - (e) the Commission is satisfied -
    - (i) that the applicant, its shareholders, controllers, directors and officers are fit and proper,
    - (ii) as to the financial condition of the applicant,
    - (iii) that the public interest will be served by the granting of the licence, and



- (iv) that the applicant meets such other criteria for the grant of the licence as the Commission considers relevant;
- (f) the applicant satisfies such operational requirements as the Commission may specify; and
- (g) the application is accompanied by -
  - (i) such information as the Commission may require; and
  - (ii) a non-refundable application fee of a prescribed amount that is payable in such manner as the Commission may specify.

(6) The Commission may at any time add to, vary or revoke any of the conditions of a licence imposed under subsection (4)(a) or this section.

(7) The Commission shall not refuse an application under subsection (1) without giving the applicant an opportunity to be heard; and, where the Commission refuses the application, it shall provide the applicant with brief written reasons for its decision, which shall not be subject to appeal or judicial review.

(8) Every person shall, while its licence is in force, satisfy—

- (a) such financial requirements as may be prescribed; and
- (b) such operational requirements and other requirements as the Commission may specify by notice in writing.

(9) A person that fails to comply with any requirement mentioned in subsection (8) shall immediately notify the Commission of the failure.

(10) Where a person fails to comply with a requirement under subsection (8)—

- (a) the Commission may, by notice in writing to that institution, do either or both of the following—
  - (i) restrict or suspend the operations of that institution,
  - (ii) give such directions to that institution as the Commission considers appropriate; and
- (b) that institution shall comply with that notice.

(11) A licensee that contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine of \$75,000 or to imprisonment for a term of 3 years or to both.

(12) A licensee that, without reasonable cause, contravenes subsection (8), or fails to comply with any condition imposed by the Commission under subsection (4)(a) or (6) commits an offence and is liable on summary conviction to a fine of \$100,000 or to imprisonment for a term of 2 years or to both.

**Variation or change of licence**

6. (1) A licensee may apply in writing to the Commission for a variation of the licensee's licence to change the types of digital asset business activity that the licence entitles the licensee to carry on a business of providing.

(2) The Commission may require an applicant to provide the Commission with such information or documents in relation to the application as the Commission considers necessary.

(3) An application under subsection (1) shall be accompanied by a non-refundable application fee of the prescribed amount that is payable in such manner as the Commission may specify by notice in writing.

(4) The Commission may approve an application under subsection (1) subject to such conditions or restrictions as the Commission thinks fit, or may refuse the application.

(5) The Commission shall not refuse an application under subsection (1) without giving the applicant an opportunity to be heard; and, where the Commission refuses the application, it shall provide the applicant with brief written reasons for its decision, which shall not be subject to appeal or judicial review.

**Annual fees of licensees**

7. (1) A licensee shall pay to the Commission a prescribed annual fee in such manner as the Commission may specify in regulations.

(2) The Commission may prescribe different annual fees for different classes of licensees, depending on the type and number of digital asset businesses that a licensee in such a class is entitled to carry on a business of providing, the volume of transactions accepted, processed or executed by a licensee in such a class, and all other factors which the Commission may consider relevant.

**Restriction of licence**

8. (1) The Commission may restrict a licence—

- (a) if it appears to the Commission that the licensee is not in full compliance of its obligations but the circumstances are not such as to justify revocation;
- (b) connection with the revocation of a licence—
  - (i) when giving the licensee notice that it proposes to revoke its licence, or
  - (ii) at any time after such notice has been given to the licensee; or
- (c) at any time after the licensee has served a notice surrendering its licence with effect from a later date.

(2) The Commission may restrict a licence by imposing such conditions as it thinks desirable for the protection of the licensee's clients or potential clients, and may in particular—

- (a) require the licensee to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business activities in a particular way;
- (b) impose limitations on the acceptance of digital asset business;
- (c) prohibit the licensee from soliciting digital asset business either generally or from persons who are not already its clients;
- (d) prohibit the licensee from accepting new digital asset business;
- (e) prohibit the licensee from entering into any other transactions or class of transactions;
- (f) require the removal of any officer or controller;
- (g) specify requirements to be fulfilled otherwise than by action taken by the licensee.

(3) Any condition imposed under this section may be varied or withdrawn by the Commission.

(4) The Commission may, where it has made a determination on its own or on the application of a licensee, vary any condition imposed on a licence.

(5) The fact that a condition imposed under this section has not been complied with shall, where the restriction has been imposed pursuant to subsection (1)(a) or (b), be a ground for the revocation of the licence in question but shall not invalidate any transaction.

### **Restriction in cases of urgency**

**9.** (1) The Commission may, if it considers it necessary as a matter of urgency, impose restriction on the licence of any licensee without prior notice.

(2) If the Commission take action under subsection (1), it shall immediately send written notice of the restriction to the licensee, giving reasons for the restriction and inviting representations from the licensee within 14 days of the receipt of the notice by the licensee.

(3) Where the licensee makes representations to the Commission in respect of the restrictions imposed under subsection (1), the Commission shall take such representations into consideration and may—

- (a) confirm its original decision to impose the restriction;
- (b) vary the restrictions imposed;
- (c) impose different restrictions;
- (d) shorten the time period for which the restriction shall apply; or

(e) rescind its original decision.

(4) The Commission shall, within 14 days of the receipt of the representations made by or on behalf of the licensee, give the licensee written notice of its decision under subsection (3) and, except where the decision is to rescind the original decision, the notice shall state the reason for the decision taken in subsection (3).

(5) Where the notice under subsection (4) is of a decision to take any of the action outlined at paragraphs (a) to (d), the notice shall have the effect of imposing the restriction in the manner specified in the decision.

### **Lapsing, surrender, revocation or suspension of licence**

**10.** (1) A licence lapses—

- (a) if the licensee (being an entity) is wound up or otherwise dissolved, whether in Anguilla or elsewhere;
- (b) if the licensee (being an individual) dies, becomes mentally incapacitated or is adjudicated a bankrupt; or
- (c) upon the occurrence of such other event as may be prescribed.

(2) The Commission may revoke a licence if—

- (a) it appears to the Commission that any of the following persons is not a fit and proper person—
  - (i) the licensee,
  - (ii) any senior officer or employee of the licensee,
  - (iii) where the licensee is a partnership or limited partnership, any partner of that partnership or limited partnership,
  - (iv) where the licensee is a company, any controller;
- (b) it appears to the Commission that either of the following is not satisfactory:
  - (i) the financial standing of the licensee,
  - (ii) the manner in which the licensee's business is being conducted;
- (c) the licensee has contravened, or continues to contravene, any provision of this Act, or has failed, or continues to fail, to comply with any condition or restriction imposed, or any notice in writing issued, by the Commission under this Act;
- (d) the licensee has failed, or continues to fail, to comply with any notice in writing issued by the Commission under the Financial Services Commission Act;
- (e) it appears to the Commission that the licensee has failed, or continues to fail, to comply with any of the licensee's obligations under or arising from -

- (i) this Act,
    - (ii) the Anti-Money Laundering and Terrorist Financing Regulations, or
    - (iii) any notice in writing issued by the Commission under this Act;
  - (f) the licensee has provided to the Commission any information or document required under this Act that is false or misleading in a material particular;
  - (g) it appears to the Commission that any of the following persons has not performed that person's duties under this Act honestly or fairly:
    - (i) the licensee,
    - (ii) any officer or employee of the licensee,
    - (iii) where the licensee is a partnership or limited partnership, any partner of that partnership or limited partnership;
  - (h) it appears to the Commission that it would be contrary to the public interest for the licensee to continue its operations;
  - (i) the licensee fails to pay the annual fee mentioned in section 9(1);
  - (j) the licensee fails or ceases to carry on a business of providing any type of payment service that the licensee is entitled to carry on a business of providing; or
  - (k) the licensee fails or ceases to have a senior officer resident in Anguilla.
- (3) The Commission may, if it considers it desirable to do so—
- (a) suspend the licence of a licensee for a specified period, instead of revoking the licence under subsection (2); and
  - (b) at any time—
    - (i) extend the suspension for a specified period, or
    - (ii) cancel the suspension.
- (4) Except as provided in subsection (5), the Commission shall not revoke a licence under subsection (2) or suspend a licence under subsection (3), without giving the licensee an opportunity to be heard.
- (5) The Commission may revoke or suspend a licence of a licensee, without giving the licensee an opportunity to be heard, in any of the following circumstances—
- (a) the licensee (being an entity) is in the course of being wound up or otherwise dissolved, whether in Anguilla or elsewhere;
  - (b) a receiver or an equivalent person has been appointed, whether in Anguilla or elsewhere, for or in respect of any property of the licensee;

- (c) any of the following persons has been convicted, whether in Anguilla or elsewhere, of an offence involving fraud or dishonesty, or of an offence the conviction for which involves a finding that the person convicted had acted fraudulently or dishonestly, whether the applicable offence is committed before, on or after the date of commencement of this paragraph—

- (i) the licensee,

- (ii) where the licensee is a partnership or limited partnership, any partner of that partnership or limited partnership,

- (iii) where the licensee is a company, any director, controller or indirect controller of the licensee.

(6) A licensee whose licence has lapsed, or is revoked or suspended, shall cease to carry on the business of providing any type of digital asset business from the date the licence lapses, or the revocation or suspension takes effect, as the case may be.

(7) Notwithstanding the lapsing or revocation of a licence granted to a person, unless the Commission otherwise directs, sections 18, 32, 36, 37 and 38 continue to apply in relation to the person in respect of matters that occurred before the lapsing or revocation of the licence.

(8) A person that contravenes subsection (6) commits an offence and is liable on summary conviction to a fine of \$75,000.

