



For Public Consultation:

## **DIGITAL ASSETS AND REGISTERED EXCHANGES (DARE) BILL, 2019**

The Securities Commission of The Bahamas (“Commission”), in its capacity as the regulator of investment funds, securities and the capital markets, has issued the Digital Assets and Registered Exchanges Bill, 2019 for public consultation. The Bill may be found on the Commission’s website: <http://www.scb.gov.bs/consultation.html>.

### **Summary**

The Digital Assets and Registered Exchanges Bill, 2019 (“DARE Bill”) provides for the regulation of the issuance and sale of digital tokens, and for the regulation of the conduct of those issuing digital tokens and those providing intermediary services related to the issuance of digital tokens.

This DARE Bill is comprehensive and will provide participants in the digital token space with clear rules to adhere to. Specifically, the Bill creates a legislative structure by which persons who wish to participate in the digital token space are guided on the requirements for entry into and participation in the industry. These requirements stipulate who may participate, the level of capital required, the rules for reporting and seeking the Commission’s approval, and the penalties for failure to comply.

Additionally, the Bill stipulates that participants must adhere to established AML/CFT laws, must take data protection measures related to the personal information of clients, and must implement measures to prevent data breaches that would jeopardize the crypto assets of clients.

### **Scope**

The Bill applies to any person who as organizer, issuer, founder, sponsor, wallet provider, exchange, purchaser or investor participates in the formation, promotion, maintenance, organization, sale or redemption of an initial token offering. However, it does not apply to a person only by reason of his acting in a professional capacity on behalf of persons engaged in procuring the organization, promotion, issuance, sale or trade of digital assets; or security tokens which, for the purpose of this Act, are tokens which when issued or traded have one or more of the same characteristic as a security as regulated by and defined under Part I of the First Schedule of the Securities Industry Act, 2011.

### **Consultation Period**

The consultation period commences Wednesday 3 April 2019 and ends on Tuesday 28 May 2019, during which time the Commission invites the public to share comments with regard to the DARE Bill. Comments may be submitted via email to [siaconsultation@scb.gov.bs](mailto:siaconsultation@scb.gov.bs). Alternatively, comments may be submitted to:

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## Digital Asset & Registered Exchanges Bill, 2019

*A Bill for an Act to regulate the issuance, sale and trade of digital assets in or from within The Bahamas.*

### PART I PRELIMINARY

#### 1. Short title.

- (1) This Act shall be cited as the Digital Asset and Registered Exchanges Bill, 2019.
- (2) This Act shall come into force upon publication.

#### 2. Interpretation.

In this Act –

“**accredited investor**” shall have the same meaning as in section 2 of the Securities Industry Regulations, 2011;

“**asset**” means movable and immovable property of any kind;

“**asset token**” means a digital asset that represents a claim against the issuer that –

- (a) is intended to represent an asset and is embedded with underlying assets; or
- (b) derives its value by reference to an underlying asset; or
- (c) is secured by an underlying asset; or
- (d) is backed by assets held as collateral for the primary purpose of encouraging price stability.

“**Commission**” means the Securities Commission of The Bahamas;

“**digital asset**” means a digital representation of value distributed through a DLT Platform where value is embedded or in which there is a contractual right of use and includes without limitation digital tokens.

“**digital asset business**” includes the provision of services related to –

- (a) digital token exchanges;
- (b) sponsorship of initial token offers;
- (c) wallet services;
- (d) custody of digital asset services; and
- (e) any other activity which the Commission may prescribe by rules;

**“digital custody”** means any arrangement under which a person is authorized to hold, directly or indirectly, a customer’s access keys, smart contracts or other forms of digital assets;

**“digital token exchange”** or **“exchange”** means a marketplace in the form of an electronic platform for the sale, trade or exchange of digital tokens whether for fiat currency or one or more digital tokens ;

**“digital tokens”** includes–

- (a) virtual currency tokens;
- (b) asset tokens;
- (c) utility tokens;
- (d) non-fungible tokens; and
- (e) any other digital representation of value designated by the Commission to be a digital token for the purposes of this Act

**“Distributed Ledger Technology or DLT platform”** means a digital public or private ledger in which data is recorded, shared and confirmed by consensus and synchronized across a network of multiple nodes;

**“fiat currency”** means coin and money of any jurisdiction that is designated by the government of such jurisdiction as legal tender;

**“founder”** means any person who beneficially owns or is entitled to a significant interest in the issuer or organizer;

**“initial token offer”** means an offer by an issuer to the public for the sale of a digital token in exchange for fiat currency or another digital asset

**“issuer”** means the entity contractually responsible for issuing the digital token;

**“registrant”** includes any person registered or licensed –

- a) under the Financial and Corporate Services Providers Act; or
- b) to deal in securities under the Securities Industry Act, 2011;

**“non-fungible token”** means a unique digital token created for use in specific applications which cannot be divided and is not interchangeable with other types of digital tokens;

**“offering memorandum”** means a notice, circular, advertisement, whitepaper or document issued to the public or accessible electronically inviting applications or offers to subscribe for or purchase digital assets or offering digital assets for subscription or purchase;

“**organizer**” if different than the Issuer, means a person who, acting alone or in conjunction with one or more other persons, procures the organization and formation of an Issuer and the promotion and issuance of digital assets through an Issuer.

“**significant interest**” means beneficial interests cumulatively representing more than ten percent of the issued and outstanding equity interests of the organizer or Issuer;

“**sponsor**” means a person registered with the Commission under Part IV of this Act;

“**token holder**” means any entity or natural person who purchases, subscribes for or acquires a digital asset;

“**utility token**” means a right of access or a discount represented in binary format to an application, utility or service but which does not, directly or indirectly, provide the holders thereof with any of the following contractual or legal rights –

- (i) ownership or equity interest in the issuer or in any person or pool of assets;
- (ii) entitlement to a share of profits, losses, assets or liabilities of the issuer or any other person or pool of assets [except in the event of the liquidation of the issuer], to receive a portion of the original subscription price paid at the time of the initial token offering;
- (iii) legal status as a creditor; or
- (iv) entitlement to receive distribution of profits, revenues, assets or other distributions from the issuer or any other person or pool of assets;

“**virtual currency token**” means a digital representation of value which can be digitally traded and functions as –

- (a) a medium of exchange;
- (b) a unit of account; or
- (c) a store of value

that does not have legal tender status or carry any security or guarantee in any jurisdiction;

“**wallet services**” means the provision of digital wallet services by use of a software program that interfaces with fiat currencies, stores private and public keys and interacts with distributed ledger technology to enable users to send, receive and monitor their digital assets

3. This Act shall –

- (a) be administered by the Securities Commission of The Bahamas;
- (b) apply to any person who as organizer, issuer, founder, sponsor, wallet provider, exchange, purchaser or investor participates in the formation, promotion, maintenance, organization, sale or redemption of an initial token offering; and
- (c) not apply to –

- (i) a person only by reason of his acting in a professional capacity on behalf of persons engaged in procuring the organization, promotion, issuance, sale or trade of digital assets; or
  - (ii) security tokens which for the purpose of this Act is a token which when issued or traded has one or more of the same characteristics as a security as defined under Part I of the First Schedule of the Securities Industry Act, 2011;
4. For the purpose of this Act, where a determination must be made concerning whether a person is fit and proper, the following considerations shall be relevant but not limited to the person's –
- (a) financial status or solvency;
  - (b) education, qualifications, experience or ability to conduct an activity under this Act;
  - (c) reputation and character; and
  - (d) any previous regulatory decisions in respect of that person.

