

**ANTIGUA AND BARBUDA**



**DIGITAL ASSETS BUSINESS ACT, 2020**

**No. 16 of 2020**

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**DIGITAL ASSETS BUSINESS ACT, 2020**

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[L.S.]



I ASSENT,

**Rodney Williams,**  
*Governor-General.*

18th June, 2020

**ANTIGUA AND BARBUDA**  
**DIGITAL ASSETS BUSINESS ACT, 2020**

**No. 16 of 2020**

**AN ACT** to regulate persons carrying on digital asset business and for the protection of the interests of clients or potential clients of persons carrying on digital asset business and to provide for other matters connected and related thereto:

**ENACTED** by the Parliament of Antigua and Barbuda as follows:

**PART I**  
**PRELIMINARY**

**1. Short title and commencement**

- (1) This Act may be cited as the Digital Assets Business Act 2020.
- (2) This Act shall come into effect on a day to be appointed by the Minister by Notice published in the official *Gazette*.

## 2. Interpretation

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

“Commission” or “FSRC” means the Financial Services Regulatory Commission established under The Financial Services Regulatory Commission Act 2013, No. 5 of 2013;

“Company” means a body corporate wherever incorporated;

“Controller” has the meaning given in section 3(3);

“Court” means the Eastern Caribbean Supreme Court;

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

“cyber reporting event” means any act that results in unauthorized access to, disruption, or misuse of the electronic systems or information stored on such systems of a licensed undertaking including any breach of security leading to the loss or unlawful destruction or unauthorized disclosure of or access to such systems or information;

“decision notice” means a notice prepared in accordance with section 35;

“digital asset” means anything that exists in binary or digital format and comes with the right to use it and includes, but is not limited to, a digital representation of value that—

- (a) is used as a medium of exchange, money, unit of account, or store of value and is not legal tender, whether or not denominated in legal tender;
- (b) is intended to represent assets such as debt or equity of any person or entity;
- (c) is otherwise intended to represent any commodity, security, assets or rights associated with such commodity, security or assets or a derivative thereof; or
- (d) is intended to provide access to or benefit of an application or service or product by means of distributed ledger technology;

but does not include –

- (e) 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; or
- (f) 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;

A digital asset is not a security for the purpose of Securities Law.

“digital asset business” has the meaning given in subsection (2);

“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 services vendor” means a person that—

- (a) under an agreement as part of its business—
  - (i) manages digital assets on behalf of another person or advises others with respect to digital assets or digital asset transactions;
  - (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;

“Director” has the meaning given in section 3(2);

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

- (a) information is recorded and consensually shared and synchronised across a network or multiple nodes; and
- (b) all copies of the database are regarded as equally authentic;

“documents” includes information recorded in any form; and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“exchange” means to assume control of digital assets from or on behalf of a client, to sell, trade, or convert—

- (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;

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

“financial year” means the period not exceeding 53 weeks at the end of which the balance of an undertaking’s accounts is struck or, if no such balance is struck or a period of more than 53 weeks is employed for that purpose, then calendar year;

“fiat currency” means currency issued by the relevant body in a country or by a government that is designated as legal tender in its country of issuance through amongst other things, government decree, regulation, or law;



“licence” means a licence issued by the Commission under section 9 and “Licensee” and “licensed” shall be construed accordingly;

“licensed undertaking” means a natural or legal person that is licensed to carry on a digital asset business pursuant to section 9 of this Act.

“market maker” means a person conducting the business of trading in digital assets including, but not limited to, quoting buy and sell prices in furtherance of profit or gain on the bid offer spread and transmitting, receiving and processing orders in furtherance of trading digital assets;

“Minister” means the Minister of Finance;

“officer” in relation to a licensed undertaking, includes a director, secretary, compliance officer, chief executive or senior executive of the licensed undertaking by whatever name called;

“senior executive” has the meaning given in section 3(6);

“share” has the meaning given in section 27 of the International Business Corporation Act, Cap. 222;

“shareholder controller” has the meaning given in section 3(4);

“subsidiary” has the meaning given in section 364 of the International Business Corporation Act, Cap. 222;

“transfer” means to assume control of digital assets from or on behalf of a client for the purposes of—

- (a) crediting the digital assets to the account of another person;
- (b) moving the digital assets from one account of a client to another account of the same client;
- (c) relinquishing control of digital assets to another person;

“wallet” means a software program that stores private and public keys and interacts with distributed ledger technology to enable users to send, receive and monitor their digital assets;

“warning notice” means a notice prepared in accordance with section 53.

(2) Subject to section 4(5), in this Act, “digital asset business” means the business of providing any or all of the following digital asset business activities to the general public or to private clients —

- (a) issuing, selling or redeeming virtual coins, tokens or any other form of digital asset;
- (b) operating as a payment service provider 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 an exchange;
- (d) operating as a digital asset services vendor;
- (e) providing custodial wallet services;
- (f) providing digital assets custody service;
- (g) lending, borrowing, providing financial services, or issuing derivatives with respect to, and otherwise dealing with digital assets;
- (h) special purpose depository services; or
- (i) reasonably ancillary activities in connection with the (a) to (h) hereof.

(3) The Minister may, after consultation with the Commission by order amend subsection (2) by adding new provisions, or by amending, suspending or deleting any of the digital asset activities set out thereunder.

(4) An order made under this section is subject to the negative resolution procedure.

### **3. Meaning of "director", "controller", "senior executive" and "associate"**

(1) In this Act, “director”, “controller”, “senior executive” and “associate” shall be construed in accordance with this section.

(2) “Director”, means a person who, under an agreement as part of its business –

- (i) manages digital assets on behalf of another person or advises others with respect to digital assets or digital transactions;
- (ii) undertakes a digital asset transaction on behalf of another person;
- (iii) has power of attorney over another person’s digital asset; or
- (iv) operates as a market maker for digital assets in relation to an undertaking, and includes an alternate director and any person who occupies the position of director, by whatever name called.

(3) “Controller”, in relation to an undertaking, means—

- (a) a managing director of the undertaking or of another company of which the undertaking is a subsidiary;
- (b) a chief executive of the undertaking or of another company of which the undertaking is a subsidiary;
- (c) a person who satisfies the requirements of subsection (4);
- (d) a person in accordance with whose directions or instructions the directors of the undertaking or of another company of which the undertaking is a subsidiary or

persons who are controllers of the undertaking by virtue of paragraph (c) (or any of them) are accustomed to act.

(4) For the purpose of subsection (3)(c), a person is a shareholder controller in relation to an undertaking if, either alone or with any associate or associates—

- (a) he holds 10% or more of the shares in the undertaking or another company of which it is a subsidiary company;
- (b) he is entitled to exercise or control the exercise of 10% or more of the voting power at any general meeting of the undertaking or another company of which it is such a subsidiary; or
- (c) he is able to exercise a significant influence over the management of the undertaking or another company of which the undertaking is such a subsidiary by virtue of—
  - (i) a holding of shares in it; or
  - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of the undertaking, or as the case may be, the other company concerned.