(9) A licensee may surrender the licensee's licence by submitting to the Commission a written notice of surrender, in such form as may be specified by the Commission by notice in writing.

(10) Any surrender, lapsing, revocation or suspension of a person's licence—

- (a) does not avoid or affect any agreement, transaction or arrangement relating to the person's business of providing any digital asset business that is entered into by the person, whether the agreement, transaction or arrangement was entered into before or after the surrender, lapsing, revocation, or suspension (as the case may be) of the licence; and

- (b) does not affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

(11) A decision of the Commission to revoke a licence shall not have effect until the end of the period within which an appeal can be brought under the Financial Services Commission Act against the revocation or, if an appeal is brought within that period, until the appeal is determined or withdrawn.

### **Holding out as licensee, etc.**

**11.** (1) A person shall not hold himself, herself or itself out—

- (a) as carrying on a business of providing any type of digital asset business, unless the person is a licensee that is entitled to carry on a business of providing that type of digital asset business; and

(b) as a licensee, unless the person has in force a licence.

(2) A person that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$125,000 or to imprisonment for a term of 3 years or to both.

### PART 3

#### OFFER OF DIGITAL ASSETS

##### **Prohibition against solicitation**

**12.** (1) A person (other than a licensee), whether in Anguilla or elsewhere, shall not, whether by that person or through any other person in Anguilla or elsewhere, do any of the following things—

- (a) offer to provide, or issue any advertisement containing any offer to provide, to the public in Anguilla or any section of the public in Anguilla, any type of digital asset business, whether in Anguilla or elsewhere;
- (b) make an offer or invitation, or issue any advertisement containing any offer or invitation, to the public in Anguilla or any section of the public in Anguilla, to enter into any agreement relating to the provision by any person of any type of digital asset business, whether in Anguilla or elsewhere.

(2) A person that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$125,000 or to imprisonment for a term of 3 years or to both.

(3) A person in Anguilla (whether or not that person is a licensee) shall not, on behalf of a person outside Anguilla that is not a licensee, do any of the following things—

- (a) offer to provide, or issue any advertisement containing any offer to provide, to the public in Anguilla or any section of the public in Anguilla, any type of digital asset business, whether in Anguilla or elsewhere;
- (b) make an offer or invitation, or issue any advertisement containing any offer or invitation, to the public in Anguilla or any section of the public in Anguilla, to enter into any agreement relating to the provision by any person of any type of digital asset business, whether in Anguilla or elsewhere.

(4) A person that contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of \$125,000 or to imprisonment for a term of 3 years or to both.

(5) For the purposes of subsections (1) and (3), in determining whether an offer, invitation or advertisement is made or issued to the public in Anguilla or any section of the public in Anguilla, a person shall have regard to such considerations as the Commission may prescribe.

(6) A person whose business is to publish, or to arrange for the publication, of advertisements (in this subsection referred to as the “publisher”) shall not commit an offence under subsection (2) or (4) if the publisher proves that—

- (a) the publisher received the advertisement for publication in the ordinary course of the publisher’s business;
- (b) the matters contained in the advertisement were not, wholly or in part, devised or selected by the publisher or by any person under the publisher’s direction or control; and
- (c) the publisher did not know and had no reason for believing that the publication of the advertisement would constitute an offence.

### **Prospectus for the issue or sale of digital asset**

**13.** (1) A licensee shall not participate in or provide financial services related to the issue or offer for sale of a newly issued digital asset without—

- (a) submitting a prospectus to the Commission for approval at least 30 days before the proposed date of its publication;
- (b) approval of the prospectus by the Commission; and
- (c) publishing the approved prospectus prior to the issue or offer for sale as may be required by the Commission.

(2) A prospectus shall be prepared in accordance with the requirements of Schedule and shall be submitted to the Commission for approval no less than 30 days before the proposed date of its publication.

(3) The Commission may approve a prospectus if it complies with the requirements of this Act and contains the information required in Schedule.

(4) Each potential purchaser of a newly created digital asset must be provided a prospectus approved by the Commission at least 5 business days prior to any sale of such digital assets to such purchaser and the purchaser shall certify in the subscription agreement or other transfer document relating to the newly created digital asset that the purchaser has been provided to prospectus and has reviewed it.

(5) An approved prospectus shall be valid for a period not exceeding twelve months from the date of approval and a prospectus may be renewed thereafter on a short form basis provided the terms of the digital asset and offering have not changed.

(6) On the earlier of the conclusion of the offering or the renewal of the prospectus, the licensee shall file a compliance report as required by Schedule together with a fee based on the value of digital assets issued, pursuant to the prospectus offering.

(7) A person shall have the right to withdraw purchase or subscription to an issue or offer for sale, in addition to any other remedy, where a prospectus contains a misrepresentation or false information that induced the person to make the purchase or subscription.



(8) A person shall exercise the right under subsection (6) as soon as practicable once knowledge of the misrepresentation or false information came to the knowledge of that person.

(9) A licensee shall be liable to pay compensation to a person who relied on the misrepresentation or false information contained in the prospectus to purchase or subscribe to an issue or offer for sale and suffers loss as a result.

#### **Amendment to a prospectus**

- 14.** (1) A licensee may, with the prior approval of the Commission, amend its prospectus.
- (2) The licensee shall submit the proposed amendment to the Commission for its review.
- (3) The licensee shall immediately upon approval of the amendment by the Commission—
- (a) publish the details of the amendment; and
  - (b) issue a notice of the amendment to any person who purchased or subscribed to an issue or offer for sale.
- (4) Where a notice is issued pursuant to subsection (3), a copy of the notice and evidence of the issuance of that notice shall be submitted to the Commission.

(5) A person who purchased or subscribed to an issue or offer for sale prior to an amendment to the prospectus, shall have the right to withdraw the purchase or subscription within 30 days of the date the notice was issued to that person.

(6) A licensee shall communicate information regarding the digital asset business and any updates or changes to that information in a complete, comprehensive and balanced manner, so a client can evaluate the features, costs and risks of the digital asset business in which the licensee is engaged.

#### **Powers of the Commission regarding prospectus**

- 15.** (1) The Commission may waive the inclusion of certain information required for a prospectus if the Commission considers that—
- (a) disclosure of this information would be contrary to the public interest;
  - (b) the disclosure of the information would be seriously prejudicial to the licensee;
  - (c) the public would not be misled as to the facts and circumstances necessary to make an informed decision of the licensee and the nature of the business; or
  - (d) not disclosing the information would not be essential to a reasonable understanding of the offering and the omission of such information would not be contrary to the public interest.
- (2) The Commission shall have the power to—
- (a) order an assessment to include information in addition to the requirements in Schedule, or subsequent to approval of the prospectus

- (b) suspend an issue or offer for sale where an order for amendment is made subsequent to approval of a prospectus under paragraph (a);
- (c) suspend or cancel an issue or offer for sale of a digital asset if it is in the public interest; and
- (d) issue a notice advising the public of any order made under paragraph (a) or (b).

(3) The Commission shall not be liable to any action for damages suffered as a result of any prospectus approved by the Commission.

#### PART 4

#### REQUIREMENTS OF LICENSEES

##### **Place of business and registered office of licensee**

**16.** (1) A licensee shall not carry on a digital asset business unless the licensee has a permanent place of business and shall at all times keep the licence on display at its permanent place of business in Anguilla.

(2) A licensee shall appoint at least 1 person to be present, during business hours at the licensee's permanent place of business, to address any queries or complaints from any digital asset business activity user that uses any digital asset business activity provided by the licensee or is a customer of the licensee.

(3) A licensee shall keep, or cause to be kept, at the licensee's permanent place of business or registered office, books of all the licensee's transactions in relation to any digital asset business activity provided by the licensee.

(4) A licensee shall notify the Commission of any change in the address of any of the following places within 7 days after the date of that change—

- (a) the licensee's permanent place of business or registered office in Anguilla;
- (b) every other place of business of the licensee.

(5) A licensee that contravenes subsection (1), (2), or (3) or commits an offence and is liable on summary conviction to a fine of \$100,000.

(6) A licensee that contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of \$2,000.

##### **Obligation of licensee to notify Commission of certain events**

**17.** (1) A licensee shall notify the Commission of the occurrence of any of the following events as soon as practicable after that occurrence—

- (a) any civil or criminal proceeding instituted against the licensee, whether in Anguilla or elsewhere;

- (b) any event (including an irregularity in the operations of the licensee) that materially impedes or impairs the operations of the licensee;
- (c) the licensee being or becoming, or being likely to become, insolvent or unable to meet any of the licensee's financial, statutory, contractual or other obligations;
- (d) any disciplinary action taken against the licensee by any regulatory authority (other than the Commission), whether in Anguilla or elsewhere;
- (e) any other event that the Commission may prescribe or specify by notice in writing.

(2) A licensee shall notify the Commission of the occurrence of any of the following events within 14 days after the date of that occurrence—

- (a) any change of a director or senior officer of the licensee, except where the licensee is required under section 28 to obtain the Commission's prior approval to appoint the director or senior officer;
- (b) any other event that the Commission may prescribe or specify by notice in guidance.

(3) A person that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of \$75,000.

#### **Obligation of licensee to provide information to Commission**

**18.** (1) Subject to subsection (4), the Commission may, by notice in writing, require any licensee, or any person acting on behalf of a licensee, to provide to the Commission, within such period as the Commission may specify in the notice, all such information relating to the licensee's business of providing any payment service as the Commission may specify in the notice.