**Part II**  
**INITIAL TOKEN OFFERING**

**5. Initial Token Offerings.**

- (1) No issuer shall offer a digital token in or from within The Bahamas except in compliance with this Act.
- (2) An issuer is deemed to offer a digital token in or from within The Bahamas if the issuer –
  - (a) is incorporated or registered under any law of the Commonwealth of The Bahamas; or
  - (b) offers a digital token for subscription to persons in The Bahamas other than accredited investors in The Bahamas.
- (3) An issuer that intends to offer digital tokens for sale in or from within The Bahamas through an initial token offer shall –
  - (a) prepare an offering memorandum in accordance with the requirements of this Act;
  - (b) apply for registration of the token offering with a sponsor licensed by the Commission;
  - (c) be fit and proper; and
  - (d) comply with any prescribed rules or guidelines issued under this Act.

**6. Offer period.**

- (1) Any tokens offered under the provisions of this Act shall only be distributed during the offer period stipulated in the relevant offering memorandum.
- (2) The Commission shall order the cancellation of any initial coin offering and take enforcement action where an issuer fails to comply with subparagraph (1).

## 7. The Offering memorandum.

(1) For the purpose of preparing the offering memorandum pursuant to section 8(3)(a), an issuer shall have a duty to provide full and accurate disclosure of all information which would allow potential purchasers to make an informed decision.

(2) Every offering memorandum published in connection with an initial token offering shall –

- (a) be signed by every founder and member of the issuer's board; and
- (b) address the matters specified in Part II of the First Schedule.

(3) An issuer shall have a duty to publish the offering memorandum by posting a copy of the memorandum on a website operated and maintained by the issuer which is readily accessible to potential purchasers for the duration of the offer period and for no less than 15 days after the offer period ends.

(4) Where requested by a potential or existing purchaser of an initial token offering, an issuer shall provide, for a minimal fee, a hardcopy of the offering memorandum by the method of delivery selected by the purchaser.

(5) Where an issuer proposes an initial token offering of utility tokens only, the offering memorandum shall in addition to addressing the matters listed in Part II of the First Schedule of this Act

–

- (a) indicate whether the founder and founder's affiliates are to receive tokens as compensation.
- (b) contain detailed projections of the timeline and the development milestones of the utility, service or project to be funded by the initial token offering;
- (c) indicate clearly any anticipated period in which the token will not have functionality; and
- (d) for the purpose of subsection (a), specify the minimum vesting period for the tokens.

(6) For the purpose of subsection (5)(d) –

- (a) the vesting period must be enforced by an escrow arrangement deposited with a custodian licensed with the Commission; and
- (b) the escrow arrangement must allow the utility tokens to be vested as disclosed in the offering memorandum.

(7) Where any of the disclosures required under Part II of the First Schedule cease to be accurate in a material particular prior to the end of the offer period for the initial token offering –

- (a) the issuer shall promptly notify the relevant sponsor of the initial token offering, providing the sponsor with –
  - (i) details of the inaccuracy; and
  - (ii) the appropriate amendment to the offering memorandum; and

- (b) the sponsor shall, within 5 business days of receiving notification from the issuer of an inaccuracy, publish a notice on its website to the subscribers to the offering memorandum including in the notice the issuer's amendment to the offering memorandum rectifying the inaccuracy.

## **8. Classification of Tokens**

(1) An issuer shall identify the class or classes of tokens which will be available for subscription in the offering memorandum,.

(2) Subject to subsection (4), should an issuer change the class or classes of tokens to be offered such change must be notified to the Sponsor and the Offering Memorandum shall be amended accordingly.

(3) An issuer shall obtain a written legal opinion in a form and with content acceptable to the Commission and issued by an appropriately qualified Bahamian domestic law firm concerning the classification of its tokens and submit the same to the sponsor along with its application for registration.

(4) Where a digital token is assessed by its issuer or sponsor to be an asset token, no registration of the initial token offering shall be made until the Commission has had an opportunity to review the application and to assess whether such asset token is designated a security for the purposes of the Securities Industry Act, 2011.

(5) Should the Commission designate the asset token as a security –

- (a) the issuer shall comply with Part IX of the Securities Industry Act, 2011 for the purpose of the token offering; and
- (b) the initial token offering shall not be registered by a sponsor.

(6) Notwithstanding the classification of a token by an issuer, a sponsor shall independently assess the classification of all tokens submitted for registration.

## **9. Registration of Initial Token Offering.**

(1) An issuer shall –

(a) apply to a sponsor for the registration of an initial token offering by –

- (i) completing the Form prescribed in Part I of the First Schedule;
- (ii) paying the relevant application fee; and
- (iii) paying the prescribed fee; and

(b) ensure that its application for registration has been submitted to a sponsor no later than 45 days prior to the commencement of the initial token offering.

(2) Where a sponsor preliminarily approves an application to register an initial token offering, it shall promptly submit the material particulars of that offering along with the prescribed fee to the Commission, but such submission shall be no later than 10 days of the receipt of the application.

(3) For the purpose of subsection (2), the material particulars which must be submitted to the Commission shall include but not be limited to the following documents –

- (a) the offering memorandum;
- (b) a certificate of compliance by the sponsor or an appropriately qualified Bahamian local counsel and attorney appointed by the sponsor attesting that the issuer's offering memorandum is in compliance with this Act; and
- (c) such other information and documentation as the sponsor relied upon for the purpose of determining the application.

(4) Where, following a review of the documentation submitted by the sponsor, the Commission does not object to the sponsorship application, the sponsor shall thereafter register the initial token offering.

(5) Where a sponsor fails to submit all required documents within the prescribed time, the sponsor shall pay a penalty of \$500 for each day which elapses thereafter until the documents have been submitted to the Commission.

**10. Other duty of sponsor.**

A sponsor shall ensure that the appropriate amendments are made where an issuer –

- (a) increases or decreases the subscription levels relevant to that token; or
- (b) converts the class of the relevant token.

**11. Accuracy of registration.**

(1) No sponsor shall amend or vary the registration of an initial token offer without the prior written approval of the Commission.

(2) A sponsor shall, where it receives a request to vary or amend the registration of an initial token offer, submit the particulars of that request to the Commission within ten days of such receipt.

**12. Approval or refusal of sponsor application.**

A sponsor shall have discretion to approve or refuse an application for sponsorship and shall, where an application has not been approved, promptly notify the issuer providing reasons for its decision.

**13. Issue of sponsorship certificate.**

Where a sponsor receives notice that the Commission has no objection to an application in respect of an initial token offering which has been preliminary approved by the sponsor, or the variation or amendment of a registration, it shall –

- (a) issue a certificate of registration to the issuer; and
- (b) submit a copy of the certificate to the Commission within twenty-one days of its issue.