(5) In this Act, "shareholder controller" means a shareholder controller in whose case the percentage referred to in subsection 4(a) or (b) is 50 or more.

(6) "Senior executive", in relation to an undertaking, means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the undertaking—

- (a) exercises managerial functions; or
- (b) is responsible for maintaining accounts or other records of the undertaking.

(7) In this section, "chief executive" in relation to an undertaking means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the undertaking.

(8) In this Act, "associate" in relation to a person entitled to exercise or control the exercise of voting power in a company, or in relation to a person holding shares in a company, means—

- (a) if that person is an individual—
  - (i) the spouse, child, step-child or parent of that person;
  - (ii) the trustees of any settlement under which that person has a life interest in possession;
  - (iii) any company of which that person is a director;

- (iv) any person who is an employee or partner of that person;
- (b) if that person is a company—
  - (i) any director of that company;
  - (ii) any subsidiary of that company;
  - (iii) any director or employee of any such subsidiary company;
- (c) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that company or under which they undertake to act together in exercising their voting power in relation to it, that other person.

(9) For the purpose of subsection (8), “settlement” includes any disposition or arrangement under which property is held in trust.

#### **4. Carrying on digital asset business in Antigua and Barbuda**

(1) For the purposes of this Act and subject to section 7, a person carries on digital asset business in Antigua and Barbuda if—

- (a) it is incorporated or formed in Antigua and Barbuda and carries on any digital asset activity set out under section 2(2); or
- (b) is incorporated or formed outside of Antigua and Barbuda and carries on any digital asset business activity set out under section 2(2) in or from within Antigua and Barbuda.

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

(3) The Minister 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 Antigua and Barbuda;
- (b) not carrying on digital asset business in Antigua and Barbuda.

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

(5) This Act shall not apply to any entity owned by the Antigua and Barbuda Government.

#### **5. Advisory Panel**

(1) The Commission may from time to time conduct surveys to determine the effect of digital asset business on—

- (a) persons licensed or registered under the Investment Authority Act, 2006, Insurance Act 2007, the Small Business Development Act, 2007, Cooperate Management and Trust Service Providers Act, 2008, Co-operative Societies Act, 2010 and the Money Services Business Act, 2011
  - (b) persons who conduct business with a licensed person under subsection (a);
  - (c) the economy of Antigua and Barbuda;
  - (d) digital asset business regulation.
- (2) The Commission shall take into consideration the results of any surveys conducted in formulating its policies.

## **PART II**

### **LICENSING**

#### **6. Restriction on carrying on digital asset business without a licence**

(1) Subject to section 7, a person shall not carry on digital asset business in or from within Antigua and Barbuda unless that person is a licensed undertaking in one of the classes specified in section 9. All Licensees shall conduct their digital asset business at all times in compliance with this Act and the Regulations made hereunder applicable to such digital asset business.

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

- (a) issuing, selling or redeeming virtual coins, tokens or any other form of digital assets;
- (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 an exchange;
- (d) providing custodial wallet services;
- (e) providing digital asset custody services;
- (f) operating as a digital assets services vendor;
- (g) lending, borrowing, providing financial services, advising or issuing derivatives with respect to, and otherwise dealing with digital assets;

(h) special purpose depository services,

and each such licence shall extend to reasonably ancillary activities in connection with the foregoing.

(3) Special purpose depository services includes —

- (a) contributing connectivity software, a platform for block chain technology or computing power to a decentralized digital asset, or to a protocol governing transfer of the digital representation of value;
- (b) providing data storage or security services for a digital asset business, but is not otherwise engaged in digital asset business activity on behalf of other persons;
- (c) the provision of any digital asset business activity by an undertaking solely for the purposes of its business operations or the business operations of any subsidiary of it;
- (d) accepting and making payments using digital assets solely for the purposes of its business operations or the business operations of any subsidiary of it.

(4) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction, to a fine of \$50,000 or to imprisonment for one year or to both such fine and imprisonment;
- (b) on conviction on indictment, to a fine of \$250,000 or to imprisonment for five years or to both such fine and imprisonment.

## **7. Exemption order**

(1) Section 6 shall not apply to any person exempted by or under an exemption order issued under this section.

(2) The Minister acting on the advice of the Commission may issue an exemption order, which shall provide for—

- (a) a specified person;
- (b) persons falling within a specified class,

to be exempt from the requirement of section 8.

(3) An exemption order may provide for an exemption to have effect—

- (a) in respect of all digital asset business activities under section 2(2);
- (b) only in respect of one or more of the digital asset business activities under section 2(2);
- (c) in respect of specified circumstances.

- (4) An exemption order may be subject to conditions.
- (5) In subsection (3)(c), “specified” means specified by the exemption order.
- (6) An order made under this section is subject to the negative resolution procedure.

## **8. Application for a digital asset business licence**

(1) An application for a digital asset business licence shall be made to the Commission in the prescribed form and 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, the Prevention of Terrorism Act 2005, The Money Laundering (Prevention) Act 1996 and The Proceeds of Crime Act 1993;
- (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 undertaking.

(2) An application shall state the class of digital asset business licence for which the undertaking is applying.

(3) Where a prescribed form has not been finalized by the Commission, application may be made to the Commission in writing addressing the information contemplated by section 8(1).

## **9. Class of licence**

(1) Where the Commission is satisfied as to the matters outlined in section 8, the Commission shall issue to an applicant either —

- (a) a Class A licence, under which a person shall be licensed to provide any or all of the digital asset business activities under the definition of digital asset business; or
- (b) a Class B licence, under which a person shall be licensed to provide any or all of the digital asset business activities under the definition of digital asset business

for a defined period determined by the Commission.

(2) A licensed undertaking may apply to the Commission in the prescribed form to extend the period of validity of its licence.

(3) The application for an extension must be accompanied by such information as the Commission may require and the amount of the application fee as prescribed by the Commission

#### **10. Determination of Class of licence**

(1) Notwithstanding an application submitted by an undertaking under section 8, the Commission may determine whether an undertaking proposing to carry on a digital asset business shall be issued with a Class A or a Class B licence.

(2) The matters the Commission may take into account in its determination under subsection (1), are —

- (a) the interests of the clients or potential clients and of the public generally;
- (b) the obligations that the Commission may have to impose on the undertaking due to the nature of the digital asset business activities it intends to carry on; and
- (c) the activities to be conducted under the licence.

#### **11. Grant and refusal of applications**

(1) The Commission may grant or refuse the application for a licence or permit.