(2) Without limiting subsection (1), the Commission may, in the notice under that subsection, require any person mentioned in that subsection to provide—

- (a) information relating to any of the following matters—
  - (i) the operations of the licensee,
  - (ii) the pricing of, or any other form of consideration for, any digital asset business activity offered or provided by the licensee; and
- (b) such other information as the Commission may require for the purposes of this Act.

(3) Subject to subsection (4)—

- (a) a requirement imposed by the Commission under this section has effect notwithstanding any obligation as to secrecy or other restrictions upon the disclosure of information imposed by any rule of law or contract; and
- (b) a person that complies with a requirement imposed by the Commission under this section is not to be treated as being in breach of any restriction on the disclosure of the information imposed by any rule of law or contract.

(4) Nothing in this section requires a person to disclose any information subject to legal privilege.

(5) A person that fails to comply with a notice under subsection (1) commits an offence and is liable on summary conviction—

(a) in the case of an individual, to a fine of \$25,000 or to imprisonment for a term of 12 months or to both; or

(b) in any other case, to a fine of \$125,000.

#### **Obligation of licensee to submit periodic reports**

**19.** (1) A licensee shall submit to the Commission such periodic reports or returns relating to the licensee's business in such form, manner and frequency as the Commission may specify by notice in writing and regulations.

(2) A person that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000.

#### **Obligation of licensee to disclose information to customers**

**20.** (1) A licensee shall disclose to its customers' information relating to the manner in which the licensee—

(a) safeguards assets belonging to its customers; and

(b) protects data relating to its customers.

(2) A person that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$75,000.

#### **Prohibition against use of unlicensed agent**

**21.** (1) A licensee shall not provide any type of digital asset business in Anguilla through an agent, unless the agent has in force a licence that entitles the agent to carry on a business of providing that type of digital asset business activity.

(2) A licensee that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$100,000.

#### **Additional requirements in respect of licensee providing digital payment token service**

**22.** (1) A licensee that provides a digital payment token service shall satisfy the requirements prescribed by regulations made under section 49(1) in respect of—

(a) the extent to which assets (including digital payment tokens) belonging to a customer held by the licensee may be commingled with other assets (including other digital payment tokens) held by the licensee;

- (b) the maintenance in a prescribed manner of a prescribed amount or percentage of the following assets—
  - (i) assets (including digital payment tokens) belonging to the customer held by the licensee,
  - (ii) assets (including digital payment tokens) belonging to the licensee,
  - (iii) other assets (including digital payment tokens) held by the licensee;
- (c) the safeguarding of assets (including digital payment tokens) belonging to customers held by the licensee, in the event of the insolvency of the licensee;
- (d) insurance against the risk of insolvency of the licensee;
- (e) the manner in which the licensee shall conduct its dealings with a customer for the following purposes—
  - (i) safeguarding assets (including digital payment tokens) belonging to its customers,
  - (ii) protecting data relating to its customers,
  - (iii) safeguarding digital payment token instruments belonging to its customers;
- (f) the monitoring of digital payment token accounts and assets (including digital payment tokens) belonging to customers held by the licensee;
- (g) the standards and processes which the licensee shall adopt—
  - (i) to safeguard assets (including digital payment tokens) belonging to customers held by the licensee, and digital payment token instruments, from unauthorised use, and
  - (ii) to protect data relating to customers that is held by the licensee from unauthorised use and disclosure;
- (h) the amount of digital payment tokens which can be contained in, or transferred out of, a digital payment token account;
- (i) the amount of digital payment tokens which a licensee can hold or transfer (whether for itself or for another person);
- (j) the exchange of digital payment tokens for currency;
- (k) the use of moneys collected in exchange for digital payment tokens for any business activity of the licensee; and
- (l) the use of digital payment tokens for any business activity of the licensee.

(2) A licensee that provides a digital payment token service shall, in respect of the service, satisfy any requirement prescribed by regulations made under section 49(1) that the Commission considers necessary or expedient in the interest of any of the following—

- (a) the public or a section of the public;
- (b) the stability of the financial system in Anguilla;
- (c) the monetary policy of the Commission.

(3) Notwithstanding section 49(3)(c) and (d), regulations made under section 49(1) may provide that a licensee that contravenes a requirement prescribed for the purposes of subsection (1)(a), (b), (c), (d), (g), (h), (i), (j), (k), (l) or (m) commits an offence and is liable on summary conviction to a fine of \$125,000 and, in the case of a continuing offence, to a further fine of \$12,500 for every day or part of a day during which the offence continues after conviction.

### **Application and interpretation of sections 23 to 28**

**23.** Sections 23 to 28 apply to—

- (a) every individual, whether or not resident in Anguilla and whether or not the person has Anguillian status; and
- (b) every entity.

### **Control of shareholding in licensee**

**24.** (1) A person shall not become a 20% controller of a licensee without the prior approval of the Commission under subsection (2).

(2) The Commission may approve an application made by any person under subsection (1) if the Commission is satisfied that—

- (a) having regard to the likely influence of the person, the licensee will or will continue to conduct its business prudently and comply with the provisions of this Act and any other written law administered by the Commission;
- (b) the person is a fit and proper person to be a 20% controller of the licensee; and
- (c) it is in the public interest to do so.

(3) An approval under subsection (2) may be granted to any person subject to such conditions as the Commission may impose, including—

- (a) any condition restricting the person's disposal or further acquisition of shares or voting power in the licensee; and
- (b) any condition restricting the person's exercise of voting power in the licensee.

(4) The Commission may at any time add to, vary or revoke any condition that is imposed under subsection (3) or this subsection.

(5) Any condition imposed under subsection (3) or (4) has effect notwithstanding anything contained in the constitution of the licensee.

(6) Where the Commission refuses an application made by any person under subsection (1), the person shall, within such period as the Commission may specify by notice in writing, take such steps (as soon as practicable after the refusal) as are necessary to cease to be a 20% controller of the licensee.

### **Objection to existing control of licensee**

**25.** (1) The Commission may serve a written notice of objection on any person that is, or is required to obtain or has obtained the Commission's approval under section 24(2) to become, a 20% controller of a licensee, if the Commission is satisfied that—

- (a) any condition for approval under section 24(2) imposed on the person under section 24(3) or (4) has not been complied with;
- (b) it is not, or is no longer, in the public interest to allow the person to continue to be a 20% controller of the licensee;
- (c) the person has provided any false or misleading information or document in connection with an application under section 24(1);
- (d) the person is no longer a fit and proper person;
- (e) having regard to the likely influence of the person, the licensee is no longer likely to conduct its business prudently or to comply with the provisions of this Act; or
- (f) the Commission would not have been satisfied as to any of the matters specified in section 24(2) had the Commission been aware, at that time, of circumstances relevant to the person's application under section 24(1).

(2) Before serving a written notice of objection under subsection (1), the Commission shall, unless the Commission decides that it is not practicable or desirable to do so—

- (a) notify the person of the Commission's intention to serve the written notice of objection; and
- (b) specify a date by which the person may make written representations with regard to the proposed written notice of objection.

(3) The Commission shall consider any written representations that the Commission receives before the date mentioned in subsection (2)(b), for the purpose of determining whether to issue a written notice of objection.

(4) The Commission shall, in any written notice of objection, specify a reasonable period within which the person that has been served the written notice of objection shall—

- (a) cease to be a 20% controller of the licensee; or
- (b) comply with such direction as the Commission may make under section 26.

- (5) A person that has been served a written notice of objection shall comply with that notice.

**Power of Commission to issue directions**

**26.** (1) If the Commission is satisfied that a person has contravened section 24(1) or (6) or has failed to comply with any condition imposed under section 24(3) or (4), or if the Commission has served a written notice of objection under section 25, the Commission may, by notice in writing—

- (a) direct the transfer or disposal of all or any of the shares in the licensee held by the person or any of the person's associates (in this section referred to as the "specified shares") within such time or subject to such conditions as the Commission considers appropriate;
- (b) restrict the transfer or disposal of all or any of the specified shares; or
- (c) make such other direction as the Commission considers appropriate.

(2) Where the Commission has issued any direction under subsection (1)(a) or imposed any restriction under subsection (1)(b), until a transfer or disposal is effected in accordance with the direction or until the restriction on the transfer or disposal is removed, as the case may be—

- (a) no voting rights may be exercised in respect of the specified shares, unless the Commission expressly permits such rights to be exercised;
- (b) no shares of the licensee may be issued or offered (whether by way of rights, bonus or otherwise) in respect of the specified shares, unless the Commission expressly permits such issue or offer; and
- (c) except in a liquidation of the licensee, no payment may be made by the licensee of any amount (whether by way of dividends or otherwise) in respect of the specified shares, unless the Commission expressly authorises such payment.

(3) Subsection (2) has effect notwithstanding anything contained in the constitution of the licensee.

(4) Any issue or offer of shares in contravention of subsection (2)(b) is void, and a person to whom a direction has been issued under subsection (1)(a) or on whom a restriction has been imposed under subsection (1)(b) shall immediately return those shares to the licensee, upon which the licensee shall return to the person any payment received from the person in respect of those shares.

(5) Any payment made by a licensee in contravention of subsection (2)(c) is void, and a person to whom a direction has been issued under subsection (1)(a) or on whom a restriction has been imposed under subsection (1)(b) shall immediately return the payment the person has received to the licensee.

**Offences, penalties and defences**

**27.** (1) A person that—

- (a) contravenes section 24(1) or (6) or 25(5) or does any act in contravention of section 26(2);



(b) fails to comply with—

(i) any notice in writing issued under section 26(1) or 29(1) or (3); or

(ii) any condition imposed under section 24(3) or (4); or

commits an offence.

(2) A person convicted of an offence under subsection (1) commits an offence and is liable on summary conviction—

(a) in the case of an individual, to a fine of \$75,000 or to imprisonment for a term of 3 years or to both; or

(b) in any other case, to a fine of \$125,000.