**14. Advertisement of initial token offering**

Any advertisement relating to an initial token offering shall be –

- (a) accurate and not misleading;



- (b) comply with any prescribed requirements;
- (c) clearly identifiable as an advertisement; and
- (d) consistent with the information contained in the offering memorandum,

**15. Powers of Commission in connection with initial token offering.**

In addition to its powers set out under section 41 the Commission shall also have the power to –

- (a) order the amendment of an offering memorandum to include supplementary information;
- (b) suspend any initial token offering with notice to the issuer and the sponsor if the Commission reasonably suspects that the offering is being conducted in breach of this Act or in a manner that is injurious to the public;
- (c) require the amendment or removal of any advertisement, material or publication on the issuer’s website concerning the offering which the Commission reasonably considers as inaccurate or misleading; and
- (d) publish a notice advising the public of any action taken pursuant to this section.

**16. Token register**

The Commission shall keep and maintain a register setting out the particulars of all initial token offerings, which register shall set out –

- (a) the name and address of the issuer and sponsor;
- (b) the regulatory licenses or registrations held by the issuer and sponsor, including any foreign registrations;
- (c) the name and applicable symbol of the digital asset created;
- (d) any conditions imposed by the Commission, including conditions concerning the sale or redemption of the digital asset; and
- (e) any other information deemed relevant by the Commission.

**17. Continuing obligations of an Issuer to disclose**

(1) Where, after the offering memorandum has been issued but before the close of the offer period, an issuer becomes aware of any information which could reasonably negatively affect the interests of purchasers, the issuer shall immediately disclose that information by a supplement to the offering memorandum.

(2) Where an issuer fails to disclose in accordance with subsection (1), each founder and member of the issuer’s board shall be –

- (a) liable personally where purchasers suffer loss as a result of the non-disclosure; and
- (b) subject to an administrative penalty of up to \$10,000.

**18. Purchasers’ rights.**

(1) Where an issuer publishes an offering memorandum or any amendment thereto which contains a material misrepresentation relating to any of the requirements set out in Part II of the First Schedule, a purchaser shall have a right of action against the issuer –

- (a) for the rescission of the subscription; or

(b) for damages.

(2) Notwithstanding any provision of law, proceedings pursuant to subsection (1) may not be commenced –

- (a) after 180 days from the day that the plaintiff first had knowledge of the misrepresentation; or
- (b) one year from the date of the subscription transaction that gave rise to the cause of action, whichever is earlier.

### **19. Right of withdrawal**

(1) A purchaser of a digital token distributed under the provisions of these Rules shall be entitled to withdraw his purchase by written notice to the issuer.

(2) A purchaser's notice of withdrawal shall be made no later than seventy-two hours after the date of the agreement to purchase the digital token.

(3) Where a purchaser has exercised the right of withdrawal, all funds paid by the purchaser shall be paid over by the issuer within two (2) days of the purchaser's request.

## **Part III DIGITAL ASSET BUSINESS**

### **20. Registration of Digital Asset Business**

(1) No person may carry on any activity which requires registration or a license issued under the provisions of this Act in or from within The Bahamas, or purport to do so, unless that person is –

- (a) a legal entity incorporated or registered under the laws of The Bahamas; and
- (b) registered with the Commission to carry on that business having received written notice of registration; or
- (c) exempt from registration.

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

- (a) a person carries on digital asset business in or from within The Bahamas if such person –
  - (i) is engaged in the course of business in any one or more of the digital asset activities listed in section 2 of this Act; and
  - (ii) is incorporated or registered under any law in The Bahamas; or
  - (iii) carries on digital asset business activities from a place of business maintained by such person in The Bahamas.
- (b) A person shall not be deemed to be carrying on digital asset business in or from within The Bahamas solely due to the presence of data servers or maintenance of other parts of the DLT platform in The Bahamas.

(3) An application to be registered as a digital asset business shall be made in the form prescribed

by the Commission and shall be accompanied by –

- (a) A copy of a detailed and up to date business plan of the applicant, including financial and operational projections, staffing requirements, technological requirements, as applicable;
- (b) evidence of the applicant’s good standing with the Registrar of Companies;
- (c) certified copy of the applicant’s Memorandum and Articles of Association, or equivalent constitutive documents;
- (d) if for a digital asset exchange, copies of the rules of the exchange including rules for admission to listing of digital assets on the exchange;
- (e) a schedule of proposed fees, including fees for listing, execution of trades, clearing and settlement and any other charges;
- (f) evidence of the applicant’s registration with any other regulatory authority, if applicable.
- (g) completed Forms for each founder, beneficial owner, security holder, director and officer; and
- (h) the prescribed application fee.

(4) All registrations shall be renewed annually by January 31 of each year.

#### **21. Duty to maintain professional conduct**

In addition to compliance with any prescribed requirements, every digital asset business registered under this Act shall, in conducting its business activities, –

- (a) act honestly and fairly;
- (b) act with due skill, care and diligence;
- (c) observe and maintain a high standard of professional conduct;
- (d) refrain from engaging in any improper or illegal conduct;
- (e) maintain adequate financial resources and solvency;
- (f) have effective arrangements in place for the protection of client assets and money;
- (g) have effective corporate governance arrangements consistent with any prescribed rules or guidelines issued by the Commission; and
- (h) have systems in place to prevent, detect and disclose money laundering and terrorist financing.

#### **22. Regulatory capital and solvency.**

All registrants shall –

- (a) maintain and be able to demonstrate adequate financial resources for the nature and scope of their financial or corporate service operations; and
- (b) maintain solvency and be able to meet the risks of its financial services or corporate services operations; and

- (c) maintain regulatory capital as may be prescribed, which regulatory capital may include a requirement for indemnity insurance.

### **23. Insurance**

(1) Except where specifically exempted, or where otherwise required due to changes in the operating environment, registrants shall secure and maintain adequate insurance coverage in an amount appropriate to the activities, scale, and complexity of its business operations to cover at least professional indemnity.

(2) Registrants shall review on an annual basis the amount and type of insurance held and ensure that such coverage continues to be sufficient to cover the insurable risks of the registrant's business.

(3) The Commission shall not renew the registration of a digital asset business under this Part where in the opinion of the Commission the amount or extent of the coverage is inadequate.

(4) The Commission may require a registrant to amend insurance coverage.

### **24. Accounts to be kept.**

All digital asset businesses shall keep or cause to be kept and maintained for a period not less than seven years from the prescribed time in a form satisfactory to the Commission –

- (a) such books and records necessary for the proper recording of its business transactions and financial affairs; and
- (b) such other documents as may be required by the Commission.

### **25. Auditors**

(1) A registrant shall only appoint an auditor approved by the Commission.

(2) The approved auditor appointed by a registrant shall make an examination, in accordance with generally accepted auditing standards, of the annual financial statements of the registrant.

(3) A registrant shall submit to the Commission on an annual basis, the annual financial statements prepared by the auditor and any other financial records.

### **26. Registrant's general duty to comply and co-operate**

(1) In addition to complying with any prescribed requirements, a registrant shall comply with the provisions of this Act and any rules, guidelines or directives made and issued by the Commission concerning the conduct of its business, and shall –

- (a) deal openly and honestly and co-operatively with the Commission;
- (b) duly provide information relevant to its operations as the Commission may require; and

(c) submit to on-site or off-site examinations as required by the Commission in the exercise of its functions.

(2) For the purpose of subsection (1), a registrant's compliance shall be considered as a part of the minimum criteria for continued registration.

(3) Any registrant, or any of its employees, managers, officers or other connected person, who

–

(a) fails to co-operate with; or

(b) obstructs or assaults any person appointed by or acting on behalf of the Commission

in the conduct of an examination, inspection or investigation of the registrant, commits an offence and is liable on summary conviction to a fine not exceeding \$500,000.