(2) In making its determination whether to grant or refuse a licence, the Commission shall take into consideration —

- (a) whether the applicant is a fit and proper person to hold a licence;
- (b) whether the directors, managers and officers of the business are fit and proper persons to operate a digital asset business;
- (c) any previous experience that the applicant may have in operating a digital assets business;
- (d) whether the applicant or any director, manager or officer of the business has ever been convicted in any jurisdiction of fraud, embezzlement or of any of the activities that could give rise to a money laundering offence under the Money Laundering (Prevention) Act 1996, as amended.
- (e) the ability of the undertaking to satisfy the statutory deposit requirement as established by the FSRC, as well as, any requirement imposed on the undertaking to obtain adequate insurance coverage for its activities; and
- (f) such other matters as the Commission may determine to be relevant given the nature of the activity in which the applicant will be engaged under the Licence.

(3) A licence issued under this section may be subject to such limitations on the scope of the digital asset business activity or the manner of operating the digital asset business as the Commission may determine to be appropriate having regard to the nature and scale of the proposed business.



## 12. Display and registration of licence

(1) A licensed undertaking shall at all times keep the licence on display at its principal place of business in Antigua and Barbuda.

(2) The Commission shall publish on its website a list of every licensed and permitted undertaking and the class of licence issued to it.

## 13. Restriction of licence

(1) The Commission may restrict a licence—

- (a) if it appears to the Commission that the licenced undertaking is not in full compliance of its obligations but the circumstances are not such as to justify revocation;
- (b) in connection with the revocation of a licence—
  - (i) when giving the undertaking notice that it proposes to revoke its licence; or
  - (ii) at any time after such notice has been given to the undertaking; or
- (c) at any time after the licensed undertaking 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 licensed undertaking's clients or potential clients, and may in particular—

- (a) require the undertaking 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 licensed undertaking from soliciting digital asset business either generally or from persons who are not already its clients;
- (d) prohibit the licensed undertaking from accepting new digital asset business;
- (e) prohibit the licensed undertaking 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 undertaking.

(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 licensed undertaking, 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 paragraphs (a) or (b) of subsection (1), be a ground for the revocation of the licence in question but shall not invalidate any transaction.

#### **14. Restriction in cases of urgency**

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

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

(3) Where the licenced undertaking 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 licenced undertaking, give the licenced undertaking 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.

#### **15. Revocation of licence**

Subject to section 39 the Commission may revoke the licence of a licensed undertaking if the Commission is satisfied that—

- (a) the licensed undertaking has failed to comply with any obligation imposed on it by or under this Act or any regulations made thereunder or is carrying on business in a manner not authorised by its licence;

- (b) the licensed undertaking is in breach of a requirement under the Money Laundering (Prevention) Act 1996 or any of the directives imposed by the FSRC.
- (c) the Commission has been provided with false, misleading or inaccurate information by or on behalf of the licensed undertaking or, in connection with an application for a licence, by or on behalf of a person who is or is to be an officer or controller of the undertaking;
- (d) the interests of the clients or potential clients of the licensed undertaking are in any way threatened;
- (e) the licensed undertaking has failed to maintain the minimum capitalization requirements as prescribed in the regulations issued under this Act.
- (f) the licensed undertaking has not commenced any business activity covered by the licence within a period of six (6) months since the licence was issued to it;
- (g) the fixed period of the licence granted to it has expired; or
- (h) the beneficial owner of the digital asset business is not a fit and proper person.

**16. Notice of restriction or revocation of licence**

(1) Where the Commission proposes to—

- (a) restrict a licence under section 13(1);
- (b) vary a restriction imposed on a licence otherwise than with the agreement of the undertaking concerned; or
- (c) revoke a licence under section 15,

the Commission shall give to the licensed undertaking concerned a warning notice under section 34.

(2) Where—

- (a) the ground for a proposal to impose or vary a restriction or for a proposed revocation is that it appears to the Commission that fit and proper criteria may not be or may not have been fulfilled, in the case of any person; or
- (b) a proposed restriction consists of or includes a condition requiring the removal of any person as a controller or an officer,

the Commission shall give that person a copy of the warning notice but the Commission may omit from such copy any matter which does not relate to him.

(3) After giving a notice under subsection (1) and taking into account any representations made under section 34(2), the Commission shall decide whether—

- (a) to proceed with the action proposed in the notice;
- (b) to take no further action;
- (c) if the proposed action was to revoke the undertaking's licence, to restrict its licence instead; or
- (d) if the proposed action was to restrict the undertaking's licence or to vary the restrictions on a licence, to restrict it or to vary the restrictions in a different manner.

(4) Once the Commission has made a decision under subsection (3), it shall forthwith provide either a decision notice under section 35 or a notice of discontinuance under section 36, as the case may be.

(5) The Commission shall publish in the *Gazette*, in such form as it thinks fit, notice of every revocation of a licence under the Act

## **17. Fees**

(1) A licensed undertaking shall pay such fee as may be determined by the Commission.

- (a) on the grant of a licence under section 11;
- (b) annually, before 31 March in every year following the year in which it was licensed based on the revenue of the digital asset business;
- (c) at the time of making an application under section 7 in relation to exemption from or modification of, prudential rules or requirements;
- (d) at the time of making an application for an extension of a defined licence period;
- (e) at the time of making an application for variance of a direction under section 13;
- (f) at the time a prospectus is submitted for review under section 18(1); and
- (g) at the time an amended prospectus is submitted for review under section 19(2).

(2) Annual fees payable by all licensed undertakings in accordance with subsection (1)(b) shall apply to the twelve-month period ending on the 31 December of that year.

(3) For each week or part of a week that a licensed or permitted undertaking fails to comply with a requirement imposed on it by subsection (1), it is liable to a civil penalty not exceeding \$5,000.

(4) The Commission, if satisfied that payment of the annual fee in whole or in part is inappropriate after taking into account the diminution in the level of digital asset business activity, may—

- (a) defer payment of all or part of the annual fee otherwise due, to such date in the future as it considers appropriate; or

- (b) remit all or part of the annual fee otherwise due, on such terms and conditions as it considers appropriate.

### **18. Prospectus for the issue or sale of digital assets**

(1) A licensed undertaking shall not participate in or provide financial services related to the issue or offer for sale of a newly issued digital asset without –

- (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 1 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 1.

(4) Each potential purchaser of a newly created digital asset must be provided a prospectus approved by the Commission at least five business days prior to any sale of such digital assets to such purchaser. The purchaser must 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. A prospectus may be renewed thereafter on a short form basis provide 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 licensed undertaking shall file a compliance report as required by Schedule 1 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 (5) as soon as practicable once knowledge of the misrepresentation or false information came to the knowledge of that person.

(9) A licensed undertaking 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.

**19. Amendment to a prospectus**

- (1) A licenced undertaking may, with the approval of the Commission, amend its prospectus.
- (2) The licenced undertaking shall submit the proposed amendment to the Commission for its review.
- (3) The licenced undertaking 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 licensed undertaking 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 licensed undertaking is engaged.

