



BERMUDA

DIGITAL ASSET BUSINESS ACT 2018

2018 : 28

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WHEREAS it is expedient to make provision for the Bermuda Monetary Authority 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 for purposes connected with those matters:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

### PART 1 PRELIMINARY

#### Citation

1 This Act may be cited as the Digital Asset Business Act 2018.

#### Interpretation

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

“Authority” means the Bermuda Monetary Authority established under the Bermuda Monetary Authority Act 1969;

“code of practice” means a code of practice issued by the Authority pursuant to section 6;

“company” means a body corporate wherever incorporated;

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

“Court” means the Supreme Court;

“custodial wallet provider” means provision of the services of storing or maintaining digital assets or a virtual wallet on behalf of a client;

“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;

“cyber security event” means any act or attempt, successful or unsuccessful, to gain unauthorized access to, disrupt, or misuse the electronic systems or information stored on such systems of a licensing undertaking;

“decision notice” means a notice prepared in accordance with section 54;

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

(a) is used as a medium of exchange, unit of account, or store of value and is not legal tender, whether or not denominated in legal tender;

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- (b) is intended to represent assets such as debt or equity in the promoter;
- (c) is otherwise intended to represent any assets or rights associated with such assets; or
- (d) is intended to provide access to 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;

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

“digital asset services vendor” means a person that—

- (a) under an agreement as part of its business—
  - (i) can undertake a digital asset transaction on behalf of another person;
  - (ii) has power of attorney over another person’s digital asset;
- (b) operates as a market maker for 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 statements” means the statements specified in subsection (1)(a), and the notes mentioned in subsection (1A), of section 84 of the Companies Act 1981 in relation to a licensed undertaking that is a company;

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- “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;
- “fit and proper person” has the meaning assigned to the term in Schedule 1;
- “licence” means a licence issued by the Authority under section 13 and “licensee” and “licensed” shall be construed accordingly;
- “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;
- “minimum criteria” means the minimum criteria for licensing specified in Schedule 1;
- “Minister” means the Minister of Finance;
- “officer” in relation to a licensed undertaking, includes a director, secretary, chief executive or senior executive of the licensed undertaking by whatever name called;
- “qualified custodian” means—
- (a) a bank (as such term is defined under the Bank and Deposit Companies Act 1999);
  - (b) an undertaking licensed under the Trusts (Regulation of Trust Business) Act 2001; or
  - (c) any other person recognized by the Authority for such purpose;
- “senior executive” has the meaning given in section 3(6);
- “share” has the meaning given in section 2 of the Companies Act 1981;
- “shareholder controller” has the meaning given in section 3(4);
- “subsidiary” has the meaning given in section 86 of the Companies Act 1981;
- “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;
- “undertaking” means a company;

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“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—

- (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;
- (c) operating as an electronic exchange;
- (d) providing custodial wallet services;
- (e) operating as a digital asset services vendor.

(3) The Minister may, after consultation with the Authority, 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.

Meaning of "director", "controller", "senior executive" and "associate"

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

(2) “Director”, in relation to an undertaking, 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, "majority 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.

#### Carrying on digital asset business in Bermuda

4 (1) For the purposes of this Act and subject to section 11, a person carries on digital asset business in Bermuda if—

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

(2) Notwithstanding subsection (1), a person shall be regarded as carrying on digital asset business in or from within Bermuda 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 Authority, 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 Bermuda;
- (b) not carrying on digital asset business in Bermuda.

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

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

#### Authority’s statement of principles and guidance provision

5 (1) The Authority shall, as soon as practicable after the coming into force of this Act, publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act—

- (a) in interpreting the minimum criteria and the grounds for revocation specified in section 24;
- (b) in exercising its power to grant, revoke or restrict a licence;
- (c) in exercising its power to obtain information and reports and to require production of documents;
- (d) in exercising its powers—
  - (i) under section 39 to impose a civil penalty;

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- (ii) under section 41 to censure publicly;
- (iii) under section 43 to make a prohibition order; and
- (iv) under section 56 to publish information about any matter to which a decision notice relates.