(4) For the purposes of subsection (3), it shall not be relevant whether the employee, manager, officer or connected person was acting on the specific instruction of any individual having control of or responsibility for the management or operation of the registrant.

## **27. Duty to implement data protection measures.**

(1) A registered digital asset business must implement and maintain data protection measures consistent with the Data Protection (Privacy of Personal Information) Act (*Ch. 324A*) concerning the protection of personal data relative to its customers.

(2) With respect to paragraph (1), a digital asset business shall also ensure that its data Protection measures provide –

(a) protocols for the collection and storage of personal data;

(b) for the implementation of appropriate security measures to prevent unauthorized access to or alteration, disclosure or destruction of personal data; and

(c) for the rectification or erasure of any data which is inaccurate upon the written request of an affected person.

## **28. Record keeping and prevention of unauthorized data access**

(1) A digital asset business shall implement and maintain where applicable –

(a) record keeping measures for the accurate collection of information and documents related to the originator and beneficiary of digital assets; and

(b) procedures to safeguard client assets against unauthorized data access by third Parties.

(2) For the purpose of subsection (1)(b), the procedures to be implemented and maintained shall include but not be limited to taking measures –

- (a) to assess and address security risks; and
- (b) addressing –
  - (i) the use of encrypted communications;
  - (ii) assignment of client-only passwords; and
  - (iii) the installation of hardware and software appropriate to the level of security risk.

**29. Prevention of money laundering and terrorism financing.**

Where a digital asset business provides services involving the sale or transfer of a digital asset, it shall, with respect to its own activities and such digital assets, for the purpose of risk management and the prevention of money laundering and terrorism financing, –

- (a) implement and maintain policies and procedures to ensure compliance with provisions of the Financial Transactions Reporting Act, 2018, the Financial Transactions Reporting Regulations, 2018, the Financial Intelligence (Transactions Reporting) Regulations, 2018; and
- (b) comply with the rules, policies and guidelines made and issued by the Commission on risk management and the prevention of money laundering and terrorist financing.

**30. Commission's prior approval for certain changes.**

No digital asset business shall, without the prior written approval of the Commission –

- (a) expand the scope of its activities;
- (b) issue new tokens;
- (c) merge with another registrant or other entity;
- (d) issue, transfer or otherwise dispose of its shares or transfer all or a material part of its business;
- (e) appoint any new director;
- (f) replace its custodian or sponsor;
- (g) replace its compliance officer or money laundering reporting officer;
- (h) add to or reduce its shareholders;
- (i) change or modify its name; or
- (j) make any change to its auditors.

**31. Duty to notify changes relating to registration.**

A digital asset business shall immediately notify the Commission of any change relevant to its application for registration concerning –

- (a) address for service;
- (b) contact information, including email address and phone or fax numbers;
- (c) principal place of business;
- (d) insurance coverage; or
- (e) attorneys and corporate officers.

**32. Suspension or revocation of registration of digital asset business**

(1) The Commission may suspend or revoke the registration of a digital asset business where –

- (a) suspension or revocation would be in the public interest;
- (b) the digital asset business is being marketed or advertised in a manner that is fraudulent or misleading or otherwise injurious to the public;
- (c) any operator of the digital asset business is convicted of a criminal offence involving fraud or dishonesty;
- (d) the digital asset business is being conducted in breach of the Act or in breach of any other law of The Bahamas;
- (e) any information furnished to the Commission is false or misleading or grossly inaccurate or if the registration has been obtained by fraud; or
- (f) at the request of the digital asset business.

(2) A notice of a proposed suspension shall be delivered to the sponsor at least 14 days prior to effective suspension and the registrant shall have 7 days from the receipt of such notice in which to respond.

(3) Notwithstanding subsection (2), the Commission may suspend the registration of the digital asset business without prior notice if the Commission deems that an immediate suspension of the registration of the digital asset business is necessary to protect the public.

(4) A suspension notice must state the conditions for reinstatement and the timeline in which the conditions must be met.

(5) The Commission may reinstate a suspended registration if the registrant has satisfied the conditions placed on the suspension to the Commission's satisfaction.

(6) The Commission may reinstate a suspended registration with or without conditions in its discretion.

#### **PART IV SPONSORS**

### **33. Registration and qualifications of token sponsor.**

(1) No person shall act as a token sponsor or offer sponsor services unless registered with the Commission.

(2) In addition to meeting any prescribed requirements for registration, a person proposing to act as a token sponsor shall –

- (a) apply for registration by completing the prescribed Form set out in Part III of the First Schedule;
- (b) have the relevant skills, knowledge and expertise to act as a token sponsor;
- (c) meet any prescribed educational requirements; and
- (d) be independent or deemed to be independent from the issuer in accordance with rules issued by the Commission.

(3) For the purpose of subsection (2)(d), a person shall be deemed to be independent from the issuer if such person –

- (a) is a separate legal entity from the issuer; and
- (b) has no common shareholders, directors, partners, or Board.

(4) A person that proposes to be a token sponsor shall be –

- (a) a counsel or attorney at law or a firm of attorneys in good standing with the Bahamas Bar Association;
- (b) a chartered accountant or firm of chartered accountants in good standing with the Bahamas Institute of Chartered Accountants;
- (c) an unrestricted fund administrator as defined in the Investment Funds Act;
- (d) a registered firm as defined in the Securities Industry Act; or
- (e) any other person approved by the Commission.

(5) The Commission may place such conditions on the registration of the sponsor as it deems fit, including a condition limiting the number of token offerings that may be sponsored.

(6) The Commission shall establish and maintain a public register of sponsors, which shall be accessible on its website.

### **34. Duties of and prudential requirements for the Sponsor**

(1) A sponsor shall:

- (a) ensure that the issuer has satisfied all requirements prescribed by this Act and any prescribed rules or regulations issued hereunder, including *inter alia*, that such issuer and the controllers of such issuer is, in each case, a fit and proper person to carry out an initial token offering;
- (b) submit such information to the Commission regarding the initial token offerings sponsored as may be prescribed by the Commission;
- (c) disclose to the Commission any information that the Commission may reasonably request with respect to the initial token offering or the offering memorandum;
- (d) conduct due diligence on all potential issuers;
- (e) ensure the origin and record of ownership of all tokens the issuer proposes to issue;
- (f) register all tokens with the Commission;
- (g) maintain all records relevant to offerings which it sponsored, including records relating to the issuer and organizer; and
- (h) advise the issuer on its obligations with regard to the subject matter requiring sponsor services.

(2) A sponsor shall have written policies and procedures addressing the minimum requirements prescribed by the Commission, which policies and procedures shall include but not be limited to –



- (a) with respect to an initial token offering, Anti Money Laundering and the Countering of the Financing of Terrorism requirements under the Financial Transactions Reporting Act, 2018 concerning the issuer and organizer;
- (b) disclosure and the resolution of conflicts of interest;
- (c) remuneration; and
- (d) the protection of employees who disclose breaches of the Act to the Commission.

**PART V  
DIGITAL ASSET BUSINESSES**

**35. Registration of a digital asset business.**

(1) No person may offer services as a digital asset business unless it has been registered under this Part.

(2) Applicants for registration under this Part must submit to the Commission –

- (a) the completed prescribed application for registration set out in Party II of the First Schedule;
- (b) the prescribed fee; and
- (c) any other document or information the Commission may require.