**20. Powers of the Commission regarding a prospectus**

- (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 licenced undertaking;
  - (c) the public would not be misled as to the facts and circumstances necessary to make an informed decision of the licenced undertaking and the nature of the business.
  - (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 1, 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 III**

#### **ADMINISTRATIVE MATTERS**

#### **21. Principal Office**

- (1) Every licensed undertaking shall maintain a principal office in Antigua and Barbuda.
- (2) Every licensed undertaking shall have at its principal office a Compliance Officer of the business who shall be responsible for –
- (a) ensuring that the business of the licenced undertaking is being conducted in accordance with this Act and the Money Laundering (Prevention) Act 1996;
  - (b) ensuring the directives of the Commission are being complied with.
- (3) Every licensed undertaking shall have available at its principal office for inspection by the Commission—
- (a) complete corporate records; and
  - (b) financial records of its business for the preceding five (5) years or since inception, whichever time period is shorter.

#### **22. Compliance Officer**

- (1) Every licensed undertaking shall appoint a Compliance Officer that satisfies the requirements of subsection (2).
- (2) The Compliance Officer shall be a person approved by the Commission to act in such capacity on behalf of the licensed undertaking.
- (3) The approved Compliance Officer shall maintain an office in Antigua and Barbuda.

(4) At the time of licensing, the licensed undertaking shall provide written notice to the Commission of the—

- (a) location of the Compliance Officer's office;
- (b) particulars of the Compliance Officer.

(5) If any information required by notification in accordance with subsection (4) is changed, the licensed undertaking shall give written particulars of the change to the Commission within 14 days of the date the change was made.

(6) A licence holder shall not —

- (a) terminate the appointment of its compliance officer; and
- (b) a Compliance Officer shall not cease to act as such, until it or he gives 30 days' notice in writing to the Commission of the intention to do so.

(7) If a Compliance Officer wilfully fails to give notice required in accordance with subsection (6) to the Commission he commits an offence.

### **23. Compliance Officer to report certain events**

(1) A Compliance Officer shall forthwith notify the Office of National Drug and Money Laundering Control Policy, in such manner as it may direct,—

- (a) on his reaching a view that there is a likelihood of the licensed undertaking for which he acts becoming insolvent;
- (b) on its coming to his knowledge, or his having reason to believe, that an event to which this section applies has occurred; or
- (c) on any suspicious activity that would likely violate AML/CFT requirements.

(2) Within 14 days of such notification, the Compliance Officer shall furnish the Commission with a report in writing setting out all the particulars of the case that are available to him.

(3) As respects any compliance officer, this section applies to the following events, being events in which the licensed undertaking for which he acts as Compliance Officer is involved, that is to say—

- (a) failure by the licensed undertaking to comply substantially with a condition imposed upon the licensed undertaking by the Commission;
- (b) failure by the licensed undertaking to comply with a modified provision, or with a condition, being a provision or condition specified in a direction given to the licensed undertaking by the Commission;



- (c) involvement of the licensed undertaking in any criminal proceedings whether in Antigua and Barbuda or abroad;
- (d) the licensed undertaking ceasing to carry on digital asset business in or from within Antigua and Barbuda;
- (e) a material change to the business of the licensed undertaking;
- (f) a cyber reporting event.

#### **24. Notification of change of controller or officer**

(1) A licensed undertaking shall give written notice to the Commission of the fact of any person having become or ceased to be a controller or officer of the licensed undertaking.

(2) A notice required to be given under subsection (1) shall be given before the end of the period of 14 days beginning with the day on which the licensed undertaking becomes aware of the relevant facts.

(3) A licensed undertaking which fails to give a notice required by this section is liable to a civil penalty calculated in accordance with subsection (4).

(4) For each week or part of a week that a licensed undertaking fails to comply with a requirement imposed under subsection (1), it is liable to a civil penalty not exceeding \$5,000.

#### **25. Material change to business**

(1) No licensed undertaking shall effect a material change within the meaning of subsection (2) unless it has notified the Commission of such proposed material change as required under subsection (4).

(2) For the purposes of subsection (1), the following changes are material—

- (a) any plan or proposal to introduce or offer a new product, service, or activity, or to make a material change to an existing product, service, or where applicable digital asset business activity;
- (b) amalgamation with or acquisition of another legal person;
- (c) sale of a subsidiary;
- (d) acquisition of controlling interest in an undertaking;
- (e) outsourcing of the functions of the digital asset business;
- (f) change to the most recent business plan submitted to the Commission.

(3) A notice under this section shall be in such form, shall contain such information and shall be accompanied by such documents as the Commission may require.

(4) The requirements referred to in subsection (1) are that—

- (a) the licensed undertaking has served on the Commission a notice in writing stating that the licensed undertaking intends to effect such a material change; and
- (b) either—
  - (i) the Commission, before the end of the period of 30 days beginning with the date of service of that notice, has notified the licensed undertaking in writing that there is no objection to the licensed undertaking effecting the material change; or
  - (ii) that period has elapsed without the Commission having served the licensed undertaking with a preliminary written notice pursuant to subsection (8) to the material change.

(5) A notice under subsection (4)(a) shall contain such information as the Commission may direct and the Commission, after receiving such a notice from any person, may by notice in writing require it to provide such additional information or documents as the Commission may reasonably require for deciding whether to serve notice of objection.

(6) Where additional information or documents are required from any person by a notice under subsection (5), the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (4)(b).

(7) The Commission shall after receipt of a notification from a licensed undertaking under this section serve a notice of objection under this section on a person who has given notice under subsection (4)(a) unless it is satisfied—

- (a) that the interests of any clients of the licensed undertaking would not in any manner be threatened by the material change; and
- (b) without prejudice to paragraph (a) that, having regard to the material change the requirements of this Act would continue to be complied with or, if any of those requirements are not complied with, that the licensed undertaking concerned is likely to undertake adequate remedial action.

(8) Before serving a notice of objection under this section the Commission shall serve the person concerned with a preliminary written notice stating that the Commission is considering service on that person of a notice of objection and that notice—

- (a) shall specify which of the matters mentioned in subsection (2) the Commission is not satisfied about and subject to subsection (6), the reasons for which it is not satisfied; and
- (b) give particulars of the rights conferred by subsection (4).

(9) A person served with a notice under subsection (8) may, within a period of 28 days beginning with the day on which the notice is served—

- (a) make written representations to the Commission; and
- (b) where such representations are made the Commission shall take them into account in deciding whether to serve a notice of objection.

(10) A notice of objection under this section shall specify which of the matters mentioned in subsection (2) the Commission is not satisfied about and, subject to subsection (11), the reasons for which it is not satisfied; and

(11) Subsection (8)(a) shall not require the Commission to specify any reason which would in its opinion involve the disclosure of confidential information, which would be prejudicial to a third party.