(3) Where a person is charged with an offence in respect of a contravention of section 25(1) or (6), it is a defence for the person to prove that—

(a) the person was not aware that he, she or it had contravened section 25(1) or (6), as the case may be; and

(b) within 14 days after becoming aware of the contravention, the person—

(i) notified the Commission of the contravention, and

(ii) within such time as may be determined by the Commission, took such action in relation to the person's shareholding or control of the voting power in the licensee as the Commission may direct.

#### **Approval of senior officer, director or partner of licensee**

**28.** (1) Subject to subsection (4) a licensee—

(a) shall not appoint a senior officer or director; or

(b) that is a partnership or limited partnership, shall not appoint an individual as its partner;

unless the licensee has obtained the prior approval of the Commission under subsection (3).

(2) The application for approval shall be made in writing and shall be accompanied by any information or documents that the Commission considers necessary in relation to the application.

(3) Without affecting any other matter that the Commission may consider relevant, the Commission may, in determining the application, have regard to such criteria as the Commission may specify by notice in writing to the licensee, and may—

(a) approve; or

(b) refuse the application.

(4) Where a licensee has obtained the approval of the Commission under subsection (3)(a) to appoint a senior officer or director, the individual may, without the approval of the Commission, be re-appointed as a senior officer or director (as the case may be) of the licensee immediately upon the expiry of the individual's term of appointment.

(5) Subject to subsection (6), the Commission shall not refuse a licensee's application under subsection (2) without giving the licensee an opportunity to be heard; and, where the Commission refuses the application, it shall provide the applicant with brief written reasons for its decision, which shall not be subject to appeal or judicial review.

(6) The Commission may refuse an application under subsection (2) for the Commission's approval under subsection (3)(b) of an individual without giving the licensee an opportunity to be heard, in any of the following circumstances—

- (a) the individual has been convicted, whether in Anguilla or elsewhere, of any of the following offences, whether the offence is committed before, on or after the date of commencement of this paragraph:
  - (i) an offence involving fraud or dishonesty,
  - (ii) an offence the conviction for which involves a finding that the individual had acted fraudulently or dishonestly;
- (b) the individual is an undischarged bankrupt, whether in Anguilla or elsewhere;
- (c) the individual has had execution against the individual in respect of a judgment debt returned unsatisfied in whole or in part;
- (d) the individual has, whether in Anguilla or elsewhere, entered into a compromise or scheme of arrangement with the individual's creditors, being a compromise or scheme of arrangement that is still in operation;
- (e) the individual has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Anguilla or elsewhere -
  - (i) that is being or has been wound up by a court, or
  - (ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Commission or, in the case of a regulated financial institution in a foreign country, by the regulatory authority in that foreign country.

(7) Where the Commission refuses an application under subsection (2) for the Commission's approval under subsection (3)(a), the Commission need not give the individual who was proposed to be appointed an opportunity to be heard.

(8) A licensee that, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of \$25,000.

**Appointment of Auditor****29.** (1) A licensee—

- (a) shall, on an annual basis and at its own expense, appoint an auditor approved by the Commission; and
- (b) if for any reason its auditor ceases to be its auditor, appoint another auditor as soon as practicable after such cessation.

## (2) The Commission may appoint an auditor for a licensee—

- (a) if the licensee fails to appoint an auditor; or
- (b) if the Commission considers it desirable that another auditor should act with the auditor appointed under subsection (1).

(3) The Commission may at any time fix the remuneration to be paid by a licensee to an auditor appointed by the Commission under subsection (2) for the licensee.

## (4) The duties of an auditor appointed under subsection (1) or (2) are as follows—

- (a) to carry out, for the year in respect of which the auditor is appointed, an audit of the accounts of the licensee; and
- (b) to carry out an audit of the transactions in relation to the payment services provided by the licensee, in particular, in respect of the licensee's observance of the provisions of this Act and any of the requirements imposed under any other written law administered by the Commission; and
- (c) to prepare a report in the case of a licensee on the financial statements of the licensee; or

(5) The Commission may, by notice in writing to an auditor, impose all or any of the following duties on the auditor in addition to those provided under subsection (4), and the auditor shall carry out the duties so imposed—

- (a) a duty to submit such additional information in relation to the audit as the Commission considers necessary;
- (b) a duty to enlarge or extend the scope of the audit of the licensee's business and affairs;
- (c) a duty to carry out any other examination, or establish any procedure, in relation to the audit in any particular case;
- (d) a duty to submit a report on any of the matters mentioned in paragraphs (b) and (c).

## (6) The licensee shall remunerate the auditor in respect of—

- (a) any remuneration the Commission has fixed under subsection (3); and

- (b) the discharge of all or any of the additional duties of the auditor imposed under subsection (5).

(7) Notwithstanding any other provision of this Act, the Commission may, if the Commission is not satisfied with the performance of any duty by the auditor of a licensee, at any time direct the licensee to—

- (a) remove the auditor; and
- (b) appoint another auditor.

(8) The auditor's report made under subsection (4)(c) shall be attached to the balance sheet and the profit and loss account or the financial statements (as the case may be) of the licensee, and a copy of the report, together with any report under subsection (5)(d), shall be submitted in writing to the Commission within 6 months of the financial year end.

(9) If an auditor, in the course of performing the auditor's duties, is satisfied that any of the following matters has occurred, the auditor shall immediately report that matter to the Commission—

- (a) there has been a serious breach or non-observance of the provisions of this Act or any of the requirements imposed under any other written law administered by the Commission;
- (b) a criminal offence involving fraud or dishonesty has been committed;
- (c) losses have been incurred that reduce the capital of the licensee by at least 50%;
- (d) there is any irregularity that has or may have a material effect on the accounts of the licensee, including any irregularity that had caused a major disruption to the provision of any type of digital asset business activity to the customers of the licensee;
- (e) the auditor is unable to confirm that the claims of creditors of the licensee are still covered by the assets of the licensee.

(10) Where an auditor or employee of the auditor discloses in good faith to the Commission—

- (a) the auditor's or employee's knowledge or suspicion of any of the matters mentioned in subsection (9); or
- (b) any information or other matter on which that knowledge or suspicion is based;

the disclosure is not a breach of any restriction upon the disclosure imposed by any law, contract or rules of professional conduct, and the auditor or employee is not liable for any loss arising out of the disclosure or any act or omission in consequence of the disclosure.

(11) A licensee that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000.

**Powers of auditor appointed by Commission**

**30.** (1) An auditor appointed by the Commission under section 29(2) may, for the purpose of carrying out an examination or audit—

- (a) examine, on oath or affirmation, any officer or employee of the licensee or any other auditor of the licensee;
- (b) require any officer or employee of the licensee, or any other auditor of the licensee, to produce any books held by or on behalf of the licensee relating to the licensee's business;
- (c) make copies of or take extracts from, or retain possession of, any books mentioned in paragraph (b) for such period as may be necessary to enable those books to be inspected;
- (d) employ such persons as the auditor considers necessary to assist the auditor in carrying out the examination or audit; and
- (e) authorise in writing any person employed by the auditor to do, in relation to the examination or audit, any act or thing that the auditor could do as an auditor under this subsection, other than the examination of a person on oath or affirmation.

(2) An individual who, without reasonable excuse—

- (a) refuses or fails to answer any question put to the individual; or
- (b) fails to comply with any request made to the individual;

by an auditor appointed under section 29(2) or a person authorised under subsection (1)(e), commits an offence and is liable on summary conviction to a fine of \$12,500 or to imprisonment for a term of 12 months or to both.

**Restriction on auditor's and employee's right to communicate certain matters**

**31.** (1) Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal—

- (a) an auditor appointed under section 29(1) or (2); or
- (b) any employee of such auditor;

shall not disclose any information that comes to the auditor's or employee's knowledge in the course of performing the auditor's or employee's duties, to any person other than the Commission or, in the case of an employee of such auditor, the auditor.

(2) A person that contravenes subsection (1) commits an offence and is liable on summary conviction—

- (a) in the case of the auditor, to a fine of \$25,000; or
- (b) in the case of the employee, to a fine of \$12,500.

**Offence to destroy, conceal, alter, etc., records**

**32.** (1) An individual who, with intent to prevent, delay or obstruct the carrying out of any examination or audit under section 29 or 30—

- (a) destroys, conceals or alters, or conspires with any other person to destroy, conceal or alter, any book relating to the business of a licensee; or
- (b) sends, or conspires with any other person to send, out of Anguilla any book or asset of any description belonging to, in the possession of or under the control of the licensee;

commits an offence and is liable on summary conviction to a fine of \$50,000 or to imprisonment for a term of 2 years or to both.

(2) If, in any proceedings for an offence under subsection (1), it is proved that the individual charged with the offence—

- (a) destroyed, concealed or altered any book mentioned in subsection (1)(a); or
- (b) sent, or conspired to send, out of Anguilla any book or asset mentioned in subsection (1)(b);

the onus of proving that, in so doing, the individual did not act with intent to prevent, delay or obstruct the carrying out of an examination or audit under section 29 or 30, lies on the individual.