**36. Approval or Refusal of application.**

(1) The Commission may approve or refuse an application under this Part in its discretion.

(2) The Commission may approve an application for registration where satisfied that an applicant under this Part –

- (a) is incorporated, established or registered under any law of the Commonwealth of The Bahamas;
- (b) is fit and proper;
- (c) has sufficient capacity and resources to conduct an activity under this Act, including –
  - (i) appropriate and sufficient systems and controls to perform its functions and manage its risks, including fraud and market abuse; and
  - (ii) the ability to meet solvency standards and levels of capital as may be prescribed by the Commission; and
- (d) has designed a digital asset framework which addresses but is not limited to the following –
  - (i) technology and security;
  - (ii) governance;
  - (iii) scalability;
  - (iv) Anti Money Laundering and Countering the Financing of Terrorism risks; and regulations.

**37. Systems and controls.**

A digital asset business shall ensure that the systems and controls used in its activities are adequate and appropriate for the scale and nature of its business, including systems and controls which adequately and appropriately address the –

- (a) recording and transmission of information;
- (b) effecting and monitoring of transactions;
- (c) operation of the arrangements made for securing the timely discharge, whether by performance, compromise or otherwise, of the rights and liabilities of the parties to transactions; and
- (d) the safeguarding and administration of assets belonging to investors.

**38. Continuing obligations.**

A digital asset business shall satisfy such ongoing requirements as may be prescribed by rules or regulations with respect to their conduct of digital asset business in or from within The Bahamas.

**PART VI  
ADMINISTRATION**

**39. Regulatory control.**

Pursuant to section 40(a), the Commission shall exercise regulatory control over digital asset businesses and activity in The Bahamas for the purpose of ensuring the –

- (a) orderly development and continuation of digital asset activities in The Bahamas; and
- (b) development and maintenance of investor protection standards with respect to the digital asset business and initial token offers.

**40. Functions of the Commission.**

The Commission shall –

- (a) regulate, monitor and supervise persons conducting digital asset business in or from within The Bahamas;
- (b) maintain the public register of information required to be maintained under the provisions of this Act;
- (c) develop rules, guidance and codes of practice in connection with the conduct of digital asset business and initial token offers;
- (d) advise the Minister on all matters relating to digital asset business;
- (e) promote investor education and other conditions that facilitate innovation and development of digital asset businesses within The Bahamas; and
- (f) perform any other function conferred or imposed by Parliament.

**41. Powers of the Commission.**

(1) For the purpose of the discharge of its functions the Commission shall –

- (a) register and regulate digital asset businesses,
- (b) regulate initial and subsequent token offers ;
- (c) make and issue rules on the conduct of digital asset businesses and issuers ;

- (d) take enforcement action against any person for failing to comply with this Act;
- (e) publish notices, guidelines, bulletins, and policies describing the views of the Commission regarding the interpretation, application or enforcement of the Act and any rules or regulations issued in accordance with the provisions of this Act;
- (f) prescribe fees by rules and collect application and other fees;
- (g) do all things, and take all actions, which may be necessary or expedient or are incidental to the discharge of any function or power given to the Commission.

(2) For the purpose of subsection (1)(f), the fees payable to the Commission and revenue earned pursuant to this Act –

- (a) shall not form part of the Consolidated Fund; and,
- (b) shall be applied by the Commission for the purpose of exercising its powers and performing its functions and duties under this Act.

#### **42. Power to inspect and investigate.**

(1) The Commission shall have power to conduct on-site or off-site inspections of the business of any person registered under this Act to determine whether such person is complying with –

- (a) the provisions of this Act or any regulations issued in accordance with the provisions of this Act;
- (b) the Financial Transactions Reporting Act, 2018 and any other anti-money laundering or counter-financing of terrorism laws; or
- (c) any other relevant laws.

(2) Notwithstanding subsection (1), the Commission shall have power to conduct such investigation as it considers necessary for the purpose of satisfying itself that –

- (a) a person registered under this Act is complying with section (1) (a), (b), or (c); or
- (b) no unregistered persons are engaged in an activity regulated under the provisions of this Act.

#### **43. Co-operative power.**

(1) The Commission may exercise its powers under the provisions of this Act to provide assistance to a domestic or an overseas regulatory authority by disclosing and transmitting to such other authority information, documents or material it has acquired in the exercise of its functions under this Act, and such disclosure shall not be a breach of confidentiality.

(2) The Commission may provide assistance where satisfied that –

- (a) such assistance may be relevant to the functions of a domestic or foreign regulatory authority and is intended to enable such authority to carry out the supervision, investigation or enforcement to which the request relates;
- (b) the domestic or overseas regulatory authority has given a written undertaking that

any material obtained pursuant to its request shall not, except with the approval or consent of the Commission –

- (i) be used for any purpose other than a purpose that is specified at the time of the request; and
  - (ii) be disclosed to any third party, other than a designated third party.
- (c) the material requested is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means.
- (d) the matter to which the request relates is of sufficient gravity; and
- (e) the provision of the requested assistance will not be contrary to the public interest of The Bahamas or the interest of the public.

(3) The Commission may, in determining whether to provide assistance to an overseas regulatory authority, consider whether –

- (a) the act or omission that is alleged to have breached the law or regulatory requirement to which the request relates would have, if it had occurred in The Bahamas, constituted a breach of the law regulating the digital asset industry;
- (b) the overseas regulatory authority has given or is willing to give an undertaking to the Commission to –
  - (i) comply with a future request by the Commission to the overseas regulatory authority for similar assistance; and
  - (ii) contribute towards the costs of providing the assistance that the overseas regulatory authority has requested.

(4) Pursuant to subsection (1), and notwithstanding any obligations as to secrecy or restrictions on the disclosure of information by virtue of any written law, any rule of law, any contract or any rule of professional conduct, the Commission may –

- (a) order any person to furnish the Commission with any material that is requested by the overseas regulatory authority, that the Commission may then transmit to that authority;
- (b) order any person to give the Commission assistance in connection with a request made by an overseas regulatory authority; or
- (c) order any person to make an oral statement to the Commission on any information requested by the overseas regulatory authority, record such statement, and transmit the recorded statement to the authority.

(5) A person shall not be required to disclose information or produce a document which the person would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in court proceedings, and the information or documents shall be deemed to be privileged if it is given to the person as a professional legal adviser –

- (a) by, or by a representative of, a client of the adviser in connection with the giving of legal advice to the client;

- (b) by, or by a representative of, a person seeking legal advice from the advisor; or by any person –
  - (i) in contemplation of, or in connection with, legal proceedings; and
  - (ii) for the purpose of those proceedings; and
- (c) for lawful purposes.

(6) Where a person in possession of any document required to be produced in response to an order made under subsection (4) claims a lien on the document –

- (a) the requirement to produce the document shall not be affected by the lien;
- (b) no fees shall be payable for or in respect of the production; and
- (c) the production shall be without prejudice to the lien.

(7) No civil or criminal proceedings, except for an offence under subsection (8) shall lie against any person, who in compliance with an order made under subsection (4), –

- (a) furnishes the Commission with any information or material in any form, including any document or copy thereof;
- (b) makes a statement to the Commission in good faith;
- (c) gives assistance to the Commission by doing or omitting to do any act, the doing or omission of the act is done in good faith.