## PART IV INVESTIGATIONS

### 26. Power to obtain information and reports

(1) The Commission may by notice in writing served on a licensed undertaking—

- (a) require the undertaking to provide the Commission (or such person acting on behalf of the Commission as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Commission may reasonably require for ensuring that the undertaking is complying with the provisions of this Act and any code of practice, and for safeguarding the interests of clients and potential clients of the undertaking;
- (b) require the undertaking to provide the Commission with a report, in such form as may be specified in the notice, by the undertaking's auditor or by an accountant or other person with relevant professional skill in, or on any aspect of, any matter about which the Commission has required or could require the undertaking to provide information under paragraph (a).

(2) The person appointed by a licensed undertaking to make any report required under subsection (1)(b) shall forthwith give written notice to the Commission of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the licensed undertaking, of the functions of the Commission under this Act.

**27. General power to require production of documents**

(1) The Commission may—

- (a) by notice in writing served on a licensed undertaking require it to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;
- (b) authorise an officer, servant or agent of the Commission, producing such evidence of his authority, to require it to provide to him such information, or to produce to him such documents, as he may specify, being such information or documents as the Commission may reasonably require for the performance of its functions under this Act.

(2) Where, by virtue of subsection (1), the Commission or any officer, servant or agent of the Commission has power to require the production of any documents from a licensed undertaking, the Commission or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(3) The power under this section to require a licensed undertaking or other person to produce any documents includes power—

- (a) if the documents are produced, to take copies of them or extracts from them and to require that undertaking or person, or any other person who is a present or past controller or officer of, or is or was at any time employed by or acting as an employee of, the licensed undertaking in question, to provide an explanation of any of them; and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) The Commission may also exercise the powers conferred by section 26 and subsection (1) of this section in relation to any company which is or has at any relevant time been—

- (a) a parent company, subsidiary company or related company of that undertaking;
- (b) a subsidiary company of a parent company of that undertaking;
- (c) a parent company of a subsidiary company of that undertaking; or
- (d) a company in the case of which a shareholder controller of that undertaking, either alone or with any associate or associates, holds 50% or more of the shares or is entitled to exercise, or control the exercise of, more than 50% of the voting power at a general meeting.

(5) The Commission may by notice in writing served on any person who is or is to be a controller or officer of a licensed undertaking require him to provide the Commission, within such time as may be specified in the notice, with such information or documents as the Commission may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(6) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both such fine and imprisonment.

(7) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Antigua and Barbuda.

## **28. Right of entry to obtain information and documents**

(1) Any officer, servant or agent of the Commission may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under sections 26(1) and 27(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 27(3).

(2) Any officer, servant or agent of the Commission may, on producing if required evidence of his authority, enter any premises occupied by any person on whom a notice could be served under sections 26(1) and 27(1) for the purpose of obtaining there such information or documents as are specified in the notice, but the Commission shall not authorise any person to act under this subsection unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(3) Any person who intentionally obstructs a person exercising rights conferred by this section commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both such fine and imprisonment.

## **29. Investigations on behalf of the Commission**

(1) If it appears to the Commission desirable to do so in the interests of the clients or potential clients of a licensed undertaking, the Commission may appoint one or more competent persons to investigate and report to the Commission on—

- (a) the nature, conduct or state of the undertaking's business or any particular aspect of it; or
- (b) the ownership or control of the undertaking, and the Commission shall give written notice of any such appointment to the undertaking concerned.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of the investigation he is appointed to carry out, he may also investigate the business of any company which is or has at any relevant time been—

- (a) a parent company, subsidiary company or related company of the undertaking under investigation;
- (b) a subsidiary company or related company of a parent company of that undertaking;
- (c) a parent company of a subsidiary company of that undertaking; or
- (d) a company in the case of which a shareholder controller of that undertaking, either alone or with any associate or associates, holds 50% or more of the shares or is entitled to exercise, or control the exercise of, more than 50% of the voting power at a general meeting.

(3) Where a person appointed under subsection (1) decides to investigate the business of any company by virtue of subsection (2), he shall give it written notice to that effect.

(4) It shall be the duty of every person who is or was a controller, officer, employee, agent, banker, auditor or barrister and attorney of a licensed undertaking which is under investigation (whether by virtue of subsection (1) or (2)), or any person appointed to make a report in respect of that undertaking under section 26(1)(b)—

- (a) to produce to the persons appointed under subsection (1), within such time and at such place as they may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation, which are in his custody or power;
- (b) to attend before the persons so appointed at such time and place as they may require and answer questions relevant to the investigation as the persons appointed under subsection (1) may require; and
- (c) otherwise to give the persons so appointed all assistance in connection with the investigation which he is reasonably able to give, and those persons may take copies of or extracts from any documents produced to them under paragraph (a).

(5) For the purpose of exercising his powers under this section, a person appointed under subsection (1) may enter any premises occupied by a licensed undertaking which is being investigated by him under this section; but he shall not do so without prior notice in writing.

(6) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(7) Unless the Commission otherwise directs, the licensed undertaking under investigation shall pay to the Commission all expenses of, and incidental to, the investigation.

(8) Any person who—

- (a) without reasonable excuse, fails to produce any documents which it is his duty to produce under subsection (4);
- (b) without reasonable excuse, fails to attend before the persons appointed under subsection (1) when required to do so;
- (c) without reasonable excuse, fails to answer any question which is put to him by persons so appointed with respect to a licensed undertaking which is under investigation or a company which is being investigated by virtue of subsection (2);  
or
- (d) intentionally obstructs a person in the exercise of the rights conferred by subsection (5),

commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both such fine and imprisonment.

(9) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him.

(10) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Antigua and Barbuda.

### **30. Investigations of suspected contraventions**

(1) The Commission may conduct an investigation if it appears to the Commission that—

- (a) a person may have contravened section 6;
- (b) any exempted person may have contravened any restriction or exemption or condition given under an exemption order under section 7;
- (c) an undertaking may have contravened a requirement imposed by or under this Act, regulations or orders made thereunder.

(2) The power conferred by subsection (1)(c) may be exercised in relation to a former licensed undertaking but only in relation to—

- (a) business carried on at any time when the undertaking was licensed under this Act;  
or
- (b) the ownership or control of an undertaking at any time when it was licensed under this Act.

### **31. Power to require production of documents during investigation**

(1) The Commission may by notice in writing require the person who is the subject of an investigation under section 30 (“the person under investigation”) or any person connected with the person under investigation—

- (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Commission may reasonably require for the purpose of the investigation;
- (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation;
- (c) to attend at such place and time as may be specified in the notice and answer questions relevant to the enquiry as the Commission may require.

(2) The Commission may by notice in writing require every person who is or was a controller, officer, employee, agent, banker, auditor or barrister and attorney of an undertaking which is under investigation by virtue of subsection (1)—

- (a) to produce to the commission, within such time and at such place as the Commission may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation, which are in his custody or power;
- (b) to attend before the Commission at such time and place as the Commission may require and answer questions relevant to the investigation as the Commission may require; and
- (c) to take such actions as the Commission may direct in connection with the investigation.