**PART 5****INSPECTION AND INVESTIGATIONS****Inspection by Commission**

**33.** (1) The Commission may from time to time inspect, under conditions of confidentiality, the books of a licensee.

(2) For the purposes of an inspection under this section—

- (a) a person mentioned in subsection (1) in possession of the person's books shall produce those books to the Commission and give such information or facilities as the Commission may require;
- (b) a person mentioned in subsection (1) shall procure any other person that is in possession of the first-mentioned person's books to produce those books to the Commission and give such information or facilities as the Commission may require; and
- (c) the Commission may—
  - (i) make copies of, or take possession of, any such books,
  - (ii) use, or permit the use of, any such books for the purposes of any proceedings under this Act, and

- (iii) subject to subsection (4), retain possession of any such books for so long as is necessary—
  - (A) for the purposes of exercising a power conferred by this section;
  - (B) for a decision to be made on whether or not proceedings should be commenced under this Act in relation to such books; or
  - (C) for such proceedings to be commenced and carried on.

(3) A person is not entitled, as against the Commission, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(4) While the books are in the possession of the Commission, the Commission—

- (a) shall permit another person to inspect at all reasonable times such (if any) of the books as the other person would be entitled to inspect if they were not in the possession of the Commission; and
- (b) may permit another person to inspect any of the books.

(5) The Commission may require a person that produced any book to the Commission to explain, to the best of the person's knowledge and belief, any matter about the compilation of the book or to which the book relates.

(6) A person that fails, without reasonable excuse, to comply with subsection (2)(a) or (b) or a requirement of the Commission under subsection (5) commits an offence and is liable on summary conviction—

- (a) in the case of an individual, to a fine of \$50,000 or to imprisonment for a term of 2 years or to both; or
- (b) in any other case, to a fine of \$100,000.

### **Investigation by Commission**

**34.** (1) The Commission may conduct such investigation as it considers necessary or expedient for any of the following purposes—

- (a) to determine whether—
  - (i) a licensee is carrying on its business in a manner likely to be detrimental to the interests of its customers, or
  - (ii) a licensee is conducting its business of providing any digital asset business activity in a proper manner;
- (b) to investigate any alleged or suspected offence or contravention of any provision of this Act;
- (c) to ensure compliance with this Act or any notice in writing issued by the Commission under this Act.

(2) For the purposes of subsection (1)—

- (a) the Commission may, by notice in writing, require any person to provide information or to produce books relating to any matter under investigation, and that person shall immediately comply with that requirement;
- (b) the Commission may make copies of, or take possession of, any such books;
- (c) the Commission may use, or permit the use of, any such books for the purposes of any proceedings under this Act; and
- (d) subject to subsection (4), the Commission may retain possession of any such books for so long as is necessary -
  - (i) for the purposes of exercising a power conferred by this section,
  - (ii) for a decision to be made on whether or not proceedings should be commenced under this Act in relation to such books, or
  - (iii) for such proceedings to be commenced and carried on.

(3) A person is not entitled, as against the Commission, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(4) While the books are in the possession of the Commission, the Commission—

- (a) shall permit another person to inspect at all reasonable times such (if any) of the books as the other person would be entitled to inspect if they were not in the possession of the Commission; and
- (b) may permit another person to inspect any of the books.

(5) The Commission may require a person that produced any book to the Commission to explain, to the best of the person's knowledge and belief, any matter about the compilation of the book or to which the book relates.

(6) The Commission may exercise any of its powers for the purposes of conducting an investigation under this section notwithstanding the provisions of any prescribed written law (or any requirement imposed under the prescribed written law) or any rule of law.

(7) A requirement imposed by the Commission in the exercise of its powers under this section has effect notwithstanding any obligation as to secrecy or other restrictions upon the disclosure of information imposed by any prescribed written law (or any requirement imposed under the prescribed written law), rule of law, contract or rule of professional conduct.

(8) A person that complies with a requirement imposed by the Commission in the exercise of its powers under this section is not to be treated as being in breach of any restriction on the disclosure of the information imposed by any prescribed written law (or any requirement imposed under the prescribed written law), rule of law, or contract.



(9) No civil or criminal proceedings shall lie against any person for—

- (a) providing information or producing books to the Commission, if the person provided the information or produced the books in good faith in compliance with a requirement imposed by the Commission under this section; or
- (b) doing or omitting to do any act, if the person did or omitted to do the act in good faith and as a result of complying with a requirement imposed by the Commission under this section.

(10) A person that fails, without reasonable excuse, to comply with subsection (2)(a) or a requirement of the Commission under subsection (5) commits an offence and is liable on summary conviction—

- (a) in the case of an individual, to a fine of \$50,000 or to imprisonment for a term of 2 years or to both; or
- (b) in any other case, to a fine of \$100,000.

(11) In this section, “prescribed written law” means this Act, or any of the following Acts, and any subsidiary legislation made under this Act or those Acts—

- (a) Financial Services Commission Act; and
- (b) such other Acts as may be prescribed.

### **Confidentiality of inspection and investigation reports**

35. (1) Subject to subsection (2), where the Commission has—

- (a) produced a written report—
  - (i) upon an inspection under section 33 of the books of a person (being a licensee);  
or
  - ii) in respect of any investigation under section 34; and
- (b) provided the report to the person whose books were inspected or the person under investigation (each referred to in this section as the “subject”),

the report shall not be disclosed to any person by the subject, or any of the subject’s officers or auditors.

(2) The report mentioned in subsection (1) may be disclosed—

- (a) by the subject to the subject’s officer or auditor solely in connection with the performance of the duties of the officer or auditor in the subject;
- (b) by any officer or auditor of the subject to any other officer or auditor of the subject, solely in connection with the performance of their duties in the subject; or
- (c) to such other person as the Commission may approve in writing.

(3) In granting written approval for any disclosure under subsection (2)(c), the Commission may impose such conditions or restrictions as the Commission thinks fit on the subject, any of the subject's officers or auditors, or the person to whom disclosure is approved, and the subject, officer or auditor, or the person to whom disclosure is approved, shall comply with the condition or restriction.

(4) The obligations of an officer or auditor mentioned in subsections (1) and (3) continue after the termination or cessation of the officer's or auditor's employment with or appointment by the subject.

(5) A person that contravenes subsection (1) or (3) commits an offence and is liable on summary conviction—

- (a) in the case of an individual, to a fine of \$50,000 or to imprisonment for a term of 2 years or to both; or
- (b) in any other case, to a fine of \$100,000.

(6) A person to whom the report is disclosed and that knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the person in contravention of subsection (1) commits an offence, unless the person proves that—

- (a) the disclosure was made contrary to the person's desire;
- (b) where the disclosure was made in any written form, the person has, as soon as practicable after receiving the report, surrendered or taken all reasonable steps to surrender the report and all copies of the report to the Commission; and
- (c) where the disclosure was made in an electronic form, the person has, as soon as practicable after receiving the report, taken all reasonable steps to ensure that all electronic copies of the report have been deleted and that the report and all copies of the report in other forms have been surrendered to the Commission.

(7) A person convicted of an offence under subsection (6) is liable on conviction—

- (a) in the case of an individual, to a fine of \$50,000 or to imprisonment for a term of 2 years or to both; or
- (b) in any other case, to a fine of \$100,000.

### **Commission's general powers of inspection and investigation**

**36.** The powers of inspection and investigation exercisable by the Commission under this Part, are conferred without prejudice to the powers conferred on the Commission by Part 5 of the Financial Services Commission Act; and the Commission's powers under the said Part 5 are exercisable to their full extent.

## PART 6

## EMERGENCY POWERS

**Interpretation of Part 6**

**37.** In this Part, unless the context otherwise requires—

“business” includes affairs and property;

“emergency” means—

- (a) any situation that prevents a digital asset business from carrying out its functions;
- (b) any situation in which, in the opinion of the Commission, the operations of a digital asset business are carried on in a manner likely to be detrimental to the interests of the participants or customers of that digital asset business; or
- (c) any undesirable situation or practice that, in the opinion of the Commission, constitutes an emergency;

“office-holder”, in relation to a digital asset business, means any person acting as the liquidator, receiver or an equivalent person of that digital asset business;

“relevant business”, in relation to a digital asset business, means any business of that digital asset business—

- (a) in relation to which a statutory adviser has been appointed under section 38(2)(b);
- (b) in relation to which a statutory manager has been appointed under section 38(2)(c); or
- (c) that the Commission has assumed control of under section 38(2)(c);

“statutory adviser” means a statutory adviser appointed under section 38(2)(b);

“statutory manager” means a statutory manager appointed under section 38(2)(c).

**Action by Commission if digital asset business unable to meet obligations, etc.**

**38.** (1) The Commission may exercise one or more of the powers specified in subsection (2) as appears to the Commission to be necessary, where—

- (a) a digital asset business informs the Commission that the digital asset business is or is likely to become insolvent, is or is likely to become unable to meet the digital asset business’ obligations, or has suspended or is about to suspend its activities;
- (b) a digital asset business is insolvent, becomes unable to meet the digital asset business’ obligations, or suspends its activities;

- (c) the Commission is of the opinion that the digital asset business—
  - (i) is or is likely to become insolvent, is or is likely to become unable to meet the digital asset business' obligations, or has suspended or is about to suspend activities, or
  - (ii) has contravened any of the provisions of this Act; or
- (d) the Commission considers it in the public interest to do so.

(2) For the purposes of subsection (1), the Commission may exercise any of the following powers—

- (a) require the digital asset business to immediately take any action, or to do or not to do any act, in relation to the business of the digital asset business, that the Commission may consider necessary;
- (b) appoint one or more persons as statutory adviser, on such terms as the Commission may specify by notice in writing, to advise the digital asset business on the proper management of such business of the digital asset business as the Commission may determine;
- (c) assume control of and manage such business of the digital asset business as the Commission may determine, or appoint one or more persons as statutory manager to do so on such terms as the Commission may specify by notice in writing.

(3) Where the Commission appoints 2 or more persons as statutory manager of a digital asset business, the Commission shall specify, in the terms of the appointment, which of the duties, functions and powers of the statutory manager—

- (a) may be discharged or exercised by those persons jointly and severally;
- (b) shall be discharged or exercised by those persons jointly; and
- (c) shall be discharged or exercised by a specified person (being one of those persons).