(8) It shall be an offence, punishable on summary conviction to a fine not exceeding \$100,000, for any person, in response to an order made under subsection (4), to –

- (a) without reasonable excuse, refuse or fail to comply with the order;
- (b) knowingly furnish the Commission with any false or misleading information or material in any form, including any document or copy thereof;
- (c) knowingly make statement to the Commission that is false or misleading in a material particular.

(9) In the exercise of its cooperative power under this section, the Commission shall have authority to enter into memoranda of understanding with overseas regulatory authorities subject to the following –

- (a) the memoranda of understanding shall be –
  - (i) for the mutual and reciprocal assistance of an overseas regulatory authority, or any designated third party, in carrying out supervision, investigation or enforcement functions;
  - (ii) related to the consolidated supervision with an overseas regulatory authority, or designated third party; or
  - (iii) for the purpose of the Commission's supervision, investigation or enforcement functions under this Act, or any other lawful purpose;
- (b) the scope of the memoranda of understanding shall not exceed the Commissions powers under the provisions of this section; and

- (c) notice of the memoranda of understanding is issued to the Ministry of Finance and published on the Commission’s website and in the Gazette.

10. For the purposes of this section –

“domestic regulatory authority” means the body or person in The Bahamas that exercises regulatory, supervisory, enforcement or similar functions as the Commission, and includes –

- (a) law enforcement agencies;
- (b) regulators supervising financial institutions;
- (c) other governmental or regulatory agencies or Competent Authority;

“overseas regulatory authority” means the body or person in a jurisdiction outside The Bahamas that exercises similar functions as the Commission regulating digital asset business and activities, and includes a designated third party.

“designated third party” includes –

- (a) a person or body responsible for supervising the relevant regulatory authority;
- (b) any authority responsible for carrying out the supervision, investigation or enforcement of laws alleged to have been breached;
- (c) any authority of the foreign jurisdiction, other than the requesting overseas regulatory authority, exercising a function that corresponds to a regulatory function of the Commission under this Act.

## **PART VII GENERAL PROVISIONS**

### **44. Rules and Guidelines**

(1) In carrying out the purposes of this Act, the Commission may make rules providing for such matters as may be necessary or expedient for giving effect to such purposes, functions and responsibilities.

(2) Rules may vary the provisions of this Act generally or with respect to its application to –

- (a) a person or class of persons;
- (b) a digital token or class of digital tokens; or
- (c) a digital asset business or class of digital asset business.

(3) In publishing rules under this Act, the Commission shall, mutatis mutandis, follow the rule making Procedure set out in Section 149 of the Securities Industry Act

(4) The Commission may publish guidelines regarding any regulations or rules made pursuant to this Act provided but such guidelines shall not be taken as having the force of law.

### **45. Regulations**

The Minister may, after consultation with the Commission, make regulations necessary or expedient for carrying out the purposes of this Act and giving effect to the functions and responsibilities of the Commission under this Act.

**46. Offences.**

(1) Any person who fails to comply with the provisions of this Act or any regulations issued hereunder commits an offence and shall be subject to fine and imprisonment or both.

(2) Notwithstanding paragraph (1), where an offence under this Act has been committed and it is proved that the offence occurred with the consent or connivance or any neglect of an officer, director, manager, partner, or person purporting to act in any such capacity, each such person shall also be guilty of the offence.

(3) For the purpose of this section, any person who commits an offence under this Act or any regulations issued hereunder for which no penalty is provided is liable on summary conviction to a fine not exceeding \$500,000 or imprisonment up to five years.

**47. Misrepresentations.**

Any person who –

- (a) willfully makes any misrepresentation in any document required to be filed or submitted under this Act;
- (b) willfully makes any statement or give any information required for the purpose of this Act which he knows to be materially false or misleading; or
- (c) knowingly fails to disclose any fact or information required to be disclosed for the purposes of this Act or any relevant regulations

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding \$500,000 in respect of each instance or imprisonment up to 10 years.

**48. Administrative sanction.**

(1) Notwithstanding any other action which may be taken by the Commission for a breach of or failure to comply with any provisions of, or any regulations, rules or guidelines made under this Act, the Commission may impose an administrative sanction for such breach or failure, which sanction may include –

- (a) issuing a public reprimand;
- (b) banning a registrant from carrying on certain activities or operations;
- (c) temporarily suspending a manager;
- (d) removing a director, officer, or other senior manager or general partner;
- (e) setting conditions or restrictions on a registrant;
- (f) an order –
  - (i) requiring that a registrant complies with a direction issued by the Commission;
  - (ii) withdrawing an exemption or waiver;
  - (i) prohibiting a person from acting as a director, partner, or officer of another person;
  - (iv) prohibiting a person from being appointed as auditor;

- (v) requiring a registrant to make changes to its practices and procedures;
- (vi) for restitution; or
- (vii) for disgorgement of profits or unjust enrichment;
- (g) appointing a person, at the expense of the registrant, to –
  - (i) oversee the affairs of the registrant and report to the Commission; or
  - (ii) assume control of a registrant’s affairs who shall, subject to necessary modifications, have all of the powers of a person appointed as a receiver or manager of a business appointed under the law governing bankruptcy or winding up.
- (h) applying to the court for an order to take such action as the Commission considers necessary to protect the interest of clients or creditors of a registrant;
- (i) with respect to subsection (1)(f)(vii), requiring a registrant to pay an administrative penalty not exceeding twice the amount of such profits or unjust enrichment;
- (j) revoking a licence pursuant to section 32; or
- (k) imposing any other penalties, sanctions, or remedies as the justice of the case may require.

(3) The sanctions and actions under subsection (2) may be imposed by the Commission where satisfied that a registrant has –

- (a) breached any provisions of this Act;
- (b) failed to comply with any regulations, or rules, guidelines, or directives made and issued by the Commission;
- (c) failed to comply with any codes of practice issued by the Commission pursuant to provisions of the Financial Transactions Reporting Act, 2018; or
- (d) failed to comply with any guidelines issued by the Financial Intelligence Unit pursuant to section 15 of the Financial Intelligence Unit Act, *Ch. 367*.

(4) Where the Commission imposes a sanction or takes action pursuant to subsection (2) –

- (a) the order shall be in writing;
- (b) the order shall specify the breach committed by the registrant and the sanction imposed by the Commission;
- (c) a copy of the order shall be given to the registrant; and
- (d) the order may be enforced in the same manner as an order of the court.

**49. Transition.**

(1) Notwithstanding the provisions of any other law, any person who immediately before the entry into force of this Act was engaged in any activity regulated under this Act shall be deemed to be engaged in such activity under the provisions of this Act.

(2) Any person who was not registered to carry on an activity regulated under this Act shall have ninety days from the commencement date of this Act to submit an application to the Commission to become registered.