(3) The Commission or a duly authorised officer, servant or agent of the Commission may take copies of or extracts from any documents produced under this section.

(4) Any officer, servant or agent of the Commission may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (c) of that subsection or exercising the powers conferred by subsection (3).

(5) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by subsection (4) commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both such fine and imprisonment.

(6) Nothing in this section shall require an Attorney-at-Law, acting in that capacity, to disclose or produce information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Antigua and Barbuda.

(7) For the purposes of this section, a person is connected with the person under investigation if such person is or has at any relevant time been—



- (a) a member of a group to which the person under investigation belongs;
- (b) a controller of the person under investigation;
- (c) a partner of a partnership of which the person under investigation is a member.

### **32. Powers of entry**

(1) A magistrate may issue a warrant under this section if satisfied on information on oath that the Commission is conducting an investigation under sections 21 and 22—

- (a) a person has failed to comply with a notice served on him under section 63;
- (b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by the person in response to a notice served on him under section 31; or
- (c) that there are reasonable grounds for suspecting that if a notice were served on the person under section 31 it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A warrant under this section shall authorise any police officer not below the rank of inspector, together with any other person named in the warrant and any other police officers—

- (a) to enter any premises occupied by the person under investigation which are specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1) or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of or extracts from any such documents;
- (d) to require any person named in the warrant to answer questions relevant for determining whether that person is guilty of any such contravention as is mentioned in section 30.

(3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(4) Any documents of which possession is taken under this section may be retained—

- (a) for a period of three months; or
- (b) until the conclusion of proceedings, if within the period of three months referred to in paragraph (a), proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 30.

(5) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(d) commits an offence and is liable—

- (a) on summary conviction, to a fine of \$25,000 or to imprisonment for six months or to both such fine and imprisonment;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

### **33. Obstruction of investigations**

(1) A person who knows or suspects that an investigation is being or is likely to be carried out—

- (a) into a suspected contravention of section 6 or a term or condition of an exemption order made under section 7; or
- (b) under section 30,

commits an offence if he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to a fine of \$25,000 or to imprisonment for six months or to both such fine and imprisonment;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

## **PART V**

### **DISCIPLINARY MEASURES**

#### **34. Warning notices**

(1) A warning notice must—

- (a) state the action which the Commission proposes to take;
- (b) be in writing; and
- (c) give reasons for the proposed action.

(2) The warning notice shall specify that the Licensee has 14 days within which the person to whom it is given may make representations to the Commission; and where such representations

are made, the Commission shall take them into account in deciding whether to give a decision notice.

(3) The Commission may extend the period specified in the notice.

### **35. Decision notices**

(1) A decision notice must—

- (a) be in writing;
- (b) give reasons for the Commission’s decision to take the action to which the notice relates;
- (c) give its decision; and
- (d) give an indication of the right to appeal the decision to the High Court under section 40.

(2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 34 was given; and if no decision notice under subsection (1) is given within that period, the Commission shall be treated as having at the end of that period given a notice of discontinuance under section 36.

(3) A decision notice about the imposition of a civil penalty shall state the date when payment is required.

(4) A decision notice about public censure shall—

- (a) set out the terms of the statement to be issued;
- (b) give details of the manner in which, and the date on which, the statement will be published.

(5) A decision notice about a prohibition order shall—

- (a) name the individual to whom the prohibition order applies;
- (b) set out the terms of the order; and
- (c) be given to the individual named in the order.

(6) A decision notice shall state the day on which it is to take effect.

(7) The Commission may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.

(8) If the person to whom a decision notice under subsection (1) is given had the right to refer the matter to which the original decision notice related to the High Court, he has that right as respects the decision notice under subsection (7).

**36. Notices of discontinuance**

(1) Subject to section 35(2), if the Commission decides not to take the action proposed in a warning notice it must give a notice of discontinuance to the person to whom the warning notice was given.

(2) A notice of discontinuance must identify the action which is being discontinued.

**37. Publication**

(1) The Commission may publish such information about a matter to which a decision notice relates as it considers appropriate.

(2) The Commission shall publish the information to which a decision notice relates on two separate occasions in the official *Gazette* and in a local news media widely available in Antigua and Barbuda.

(3) The Commission shall also publish the information by posting it on the Commission's website.

**38. Surrender of licence**

(1) A licensed undertaking may make an application to the Commission in the prescribed form to surrender its licence.

(2) The application shall be accompanied by documents as may be prescribed the Commission.

(3) At any time after receiving an application, the Commission may require the applicant to furnish additional information in support of its application.

(4) The Commission may accept the surrender of the licence, unless the Commission considers it prejudicial to the public interest to do so.

(5) A surrender shall take effect on the date of the giving of approval by the Commission.

(6) The surrender of a licence shall be irrevocable unless the Commission by notice in writing allows it to be withdrawn.

**39. Winding up on petition from the Commission**

(1) On a petition presented by the Commission by virtue of this section, the Court may wind up a licensed undertaking in respect of which a licence is revoked, if the Court is of the opinion that it is just and equitable that the undertaking be wound up.

(2) Part IV (Winding Up) of the Companies Act 1995 shall apply to the winding up of a licensed undertaking under this section.

#### **40. Rights of appeal**

A licensed undertaking granted a Class A or Class B licence which is aggrieved by a decision of the Commission—

- (a) to restrict its licence, to restrict it in a particular manner or to vary any restrictions of its licence;
- (b) to revoke its licence;
- (c) to impose a civil penalty;
- (d) to publish a statement in respect of it; or
- (e) to remove an officer or a controller,

may appeal against the decision to the High Court.

## **PART VI AUDITED ACCOUNTS**

#### **41. Duty to prepare annual audited financial statements and accounts**

(1) Every licensed undertaking shall prepare annual audited financial statements or accounts as required by this section in respect of all transactions and balances relating to its business.

(2) Financial statements must be audited by an approved auditor.

(3) Prior to the appointment of an auditor, a licensed undertaking shall submit written particulars of such person to the Commission for approval.

(4) Financial statements of licensed undertakings shall be audited by the approved auditor in accordance with generally accepted auditing standards for Canada, the United Kingdom, the United States of America, International Financial Reporting Standards or such standards as the Commission may recognise; and the approved auditor shall be required to provide an auditor's report in respect thereof.

(5) Not later than four months after the close of its financial year every licensed undertaking shall file a copy of its audited financial statements and auditor's report or accounts with the Commission.

(6) A licensed undertaking shall keep a copy of the most recent audited financial statements together with a copy of the auditor's report thereon or accounts as the case may be, at its head office for a period of not less than five years beginning with its filing date under subsection (5).

(7) If a licensed undertaking fails to appoint an approved auditor as required by this section or, at any time, fails to fill a vacancy for such auditor, the Commission may appoint an approved auditor and shall fix the remuneration to be paid by that digital asset business to such auditor.