(4) Where the Commission has exercised any power under subsection (2), the Commission may, at any time and without affecting the Commission's powers under section 10(2) or (3), do one or more of the following—

- (a) vary or revoke any requirement of, any appointment made by, or any action taken by the Commission under subsection (2) in the exercise of such power, on such terms as the Commission may specify by notice in writing;
- (b) exercise any of the powers under subsection (2);
- (c) add to, vary or revoke any term the Commission has specified under this section.

(5) A statutory manager or statutory adviser incurs no liability for anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the course of or in connection with—

- (a) the exercise or purported exercise of any power under this Act;
- (b) the performance or purported performance of any function or duty under this Act;  
or
- (c) the compliance or purported compliance with this Act.

### **Emergency powers of the Commission applicable to digital asset business**

**39.** (1) Without affecting section 38, where the Commission has reason to believe that an emergency exists, or thinks that it is necessary or expedient in the interests of the public or a section of the public to so act, the Commission may exercise one or more of the following powers—

- (a) by notice in writing, direct a digital asset business to take such action as the Commission considers necessary to maintain or restore the safe and efficient operation of the digital asset business;
- (b) apply to the Court for the winding up or bankruptcy (as the case may be) of a digital asset business;
- (c) require a digital asset business to cease operations or operation of a specified activity.

(2) Without limiting subsection (1)(a), the actions that the Commission may direct a digital asset business to take include modifying or suspending any of the rules governing its activities.

(3) The Commission may modify or cancel any action taken by it under subsection (1), and in so modifying or cancelling any such action, the Commission may impose such conditions as it thinks fit, subject to which the modification or cancellation has effect.

(4) A digital asset business that fails to comply with any notice in writing issued under subsection (1)(a) commits an offence and is liable on summary conviction to a fine of \$75,000.

### **Assumption of control**

**40.** (1) Upon assuming control of any business of a digital asset business under section 38(2)(c), the Commission or statutory manager (as the case may be) shall take custody or control of the relevant business of the digital asset business.

(2) During the period when the Commission or statutory manager is in control of the relevant business of a digital asset business, the Commission or statutory manager—

- (a) shall manage the relevant business in the name of and on behalf of the digital asset business; and
- (b) is treated as an agent of the digital asset business.

(3) In managing the relevant business of a digital asset business, the Commission or statutory manager has all the duties, powers and functions of the members of the board of directors of the digital asset business (collectively and individually) under—

(a) this Act; and

(b) the constitution of the digital asset business;

including powers of delegation, in relation to the relevant business of the digital asset business.

(4) Notwithstanding subsection (3), the Commission or statutory manager is not required to call any meeting of the digital asset business under the constitution of the digital asset business.

(5) Notwithstanding any written law or rule of law—

(a) upon the Commission or statutory manager assuming control of any business of a digital asset business under section 38(2)(c), any appointment of an individual as chief executive officer or director of the digital asset business that was in force immediately before the assumption of control is treated as revoked, unless the Commission gives the Commission's approval, by written notification to the individual and the digital asset business, for the individual to remain in the appointment; and

(b) during the period when the Commission or statutory manager is in control of the relevant business of the digital asset business, an individual shall not be appointed as chief executive officer or director of the digital asset business, except with the approval of the Commission.

(6) Where the Commission has given its approval under subsection (5) for an individual to remain in the appointment of, or to be appointed as, chief executive officer or director of a digital asset business, the Commission may at any time, by written notification to the individual, revoke the Commission's approval, and that appointment is treated as revoked on the date specified in the notification.

(7) Notwithstanding any written law or rule of law, if any individual, whose appointment as chief executive officer or director of a digital asset business is revoked under subsection (5) or (6), acts or purports to act as chief executive officer or director of the digital asset business during the period when the Commission or statutory manager is in control of the relevant business of the digital asset business under section 38(2)(c)—

(a) the act or purported act of the individual is invalid and of no effect; and

(b) the individual commits an offence.

(8) Notwithstanding any written law or rule of law, if any individual, who is appointed as chief executive officer or director of a digital asset business in contravention of subsection (5), acts or purports to act as chief executive officer or director of the digital asset business during the period when the Commission or statutory manager is in control of the relevant business of the digital asset business under section 38(2)(c)—

(a) the act or purported act of the individual is invalid and of no effect; and

(b) the individual commits an offence.

(9) During the period when the Commission or statutory manager is in control of the relevant business of a digital asset business—

(a) if there is any conflict or inconsistency between—

(i) a direction or decision given by the Commission or statutory manager (including a direction or decision given to a person or body of persons mentioned in subparagraph (ii)), and

(ii) a direction or decision given by any chief executive officer, director, member, executive officer, employee, agent or office-holder of the digital asset business, by the board of directors of the digital asset business, or by any trustee for the digital asset business;

the direction or decision mentioned in subparagraph (i) prevails over the direction or decision mentioned in subparagraph (ii) to the extent of the conflict or inconsistency; and

(b) a person shall not exercise any voting or other right attached to any share in the digital asset business in any manner that may defeat or interfere with any duty, power or function of the Commission or statutory manager, and any such exercise or purported exercise of that right is invalid and of no effect.

(10) An individual who commits an offence under subsection (7) or (8) is liable on summary conviction to a fine of \$75,000 or to imprisonment for a term of 3 years or to both.

#### **Other provisions concerning control**

**41.** (1) The Commission shall cease to be in control of the relevant business of a digital asset business when the Commission is satisfied that the reasons for the Commission's assumption of control of the relevant business have ceased to exist.

(2) A statutory manager is deemed to have assumed control of the relevant business of a digital asset business on the date of the statutory manager's appointment as a statutory manager.

(3) Without limiting section 38(4)(a), the Commission may at any time revoke the appointment of a statutory manager in relation to the relevant business of a digital asset business—

(a) if the Commission is satisfied that the reasons for the appointment have ceased to exist; or

(b) on any other ground.

(4) The statutory manager ceases to be in control of the relevant business of the digital asset business upon the revocation of the statutory manager's appointment under subsection (3) or section 38(4)(a).

(5) The Commission shall publish in the Gazette the date, and such other particulars as the Commission thinks fit, of—

- (a) the Commission’s assumption of control of the relevant business of a digital asset business;
- (b) the cessation of the Commission’s control of the relevant business of a digital asset business;
- (c) the appointment of a statutory manager in relation to the relevant business of a digital asset business; and
- (d) the revocation of a statutory manager’s appointment in relation to the relevant business of a digital asset business.

**Responsibilities of directors, officers, etc., of digital asset business**

**42.** (1) During the period when the Commission or statutory manager is in control of the relevant business of a digital asset business—

- (a) a relevant person shall provide to the Commission or statutory manager, within such time and in such manner as the Commission or statutory manager may specify, such information as the Commission or statutory manager may require to discharge the duties or functions, or exercise the powers, of the Commission or statutory manager in relation to the digital asset business; and
- (b) the Court may, on an application by the Commission or statutory manager, direct any relevant person to pay, deliver, convey, surrender or transfer to the Commission or statutory manager, within such period as the Court may specify, any property or book of the digital asset business that—
  - (i) forms part of or relates to the business of the digital asset business, and
  - (ii) is in the relevant person’s possession or control.

(2) A person that—

- (a) without reasonable excuse, fails to comply with subsection (1)(a); or
- (b) in purported compliance with subsection (1)(a), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

commits an offence and is liable on summary conviction to a fine of \$50,000 or to imprisonment for a term of 2 years or to both.

(3) In this section, “relevant person” means a current or former chief executive officer, director, senior officer, employee, agent, banker, auditor or office-holder of, or trustee for, the digital asset business mentioned in subsection (1).



**Remuneration and expenses of Commission and others in certain cases**

**43.** The Commission may at any time fix the remuneration and expenses to be paid by a digital asset business—

- (a) to a statutory adviser or statutory manager appointed in relation to the digital asset business, whether or not the appointment has been revoked; and
- (b) where the Commission has assumed control of the relevant business of a digital asset business, to the Commission in relation to the Commission's assumption of control of the relevant business, whether or not the Commission has ceased to be in control of the relevant business.

**PART 7****OFFENCES****Offence by company**

**44.** (1) Where an offence under this Act committed by a company is proved—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the officer's part,

the officer, as well as the company, commits the offence and both are liable to be proceeded against and punished accordingly.

(2) Where the affairs of the company are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the company.

**Offences by officers**

**45** (1) Any person, being an officer of a licensee or regulated subsidiary company, who fails to take all reasonable steps to secure—

- (a) compliance with any provision of this Act; or
- (b) the accuracy and correctness of any statement submitted under this Act,

commits an offence and is liable on summary conviction to a fine of \$50,000 or to imprisonment for a term of 2 years or to both.

(2) In any proceedings against an officer under subsection (1), it shall be a defence for the officer to prove that the officer had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that those statements were accurate, as the case may be, and that that person was competent, and in a position, to discharge that duty.

(3) An officer shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the Court, the officer committed the offence wilfully.

**Falsification of records by officers, etc.**

**46.** (1) An officer, auditor, employee or agent of a licensee who—

- (a) wilfully makes, or causes to be made, a false entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of the licensee;
- (b) wilfully omits to make an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of the licensee, or wilfully causes any such entry to be omitted; or
- (c) wilfully alters, extracts, conceals or destroys an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of the licensee, or wilfully causes any such entry to be altered, extracted, concealed or destroyed;

commits an offence and is liable on summary conviction to a fine of \$75,000 or to imprisonment for a term of 3 years or to both.