Dated of , 2019

## First Schedule

### Part 1

Information to be collected by Token Sponsor

<b>General information</b>	
Name of the project	
Company name	
Type of entity	
Addresses of the company	
e-mail	
Website	
Names of the founders (attach CV/background)	
Addresses of the project operators	
Details of all persons involved : <ul style="list-style-type: none"><li>• Founder</li><li>• Issuer</li><li>• Token seller</li><li>• Advisors</li><li>• Secondary trading participants (platform, ICO organiser, etc.)</li><li>• Person endorsing Offering Memorandum</li></ul>	
Regulatory licenses held by the Issuer, Founder, advisors and Exchanges (if any)	
<b>Project description</b>	

Project name, goals and project plan / timeline-roadmap	
Key features of the service to be developed (industry)	
Profile of investors i.e. accredited vs. Non-accredited	
Residence restrictions on investors (US, China, etc.)	
Project organization and planning (timing of the various ICO phases, milestones, etc.)	
Technologies used (DLT, new techno, open source, etc.)	
Method of payment accepted : (types of digital assets and currencies)	
Projected raise total in fiat currencies and digital assets	
Please indicate whether the funds have been allocated to a specific project / operational investment and how will the surplus funds be allocated	
<b>Issuance of Digital Asset</b>	
Name/symbol of digital asset created	
Technological methods and standards for creation (ERC 20, etc.)	

Wallet ID of the ICO (if already in existence)	
At which point by whom and in which manner will the token be transferred to the investors ? Price of token during pre/public sale) and price setting mechanism	
Which functionalities will be embedded in the token / what will be the uses of the token ?	
At which point will the functionalities planned apply ?	
Will a regulated financial intermediary commissioned to meet the AML due diligence requirements ? If so, according to which law	
Provide detailed description on the KYC / AML processes applied (PEPs, sanctions, high risk industries, etc)	
<b>Transfer and secondary market</b>	
Describe how the token be transferred (compatible wallets, technical standards)	
Indicate whether the token is already functional at the time of the transfer and, if yes, to what extent	
Indicate where the token can be acquired or sold after the issuance (what are the secondary market platforms) ?	

Will it be possible to use the tokens to buy goods or services or make payments to third parties ?	
Are there plans for the project operator / issuer to buy back tokens)	
<b>Vesting of Digital Assets (Utility Tokens)</b>	
How can the token be transferred (compatible wallets, technical standards) ?	
Is the token already functional at the time of the transfer ? If yes, to what extent ?	
How and where can the token be acquired or sold after the issuance (what are the secondary market platforms) ?	
Will it be possible to use the tokens to buy goods or services or make payments to third parties ?	
Are there plans for the project operator / issuer to buy back tokens)	

**First Schedule**  
**Part II**  
**Requirements for Offering memorandum**

Matters to be specified in a offering memorandum of an issuer and requirements for its approval and publication.

**General**

1. The offering memorandum shall contain the information which, according to the nature of the issuer and of the digital assets offered to the public, is necessary to enable investors to make an informed assessment of the prospects of the issuer, the proposed project and of the features of the digital asset. This information shall be presented in plain English with no over-reliance on technological terms unless such terms are clearly explained.
2. Certain information specified in this Schedule may be omitted from the offering memorandum if:
  - (a) disclosure of such information would be seriously detrimental to the issuer, provided that the omission would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the prospects of the issuer, the proposed project and of the features of the digital assets to which the offering memorandum relates; or
  - (b) such information is largely irrelevant and would not taking into account reasonable factors influence an informed assessment of the prospects of the issuer, the proposed project and of the features of the digital assets to which the offering memorandum relates.
3. The offering memorandum shall be drafted in the English language and any additional languages, at the issuer's discretion.
4. The offering memorandum shall include a summary. The summary shall, in brief and in non-technical language, provide key information in relation to the offering. The format and content of the summary of the offering memorandum shall provide, in conjunction with the offering memorandum, appropriate information about essential elements of the digital assets concerned in order to aid investors consideration of whether to invest in such digital assets. The summary shall also include a warning that:
  - (a) it should be read as an introduction to the offering memorandum;
  - (b) any decision to invest in the digital assets should be based on consideration of the offering memorandum as a whole by the investor;

(c) the offering of digital assets does not constitute an offer or solicitation to sell a digital asset which is an asset token that has been deemed by the Commission to be a security, and that any such offer of an asset token that is deemed by the Commission to be a security will be made only by means of a prospectus or other offering documentation as provided by the Securities Industry Act, 2011;

**Specific matters to be included.**

5. The persons responsible for the publication of the offering memorandum;

6. Names, functions and declarations by the persons responsible for the offering memorandum that:

“To the best of their knowledge the information contained in the offering memorandum is in accordance with the facts and that the offering memorandum makes no omission likely to affect its import.”

7. At least, and to the extent it is applicable, the following information on the offer shall be provided in the offering memorandum:

(a) description of the reason behind the initial token offering;

(b) detailed technical description of the protocol, platform and, or application, as the case may be, and the associated benefits;

(c) detailed description of the sustainability and scalability of the proposed project;

(d) associated challenges and risks as well as mitigating measures thereof;

(e) detailed description of the characteristics and functionality of the digital assets being offered;

(f) detailed description of the issuer, sponsor, development team, advisors and any other service providers that may be deployed for the realisation of the project;

(g) detailed description of the issuer’s wallet/s used;

(h) description of the security safeguards against cyber threats to the underlying protocol, to any off-chain activities and to any wallets used by the issuer;

(i) detailed description of the life cycle of the initial token offering and the proposed project;

(j) detailed description of the past and future milestones and project financing;

(k) detailed description of the targeted investor base;

- (l) exchange rate of the digital assets;
- (m) description of the underlying protocol's interoperability with other protocols;
- (n) description of the manner funds raised through the initial token offering will be allocated;
- (o) the amount and purpose of the issue;
- (p) the total number of digital assets to be issued and their features;
- (q) the distribution of digital assets;
- (r) the consensus algorithm, where applicable;
- (s) incentive mechanism to secure any transactions, transaction and/or any other applicable fees;
- (t) in the case of a new protocol, the estimated speed of transactions;
- (u) any applicable taxes;
- (v) any set soft cap and hard cap for the offering;
- (w) the period during which the offer is open;
- (x) any person underwriting or guaranteeing the offer;
- (y) any restrictions on the free transferability of digital assets being offered and the DLT platform/s on which they may be traded, to the extent known by the issuer;
- (z) methods of payment;
- (aa) specific notice that investors participating in the initial token offering will be able to get their contribution back if the softcap is not reached at the end of the offering and detailed description of the refund mechanism, including the expected time-line of when such refund will be completed;
- (ab) detailed description of the risks associated with the digital assets and the investment therein;
- (ac) the procedure for the exercise of any right of pre-emption;
- (ad) detailed description of the smart contract/s, if any, deployed including inter alia the adopted standards, its/their underlying protocol/s, functionality/-ies and associated operational costs;



(ae) if any smart contract/s is/are deployed by the issuer, details of the auditor who performed an audit on it/them;

(af) description of any restrictions embedded in the smart contract/s deployed, if any, including inter alia any investment and/or geographical restrictions;

(ag) the program agents used to obtain data and verify occurrences from smart contracts (also known as 'oracles') used and detailed description of their characteristics and functionality thereof;

(ah) bonuses applicable to early investors including inter alia discounted purchase price for virtual financial assets;

(ai) the period during which voluntary withdrawals are permitted by the smart contract, if any;

(aj) description of the issuer's adopted white-listing and anti-money laundering and counter financing of terrorism procedures in terms of the Financial Transactions Reporting Act, 2018 and the Anti-Terrorist Financing Act;

(ak) intellectual property rights associated with the offering and protection thereof; and

(al) the methods of and time-limits for delivery of the digital assets:

Provided that the Commission shall have the power to waive or modify any of the above requirements within the context of a particular initial digital offering on application by the issuer.