(8) A licensed undertaking which fails to comply with this section commits an offence and is liable on summary conviction to a fine of \$25,000.

(9) For the purposes of this Part, “approved auditor” means an auditor who is a person entitled to practise as a public accountant and is a member of a professional body approved by the Commission for the purposes of this Act.

(10) No person having an interest in any licensed undertaking otherwise than as a client, and no officer, servant or agent of any digital asset business shall be eligible for appointment as an approved auditor for that licensed undertaking; and any person appointed as such auditor to any licensed undertaking who subsequently acquires such interest or becomes an officer, servant or agent of that licensed undertaking shall cease to be an approved auditor.

(11) A person to be appointed as an approved auditor must sign and file a Declaration of Interest with the FSRC.

#### **42. Auditor to communicate certain matters to Commission**

(1) An auditor of a licensed undertaking shall in the circumstances specified in subsection (2) forthwith give written notice to the Commission of those matters.

(2) The circumstances referred to in subsection (1) are—

- (a) his resignation before the expiration of his term of office;
- (b) his intention not to seek to be re-appointed;
- (c) a decision to include a modification of his report on the licensed undertaking’s financial statements and, in particular, a qualification or denial of his opinion, or the statement of an adverse opinion.

(3) An auditor of a licensed undertaking shall forthwith give written notice to the Commission of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the licensed undertaking of which he is an auditor, of the Commission’s functions under this Act.

(4) An auditor who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000

**PART VII**  
**OFFENCES AND PENALTIES**

**43. Access to and maintenance of client transaction records**

(1) A licensed undertaking, where the Commission requires, must provide the Commission with online or automated read-only access to both its client and its own digital asset transaction records.

(2) A licensed undertaking must maintain a record of both its client and its own transactions at its head office for a period of not less than five years beginning from the date the transaction occurred.

**44. False documents or information**

(1) Any person who, for any purposes of this Act—

- (a) issues a document, or supplies information, which is false or misleading in a material respect; or
- (b) signs a document which is false or misleading in a material respect; or
- (c) takes part in the preparation or issue of a document, or the supplying of information, which is false in a material respect, commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

- (a) on summary conviction, to a fine of \$25,000 or to imprisonment for two years or to both such fine and imprisonment;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for four years or to both such fine and imprisonment.

(3) It shall be a defence for a person charged with an offence under subsection (1) to produce evidence to show:—

- (a) if an individual, that he had no knowledge of the falsity or misleading character of the document or information, and took every reasonable precaution to ensure its accuracy; and
- (b) if not an individual, that every person acting on such person's behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.

**45. Offences**

(1) Where an offence under this Act committed by a licensed undertaking is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any officer of the licensed undertaking, or any person who was purporting to act in any such

capacity, he, as well as the licensed undertaking, commits that offence and shall be liable to be proceeded against and punished accordingly unless such person shows that he took all reasonable steps to avoid the Commission of an offence.

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

#### **46. Prohibition on use of words "digital asset business"**

(1) No person carrying on business in or from Antigua and Barbuda shall use any name which indicates or may reasonably be understood to indicate (whether in English or in any other language) that it is carrying on digital asset business unless it is a licensed undertaking under section 9.

(2) Any person using a name in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.

#### **47. Notices**

(1) This section has effect in relation to any notice, direction or other document required or authorised by or under this Act to be given to or served on any person other than the Commission.

(2) Any such document may be given to or served on the person in question by—

(a) delivering it to him;

(b) leaving it at his principal office; or

(c) sending it to the licensed undertaking by electronic or other similar means which produces a document containing the text of the communication.

(3) Any such document may in the case of a company be given to or served by—

(a) delivering it to the company's principal office or registered office in Antigua and Barbuda; or

(b) sending it by registered post to the address of the licensed undertaking on record at the Commission.

#### **48. Service of notice on the Commission**

(1) No notice required by this Act to be given to or served on the Commission shall be regarded as given or served until it is received.

(2) Subject to subsection (1), such notice may be given by electronic or other similar means which produces a document containing the text of the communication.



#### **49. Civil debt and civil penalties**

(1) When a person is convicted of an offence under this Act, such person shall not also be liable to a civil penalty imposed by or under this Act in relation to the same matters.

(2) A civil penalty levied pursuant to this Act may be recovered by the Commission as a civil debt.

#### **50. Regulations**

(1) The Minister may, after consulting with the Commission, make regulations prescribing anything which may be prescribed under this Act and generally for the implementation of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may in particular provide with respect to any of the following matters—

- (a) any matter relating to the conduct of a digital asset business;
- (b) the requirement for any additional service or services to be deemed a digital asset business activity;
- (c) the preparation, adoption and implementation of processes or procedures relating to a digital asset business.

(3) Regulations made under subsection (1) may—

- (a) prescribe penalties not exceeding \$10,000 for any breach of the regulations;
- (b) make such transitional, incidental or supplementary provision as appears to the Minister to be necessary or expedient.

(4) Regulations made under this Act shall be subject to the negative resolution procedure.

#### **51. Transitional**

(1) An undertaking carrying on digital asset business prior to the commencement of this Act shall be required to submit an application to the Commission in accordance with section 8 within two months of the date of commencement of this Act.

(2) An undertaking is liable to pay the fee prescribed by virtue of section 12 on the issue of its licence under subsection (1), but is liable to pay the fee prescribed thereunder on or before 31 March and annually thereafter, and the provisions of section 17(3) shall apply in relation to failure to pay such fee.

(3) Where the undertaking referred to in subsection (1) makes an application for a licence within two months from the date of commencement of this Act, it may continue to carry on digital asset business activities without a licence until that application is approved, declined or withdrawn.

**SCHEDULE I***(Sections 18(2), 18(5), 20(2))***Part 1  
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 2020 (the "Act") shall be submitted to the Commission in writing on the letterhead of the Licensee and shall include three (3) copies of the related Prospectus.

(2) The Prospectus shall include the minimum required information set forth in this Schedule 1 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 applicant. On issuance of an approval, the Licensee applicant shall be permitted to publish the Prospectus and proceed with the Offering.

**Cover Page Disclosure**

(6) 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.

## **2. 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 applicant 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 Licensee
- (e) The full name and address of the Legal counsel of the Licensee
- (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 Antigua and Barbuda, 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.

### **3. 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 equivalent (in EC dollars) 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 and 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 Antigua and Barbuda or any other jurisdiction will be engaged to meet due diligence requirements under Antigua and Barbuda 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 digital asset has been marketed by the Licensee applicant or any other party as a currency, commodity, utility or investment.