(2) In this section “officer” includes a person purporting to act in the capacity of an officer.

**General duty to use reasonable care not to provide false information to Commission**

**47.** (1) A person who provides the Commission with any information under or for the purposes of any provision of this Act shall use reasonable care to ensure that the information is not false or misleading in any material particular.

(2) Subsection (1) applies only where no other provision of this Act creates an offence in connection with the provision of information that is false or misleading in a material particular.

(3) A person who—

- (a) signs any document lodged with the Commission; or
- (b) lodges with the Commission any document by electronic means using any identification or identifying code, password or other authentication method or procedure assigned to the individual by the Commission;

shall use reasonable care to ensure that the document is not false or misleading in any material particular.

(4) A person who contravenes subsection (1) or (3) commits an offence and is liable on summary conviction—

- (a) in the case of an individual, to a fine of \$50,000 or to imprisonment for a term of 2 years or to both; or
- (b) in any other case, to a fine of \$100,000.

**General penalty**

**48.** A person who commits an offence under this Act for which no penalty is expressly provided is liable on summary conviction—

- (a) in the case of an individual, to a fine of \$50,000; or
- (b) in any other case, to a fine of \$100,000.

**PART 8****MISCELLANEOUS****Regulations**

**49.** (1) The Governor may make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the Governor may make regulations for or with respect to—

- (a) the fees to be paid in respect of any matter or thing required for the purposes of this Act, and the refund or remission of the whole or any part of any such fees;
- (b) the granting, variation, change, lapsing, surrender, revocation or suspension of a licence, and all incidental matters;
- (c) the cessation of the provision of a digital asset business activity by a licensee and all incidental matters;
- (d) the activities that may be carried out by a digital asset business, in relation to its business;
- (e) the standards to be maintained by a digital asset business in the conduct of its business;
- (f) any measures to be taken by a digital asset business in relation to its business;
- (g) the standards, framework, policies and procedures for business continuity management (including for ensuring the availability of, and the maintenance of, a backup system) by a digital asset business;
- (h) the corporate governance of a licensee;
- (i) the imposition, variation or revocation of an access regime;
- (j) the acquisition or holding of shares or any other interest in a digital asset business;
- (k) the acquisition or holding of shares or any other interest by a digital asset business in any other entity;

- (l) different requirements for the audit of accounts in relation to different digital asset business;
  - (m) the responsibilities of a digital asset business in relation to the audit of its accounts;
  - (n) the procedures applicable in the event of a default in any payment obligations facilitated by a digital asset business, including the suspension and re-admission of any participants of the digital asset business; and
  - (o) Classes of licenses.
- (3) Except as otherwise expressly provided in this Act, regulations made under this Act—
- (a) may be of general or specific application;
  - (b) may relate to all, or any class, category or description of persons or digital asset business, and may make different provisions for different classes, categories or descriptions of persons or digital asset business or to a particular person or digital asset business;
  - (c) may contain such saving and transitional provisions as the Governor may consider necessary or expedient;
  - (d) may provide that a contravention of any specified provision of the regulations shall be an offence; and
  - (e) may provide—
    - (i) in the case of an individual, for penalties not exceeding a fine of \$50,000 or imprisonment for a term not exceeding 2 years or both for each offence, and
    - (ii) in any other case, for penalties not exceeding a fine of \$100,000.

**Publication of certain information**

**50.** (1) The Commission shall publish on its website a list of all persons licensed under this Act and the class of licence issued.

- (2) The Commission may prepare and publish—
- (a) consolidated statements aggregating any information provided under this Act; or
  - (b) for statistical purposes, statements that relate to or are derived from any information provided under this Act in respect of—
    - (i) a digital asset business, being the only digital asset business in its class, or
    - (ii) a digital asset business activity provided by a licensee, being the only digital asset business activity in its class.

(3) The Commission may, in such form or manner as the Commission considers appropriate, publish such information as the Commission may consider necessary or expedient to publish in the public interest, including information relating to all or any of the following—

- (a) the lapsing, surrender, revocation or suspension of the licence of any person under section 10;
- (b) the revocation or withdrawal of any exemption granted under this Act;
- (c) the conviction of any person for any offence under this Act;
- (d) any other action taken by the Commission against any person under this Act.

### **Service of documents**

**51.** A document other than a summons to be given or served under this Act may be given to or served upon—

- (a) an individual, by being delivered to the individual in person, or by being left at, or sent by registered post or transmitted to, the individual's usual or last known place of abode;
- (b) a company with a principal office in Anguilla, by being left at, or sent by registered post or transmitted to, that office;
- (c) a company without a principal office in Anguilla, by being left at, or sent by registered post or transmitted to, its principal or last known principal place of business in Anguilla or, if there is no such place, its principal or last known principal place of business outside Anguilla;
- (d) an unincorporated body, by being given to or served on any partner, member, manager, director or other similar officer thereof in accordance with paragraph (a), or by being left at, or sent by registered post or transmitted to, the body's principal or last known principal place of business in Anguilla or, if there is no such place, its principal or last known principal place of business elsewhere; and
- (e) the Commission or its Chairman, by being left at, or sent by registered post or transmitted to, the office of the Commission.

### **Amendment of Schedule**

**52.** The Governor may, by Order, amend the Schedule.

### **Application**

**53.** This Act does not apply to a person licensed or registered under the—

- (a) Anguilla Utility Token Offering Act; or
- (b) Utility Tokens Exchange Act.

### **Citation**

**54.** This Act may be cited as the Digital Assets Business Act, 2023.

**SCHEDULE**

(Sections 13 and 15)

**MINIMUM REQUIRED INFORMATION IN A PROSPECTUS FOR AN  
INITIAL DIGITAL ASSET OFFERING****1. Application for Approval of a Prospectus**

(1) An application for approval of a prospectus (“Prospectus”) in connection with the issuance and offering of a previously unissued digital asset (“Offering”) by a licensee pursuant to the Digital Assets Business Act, 2023 (the “Act”) shall be submitted to the Commission in writing on the letterhead of the licensee and shall include a copy of the related Prospectus. Where the application is for an amendment to the Prospectus, a track changed copy of the Prospectus with the proposed amendments shall be submitted.

(2) The Prospectus shall include the minimum required information set forth in this Schedule presented in a clear and concise manner.

(3) The Prospectus shall additionally contain full, true and plain disclosure of all information reasonably relevant to a participant in, or purchaser through, the Offering. The Prospectus shall be accompanied by a certificate from each director of the licensee and the issuer (if not the licensee), and each promoter of the Offering that the Prospectus contains full, true and plain disclosure of all information reasonably relevant to a participant in, or purchaser through, the Offering.

(4) The Commission shall respond to the applicant licensee within fourteen (14) days of submission of the Prospectus with its initial comments and questions. The Commission may at that time approve the Prospectus if it considers it is not contrary to the public interest to do so or may request revision to the Prospectus prior to approval.

(5) The Commission shall approve or reject a Prospectus in writing addressed to the licensee. On issuance of an approval, the licensee shall be permitted to publish the Prospectus and proceed with the Offering.

**2. Cover Page Disclosure**

(1) The cover page to a prospectus shall contain:

- (a) a statement as follows- “No regulatory authority has expressed an opinion about these digital assets and it is an offence to claim otherwise”;
- (b) the full name of the issuer of the digital asset;
- (c) the full name of the licensee involved with the Offering if not the same as the issuer;
- (d) the name of the digital asset;
- (e) the number of digital assets offered under the Prospectus and any maximum or minimum amount of digital assets to be offered;
- (f) the price for the digital assets;
- (g) the amount of any commissions or royalties to be paid to any person pursuant to the Offering; and
- (h) a cross-reference to the section of the Prospectus setting out risk factors in connection with the Offering and the business of the issuer.

**3. Minimum required information regarding persons involved with the Offering**

A Prospectus shall include the following minimum information relating to the persons involved with the Offering including—

- (a) the name of the Offering and the names of the Offering managers;
- (b) the full name of the licensee, its license number, including addresses, email addresses and websites and any other jurisdiction in which the licensee is registered;
- (c) the full name, address and biography of each shareholder holding more than 20% ownership of the licensee and each director and officer of the licensee;
- (d) the full name and address of the auditor of the license;
- (e) the full name and address of the Legal Counsel of the license;
- (f) the full name of the issuer under the Offering, if the different from the licensee, its address, email addresses and websites and any other jurisdiction in which the issuer is registered;
- (g) the details including full name, address and short biography of all other persons involved with the Offering including any shareholder of the issuer holding more than 20% ownership of the issuer and all directors and officers of the issuer if different from the licensee, the owner of the platform where the digital assets will be initially offered if different from the licensee, Offering organisers, promoters and any other such information necessary to identify all persons involved with the Offering;
- (h) confirmation as to whether any one or more of the persons referred to in paragraph (a), (b), (c), (f) or (g) have applied for or been granted a licence, permission or other authority under any law relating to the proposed Offering or otherwise relating to financial markets in any other country or countries and, if so, the relevant details;
- (i) whether the issuer, licensee or any other persons involved in the Offering have previously completed or attempted to complete an offering or sale of digital assets in Anguilla, or any other jurisdiction, and if so the status of such offering or sale and any other project funded thereby; and
- (j) details of any interests the person referred to in paragraph (a), (b), (c), (f) or (g) have or may have in any material contract of the issuer or licensee.