#### **Details of the issuer**

8. The following details of the issuer:-

Name;

Registered address and registration number;

Date of registration;

The issuer's object(s);

Where applicable, the group of undertakings to which the issuer belongs;

Insofar as they are known, indication of the members who directly or indirectly exercise or could exercise a determining role in the issuer's administration;

The issuer's principal activities; and

Description of the issuer's principal activities including the disclosure of any legal proceedings having an important effect on the issuer's financial position.

The issuer's operators

10. Names, addresses and functions of operators.

**Benefits for third parties and other expenditure**

11. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

12. Any amount or benefit intended to be paid or given to the sponsor or any person endorsing the offering, and the consideration for the payment or the giving of the benefit.

**Issuer's financial track record**

13. Where the issuer has been established for a period exceeding three years, details of its financial track record.

Validity of a Offering memorandum, Arrangements for Approval and Publication of an Offering memorandum

14. A offering memorandum shall be valid for 6 months after its approval by the sponsor for offers to the public.

15. (1) The sponsor shall not register a offering memorandum unless it is satisfied that the offering memorandum has been drawn up in accordance with the provisions of this Act, this Schedule and any regulations, Rules or guidance made or issued thereunder.

(2) The sponsor shall notify the Commission and the issuer of its decision regarding the approval or otherwise of the offering memorandum.

**Significant new factors, material mistakes or inaccuracies**

16. (1) Every material change, material mistake or inaccuracy relating to the information included in the offering memorandum which is reasonably capable of affecting the assessment of the digital assets and which arises or is noted between the time when the offering memorandum is approved and the final closing of the offer to the public, whichever occurs later, shall be mentioned in a supplement appended to the offering memorandum. Such a supplement shall be approved in the same way and published in accordance with at least the same arrangements as were applied when the original offering memorandum was published. The summary, and any translations

thereof, shall also be supplemented, if necessary, to take into account the new information included in the supplement.

(2) Investors who have already agreed to purchase or subscribe for the digital assets before the supplement is published shall have the right to withdraw their acceptance within two working days after the publication of the supplement, provided that the material change, mistake or inaccuracy referred to in paragraph (1) arose before the final closing of the offer to the public and the delivery of the digital assets. That period may be extended by the issuer in which case the smart contract, if any, shall be updated accordingly. The final date of the right of withdrawal shall be stated in the supplement.

**First Schedule  
Part II**

**Appendix D**

**Application for Registration as a Digital Asset Business**

**Item 1 - Name of Applicant**

State the full legal name of the Applicant.

**Item 2 - Type of Application**

State what category of digital asset business the Applicant is applying for registration in.

**Item 3 - Full Business Contact Details of Applicant**

State the Applicant's principal business address and provide email addressees), telephone numbers and fax numbers. If the Applicant operates at more than one address in The Bahamas, provide details for each office.

**Item 4 - Full Details on Security Holders, Directors and Officers**

Provide completed Form 4 for each security holder, director and officer of the Applicant.

If the securities of the Applicant are traded on a securities exchange in any jurisdiction, provide full details of the listing.

Provide a list of all affiliates of the Applicant and indicate nature of relationship, business the affiliate is in, where it is incorporated etc.

**Item 5- Discipline History**

State whether the Applicant or any director, officer or significant security holder of the Applicant has ever been:

(a) disciplined by any stock exchange, regulatory authority or professional association in any jurisdiction or been denied admission, registration or renewal or had its membership or registration revoked;

(b) declared bankrupt, been convicted of a crime or been sued under any commercial law, securities law, companies law or law concerning fraud;

(c) involved with an application for regulatory approval in any jurisdiction where that application has been refused or withdrawn;

(d) dismissed from any office or employment or barred from entry to any profession or occupation; and

(e) compulsorily wound up or made any arrangement with its creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims. If so, please provide full details.

**Item 6 - Operational Capabilities**

Provide a detailed description of the Applicant's operational capabilities, including the physical premises, trading system, clearing and settlement systems, security, communication and market surveillance systems, and staff resources, as applicable.

**Item 7 - Policies and Procedures**

Provide a summary of the Applicant's written Commission, internal controls and risk management policies and procedures. Attach a complete copy of these policies and procedures.

**Item 8 - Rules**

Provide a summary of the Applicant's rules/proposed rules including rules regarding membership, listing, business conduct and clearing and settlement, as applicable. Attach a complete copy of these rules.

**Item 9 - Financial Statements**

The following must be submitted

Where the Applicant has been established within six months of the date of application and the Applicant has not commenced operations (a) a statement from a senior officer of the Applicant confirming that the Applicant has not commenced trading since the date of establishment and that no financial statements have been produced or dividends declared; and (b) a statement of financial position, showing the minimum financial resources required as at a date not more than 21 days before the date of the application.

For all other Applicants (a) financial statements for the two financial years immediately prior to the date of the application or, if shorter, since the date of establishment; and (b) the most recent interim financial statements certified by the Chief Executive Officer and the Treasurer to be true and complete.

If the Applicant has any significant security holders that are companies, the Applicant must also submit for each such security holder (a) financial statements for the two financial years immediately prior to the date of the application or, if shorter, since the date of establishment; and (b) the most recent interim financial statements certified by the Chief Executive Officer and the Treasurer to be true and complete.

**Item 10 - Proposed Fees**

Provide a summary of the proposed fee schedule, including, as applicable, fees for membership, listing, execution of trades, clearing and settlement and any other charges. Attach a copy of the complete schedule.

**Item 11 - Other Regulatory Approvals**

If the Applicant is registered, licensed or authorized by any other regulatory authority in The Bahamas or elsewhere, provide details of that status, including the name of the regulatory authority, type of registration, license or authorization, date of approval, registration number, etc.

**Item 12 - Business Plan**

Provide a summary of the Applicant's business plan for the next three years, which shall include financial and operational projections, staffing requirements and listing projections, as applicable.

**Item 13 - Contact Person at Applicant**

Give the name, business telephone number and email address of a senior official of the Applicant who is knowledgeable about the application and who may be contacted to discuss it.

**Item 14 - Date the Application**

**Item 15 - Certification and Signature**

Include the signature of the Chief Executive Officer and treasurer certifying the following statement

"We, the undersigned, hereby affirm that to the best of our information, knowledge and belief that:

a. The Applicant is currently in compliance with all the applicable provisions of the Act and these Regulations; and b. The contents of this form and any attachments provided with this form are true, correct and not misleading." **WARNING:** Intentional misstatement or failure to disclose information may constitute an offence.

Required attachments:

1. Copy of the Applicant's written Commission, internal controls and risk management policies and procedures.
2. Evidence of the Applicant's good standing with the Registrar of Companies.
3. Certified copy of the Applicant's Memorandum and Articles of Association, or equivalent incorporation documents.
4. Copies of required financial statements.
5. Copy of the rules of the marketplace or clearing facility, including rules regarding membership, listing, business conduct, and clearing and settlement, as applicable.
6. A schedule of the proposed fees, including fees for membership, listing, execution of trades, clearing and settlement and any other charges.
7. Evidence of the Applicant's registration with any other regulatory authority, if applicable.
8. Copy of the Applicant's detailed business plan for the next three years, including financial and operational projections, staffing requirements and listing projections, as applicable.
9. Completed Form 4s for each security holder, director and officer.
10. Application fee must be submitted with this application.