#### **4. 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.

#### **5. 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 1 and other relevant provisions of the Act.

## **PART 2 COMPLIANCE MEASURES**

#### **6. Meaning of “appropriate measures”**

For the purposes of this Schedule 1, appropriate measures include the following—

- (a) identifying any participant and verifying the participant's identity on the basis of documents, data or information obtained from a reliable and independent source;
- (b) in the case of a legal entity or legal arrangement, identifying the participant and verifying the identity of the relevant natural person carrying out the transaction or proposed transaction;
- (c) in the case of a person purporting to act on behalf of a participant, verifying that the person is in fact so authorised and identifying and verifying the identity of that person; and
- (d) conducting enhanced due diligence whenever necessary.

### **7. Verification of identity and timing of verification**

(1) A Licensee shall, in relation to an Offering, ensure that it applies appropriate measures relating to identification and verification of the participants in the Offering.

(2) Subject to paragraph (3), a Licensee must verify the identity of a participant before the issuance of a digital asset to the participant with respect to the Offering.

(3) Such verification may be completed after the issue of a digital asset if—

- (a) the rights and functionalities are such that the digital asset can only be used for services and products provided by the Offering issuer;
- (b) this is necessary not to interrupt the normal conduct of business;
- (c) there is little risk of money laundering or terrorist financing occurring, provided that the verification is completed as soon as practicable after the digital asset is issued;
- (d) any money laundering or terrorist financing risks that may arise are effectively managed; and
- (e) it appears that a participant, or any person purporting to act on behalf of the participant, is not or does not appear to be anonymous or fictitious

### **8. Requirement to cease transactions, etc.**

(1) Where in relation to any participant or proposed participant in an Offering, a company is unable to apply appropriate measures in accordance with the provisions of this Schedule 1, the Licensee—

- (a) shall not open any account or carry out a transaction for the person;

- (b) shall not issue a digital asset to the person;
- (c) in the case of a participant in an Offering, shall not permit that participant to undertake any further transactions of any nature, until such time as the Licensee has been able to apply the measures; and
- (d) shall terminate any existing business relationship with the person.

(2) In the event that an existing business relationship is terminated in accordance with paragraph (1)(d), details regarding the termination shall be included in any final audit or other compliance report required by the Commission.

### **9. Enhanced due diligence**

(1) A Licensee must apply on a risk-sensitive basis enhanced due diligence to business relationships with existing participants or proposed participants in an Offering—

- (a) in accordance with paragraph (2);
- (b) in instances where a person or a transaction is from or in a country that has been identified as having a higher risk by the Financial Action Task Force;
- (c) in instances where a person or a transaction is from or in a country that represents a higher risk of money laundering, corruption, terrorist financing or being subject to international sanctions;
- (d) in any other situation which by its nature may present a higher risk of money laundering or terrorist financing;
- (e) in instances where the company suspects money laundering or terrorist financing;  
or
- (f) in instances where the company doubts the veracity or adequacy of documents, data or information previously obtained for the purpose of identification or verification.

(2) Where any of the circumstances in paragraph (1) exist, a Licensee must take specific and adequate measures to compensate for the potential risk, for example by applying one or more of the following measures—

- (a) ensuring that the participant's identity is established by additional documents, data or information;



- (b) employing supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by an AML/ATF regulated financial institution (or equivalent institution inside or outside of Antigua and Barbuda) which is subject to equivalent regulations;
- (c) ensuring that the first payment is carried out through an account opened in the participant's name with a banking institution;
- (d) monitoring the participant's activity.

### **10. Reliance on third parties**

(1) A Licensee may rely on service provider who falls within paragraph (2) to apply any measures required by this Schedule 1, provided that—

- (a) the other service provider consents to being relied on; and
- (c) notwithstanding the Licensee's reliance on the service provider, the Licensee—
  - (i) must obtain information sufficient to identify participants;
  - (ii) must satisfy itself that reliance is appropriate given the level of risk for the jurisdiction in which the party to be relied upon is usually resident; and
  - (iii) will remain liable for any failure to apply such measures.

(2) The service provider is—

- (a) an AML/ATF regulated financial institution in its jurisdiction of residence;
- (b) an independent professional resident in Antigua and Barbuda supervised by a professional body recognized by the Commission; or
- (c) an independent professional outside of Antigua and Barbuda supervised by a professional body equivalent to the bodies recognized in Antigua and Barbuda by the Commission. .

### **11. Record-keeping**

(1) A Licensee must keep the records specified in paragraph (2) for at least the period specified in paragraph (3).

(2) In respect of a business relationship or an occasional transaction, the records are—

- (a) a copy of, or the references to, the evidence of the person's identity obtained pursuant to this Schedule 1, together with the results of any analysis or enhanced due diligence undertaken in relation to that person; and
- (b) the records of transactions, provided that such records must be sufficient to permit the reconstruction of individual transactions.

(3) The period specified records must be kept is—

- (a) in the case of records in paragraph 2(a), for the duration of the business relationship and five (5) years beginning on the date on which the business relationship ends or five (5) years beginning on the date the occasional transaction is completed;
- (b) in the case of records in paragraph 2(b), five (5) years beginning on the date the transaction is completed.

(4) A Licensee who is relied on by another person must keep the records specified in paragraph (2)(a) for five (5) years beginning on the date on which it is relied on for the purposes of these Regulations in relation to any business relationship or occasional transaction.

(5) But in any case where a Licensee has been notified in writing by a police officer that particular records are or may be relevant to an investigation which is being carried out, the Licensee must keep the records pending the outcome of the investigation.

(6) For the avoidance of doubt, all documents and findings related to the investigations of—

- (a) complex transactions;
- (b) unusually large transactions; or
- (c) unusual patterns of transactions,

must be recorded and kept for a minimum period of five (5) years and shall be made available to competent authorities upon request.

(7) A Licensee who relies on a service provider referred to in regulation 11(2) to apply appropriate measures must take steps to ensure that the service provider will, if requested by the Licensee, within the period referred to in paragraph (4)—

- (a) as soon as reasonably practicable make available to the Licensee any information about the participant; and
- (b) as soon as reasonably practicable forward to the Licensee copies of any identification and verification data and other relevant documents on the identity of

the participant, which the service provider obtained when applying those measures.

## **12. Audit and Security of Offering**

(1) A Licensee must—

- (a) carry out an internal compliance review with respect to the conduct of an Offering and financial operations (including financial expenditures, if any) connected therewith and prepare a compliance report which shall be audited; and
- (b) file with the compliance report with the Commission in such form as the Commission may determine, within 90 days of completion of the Offering.

(2) The Licensee shall ensure that appropriate mechanisms are in place in respect of the security of digital assets issued to recipients, confidentiality, disclosure of information and connected matters and that applicable Antigua and Barbuda laws are complied with in these respects.

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Passed the House of Representatives on  
The 2nd day of June, 2020.

Passed the Senate on the 16th day of  
June, 2020.

**Gerald Watt, Q. C.,**  
*Speaker of the House*

**Alicia Williams Grant,**  
*President of the Senate*

**A. Peters,**  
*Clerk to the House of Representatives.(Ag)*

**A. Peters,**  
*Clerk to the Senate.(Ag)*