**4. Minimum required information describing the issuer and the Offering**

(1) A Prospectus shall include the following minimum information describing the Offering—

- (a) information about the issuer's jurisdiction of organization, a general description of its business, personnel and project planning including the project phases and milestones and estimated time for delivery of any products or services;
- (b) a description of any legal proceedings the issuer is involved with in any jurisdiction;
- (c) key features of the product or service to be developed, if applicable;
- (d) the proposed market participants that the Offering seeks to target and the proposed jurisdiction or jurisdictions;

- (e) whether there are any restrictions regarding participants and whether any proposed participants are related to the issuer;
  - (f) information regarding the technologies to be used and including whether distributed ledger technology or other new or existing technologies will be used (and whether this is an open source project) and the ownership of such technologies;
  - (g) the means by which the Offering will be financed by the issuer;
  - (h) the amount of money that the Offering is intended to raise and the number of digital assets to be issued and any maximum or minimum amounts applicable;
  - (i) whether such funds have already been allocated to a specific project and how any surplus funds would be handled.
  - (j) details regarding any person or persons that have committed to purchase the digital assets once issued and the amount and nature of such commitments;
  - (k) details of all the relationships between the issuer and any other person in connection with the Offering where such person will be paid or receive direct or indirect benefit through the Offering including the amount paid or expected to be paid to such person;
  - (l) whether a financial institution that is subject to anti-money-laundering and anti-terrorist financing laws in Anguilla or any other jurisdiction will be engaged to meet due diligence requirements under Anguilla laws and, if so detailed information about the relevant processes and relevant financial institution must be provided; and
  - (m) full disclosure of risk factors relating to the issuer and its business and the Offering and the value of the digital asset offered, such as cash flow and liquidity problems of the issuer, if any, experience of management, the general risk inherent in the business carried on by the issuer the Offering and the future value of the digital asset, reliance on key personnel, regulatory constraints, economic or political conditions and financial history and any other matter that would be likely to influence an investor's decision to purchase the digital asset under the Offering.
- (2) A Prospectus shall include the following minimum information describing the digital asset—
- (a) whether a digital asset has been created, or will be created in the course of the Offering; and if the latter, the steps for the creation of the digital asset by reference to the technical standards applicable;
  - (b) the amount or proportion of the digital assets that will be retained by the issuer or project operator, project development team or others and whether there is a vesting period and, if so, details of the timeline;
  - (c) the point at which, by whom and the manner in which the digital asset will be transferred to the participants;
  - (d) a detailed description of any functionalities that are planned for the digital asset and a description of the point or points when the planned functionalities will apply or become active;
  - (e) the rights that the participant would acquire and any obligations to be imposed on the participant and how they will be documented (specifics regarding participation and issuing conditions are required); and



- (f) whether the digital asset has been marketed by the licensee or any other party as a currency, commodity, utility or investment.

#### 5. Minimum required information regarding any proposed transfer following digital asset issue

A Prospectus shall include the following minimum information regarding subsequent transfer of the digital asset—

- (a) whether the digital asset can be traded or transferred between persons with or without an intermediary or other third-party custodian and information about compatible wallets and technical standards;
- (b) whether the digital asset will already be functional at the time of transfer and, if so, to what extent;
- (c) whether it is intended that the digital asset may be used in exchange for goods or services of the applicant or third parties;
- (d) whether the digital asset is expected to be listed and traded on any exchange or marketplace; and
- (e) whether there are plans for the project operator or issuer to buy back the digital assets and the terms of the repurchase.

#### 6. Minimum required information regarding compliance issues

A Prospectus shall include the following minimum required information regarding compliance features which it intends to include in the systems relating to the Offering—

- (a) a description of the technical standards or software, block chain or other distributed ledger technology that will be used to identify participants in the Offering;
- (b) a description of the procedures or protocol that will be used to confirm the identities of the participants in the Offering; and
- (c) a description of the measures that will be established to enable an audit and production of a compliance statement at the close of the Offering confirming compliance with this Schedule and other relevant provisions of the Act.

  
Mrs. Barbara Webster-Bourne  
*Speaker*

Passed by the House of Assembly this 30<sup>th</sup> day of June, 2023.

  
Ms. Vanisha Proctor  
*Clerk of the House of Assembly (Acting)*

**OBJECTS AND REASONS**

*(The objects and reasons do not form part of the Bill)*

The Bill for consideration is the Digital Assets Business Bill.

Part 1 of the Bill (**clauses 1 and 2**) provides for preliminary matters, including the interpretation provision (**clause 1**) and meaning of “fit and proper” (**clause 2**).

Provision is made in Part 2 of the Bill (**clauses 3 to 11**) for the licensing of digital assets business.

**Clause 3** outlines what it means to carry on a digital asset business being any of the activities specified in section 4(2) or an activity specified by Order by the Governor under section 3(3).

**Clause 4** provides for the activities which constitute a digital asset business and makes it an offence for a person to carry on a digital asset business in Anguilla, unless the person is licensed to do so.

**Clause 5** provides for the application procedure for a digital asset business licence and the requirement to be met by the applicant in relation to each type of licence. There are 5 types of licence dependent on the activity to be undertaken. The clause empowers the Financial Services Commission (“the Commission”) to issue a licence to a successful applicant. Depending on the type of licence issued, various aspects of digital asset business activities could be authorised.

**Clause 6** provides the procedure for the variation or change to a license.

**Clause 7** makes provision for the charging of annual fees in respect of licences.

**Clauses 8 and 9** makes provision for the Commission to restrict a licence where the licensee is not in compliance with the terms of the licence. A licence can either be restricted with notice or in the urgent cases without notice.

**Clause 10** sets out the circumstances in which a licence may lapse, be surrendered, revoked or suspended.

**Clause 11** makes it an offence for a person to hold itself out as a licensee, unless the person has a licence.

Part 3 of the Bill (**clauses 12 to 14**) provides for the offer of digital assets to the public.

**Clause 12** makes it an offence for a person (other than a licensee) to offer to provide to the public in Anguilla, any type of digital asset business, whether in Anguilla or elsewhere

**Clause 13** sets out the requirements for the issue of a Prospectus in respect of the offer for sale of a digital asset to the public. A Prospectus cannot be issued without the prior approval of the Commission and must satisfy all the requirements set out in the Schedule. It also provides protection to any person who acts on a Prospectus which is found to contain misrepresentation or false information through a right of withdrawal and the payment of compensation.

**Clause 14** sets out the procedure in respect of where an amendment needs to be made to a Prospectus.

**Clause 15** outlines the powers of the Commission in relation to a Prospectus including the waiving of certain information to be set out in the Prospectus and is empowered to order an assessment of the information provided, suspend or cancel an issue or offer made in relation to the prospectus

Part 4 of the Bill (**clauses 16 to 31**) outlines the key obligations of a licensee, and make it an offence for a licensee to—

- (a) carry on a business of providing any type of digital asset business activity unless the licensee has either a permanent place of business or a registered office in Anguilla (**clause 16**);
- (b) fail to notify the Commission that the licensee is unable to meet any of the licensee's financial, statutory, contractual or other obligations (**clause 17**);
- (c) fail to comply with a notice, from the Commission, requiring specified information and reports relating to the licensee's business of providing a digital asset business (**clauses 18 and 19**);
- (d) fails to comply with the requirement to disclose to its customers information in respect of the keeping of their accounts (**clause 20**); and
- (e) provide any type of digital asset business in Anguilla through an unlicensed agent (**clause 21**);

**Clause 22** enables the additional regulation of a licensee that provides a digital payment token service, for example, in respect of the licensee's insurance against the risk of insolvency.

**Clause 23 to 28** contain provisions relating to the monitoring and control of shareholding in a licensee.

**Clauses 29 to 32** contain provisions requiring the annual accounts of a licensee to be audited by an auditor appointed by the licensee. If the licensee fails to appoint an auditor, the Commission may appoint an auditor for the licensee and the auditor would be empowered to examine, on oath or affirmation, any officer or employee of the licensee and would be required to report to the Commission any matter which, in the auditor's opinion, constitutes an offence involving fraud or dishonesty.

Part 5 of the Bill (**clauses 33 to 36**) makes provisions for inspections and investigations.

**Clause 33** empowers the Commission to inspect, the books of a digital asset business.

**Clause 34** empowers the Commission to conduct an investigation for specified purposes, for example, to ensure compliance with the legislation.

**Clause 35** makes provision for the confidentiality of inspection and investigation reports and **clause 36** preserves the Commission's powers of inspection and investigation under the Financial Services Commission Act.

Provision is made in Part 6 of the Bill (**clause 37 to 43**) for emergency powers where the Commission is of the view that circumstances require immediate intervention.

**Clause 37** contains interpretation provisions.

Where a digital asset business is unable to meet its obligations or an emergency exists in relation to that digital asset business, **clauses 38 to 40** enable the Commission to perform various acts, for example, to assume control of and manage the digital asset business. By virtue of **clause 41**, the Commission would cease to be in control of the business of a digital asset business when the Commission is satisfied that the reasons for the Commission's assumption of control of the business have ceased to exist.

**Clause 42** sets out the duties that are to be performed by the officers of a digital asset business during the period when the Commission is in control of the digital asset business, and **clause 43** makes provision in respect of the remuneration and expenses of the Commission during that period.

Part 7 of the Bill (**clauses 44 to 48**) provides for offences and sets out various offences constituted under the legislation and these include falsification of records by officers (**clause 46**).

Miscellaneous provisions are provided for in Part 8 of the Bill (**clauses 49 to 54**). These include regulation making powers in **clause 49**. Provision is also made for the publication of certain information in **clause 50**, service of documents in **clause 51** and the mechanism for the amendment of the Schedule in **clause 52**. **Clause 53** provides that the Bill does not apply to persons licensed or registered under the Anguilla Utility Token Offering Act or Anguilla Utility Tokens Exchange Act. **Clause 54** provides the short title of the Bill.