(2) If the Authority makes a material change to the principles, it shall publish a statement of the change or the revised statement of principles in the same manner as it published the statement under subsection (1).

(3) The Authority may from time to time give guidance on the application of this Act and rules or regulations made under it.

(4) The Authority may publish such guidance (which may be in the form of information and advice) in such manner as it thinks fit, including guidance in respect of access to, and maintenance of, client transaction records.

### Codes of practice

6 (1) The Authority may issue codes of practice in connection with the manner by which licensed undertakings shall carry on digital asset business.

(2) Without prejudice to the generality of subsection (1), the Authority may issue codes of practice for the purpose of providing guidance as to the duties, requirements and standards to be complied with, and the procedures (whether as to identification, record keeping, internal reporting and training or otherwise) and sound principles to be observed by persons carrying on digital asset business.

(3) Before issuing a code of practice, the Authority shall publish a draft of that Code in such manner as it thinks fit and shall consider any representations made to it about the draft.

(4) Every licensed undertaking shall in the conduct of its business have regard to any code of practice issued by the Authority.

(5) A failure on the part of a licensed undertaking to comply with the provisions of such a code shall be taken into account by the Authority in determining whether the business is being conducted in a prudent manner as required by paragraph 2 of Schedule 1 (Minimum Criteria for Licensing).

### Prudential and other returns

7 (1) The Authority may make Rules prescribing prudential standards in relation to—

- (a) disclosures to clients;
- (b) risk management;
- (c) custody of client assets;
- (d) cybersecurity;
- (e) financial statements;

(f) statutory returns,

which shall be complied with by all licensed undertakings.

(2) The Authority may in such Rules or statutory returns prescribe standards that impose different requirements to be complied with by licensed undertakings in different situations or in respect of different activities.

(3) Audited financial statements and accounts shall be in a prescribed form and different forms of return may be prescribed for undertakings holding different classes of licence.

(4) Not later than four months after the close of its financial year every licensed undertaking shall file with the Authority any information or documents required in relation to any applicable Rule or statutory return required to be prepared by it under this section.

(5) Every licensed undertaking shall keep a copy of the most recent Rule or return filed with the Authority at its head office for a period of not less than five years beginning with its filing date under subsection (4).

(6) Every licensed undertaking that fails to file audited financial statements, accounts, any information or documents required in relation to a Rule or statutory return within the time specified in subsection (4) is liable to a civil penalty not exceeding \$5,000 for each week or part of a week that it is in default.

Authority may exempt or modify prudential standards or requirements or take necessary actions

8 (1) The Authority may, where it has made a determination or on the application of a licensed undertaking, exempt it from the requirement to comply with any prudential standard or requirement applicable to it under this Act or modify any such prudential standard or requirement.

(2) In granting an exemption or modification under this section the Authority may impose such conditions on the exemption or modification as it considers appropriate.

(3) The Authority shall not grant an exemption or modification unless it is satisfied that it is appropriate to do so having regard to the nature, scale and complexity of the licensed undertaking.

(4) The Authority may revoke an exemption or vary any modification granted under this section and shall serve notice on the licensed undertaking of its proposal to revoke its approval and the reason for its proposal.

(5) A licensed undertaking served with a notice under subsection (4) may within a period of 28 days from the date of the notice make written representations to the Authority and where such representations have been made, the Authority shall take them into account in deciding whether to revoke its approval.

(6) Without prejudice to its powers under subsection (1), the Authority where it has made a determination, may take any action necessary or desirable to protect the public, clients or potential clients of the licensed undertaking where the Authority concludes that due to the nature, scale and complexity and risk profile of the licensed undertaking, such

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action is necessary and in the interest of the public or is required to be taken for the protection of clients or potential clients.

(7) Before taking any such action under subsection (6), the Authority shall serve notice on the licensed undertaking giving its reasons therefor.

(8) A licensed undertaking served with a notice under subsection (7) may, within a period of 28 days from the date of the notice, make written representations to the Authority; and where such representations are made, the Authority shall take them into account in deciding whether to take the proposed action.

(9) The Authority shall notify a licensed undertaking of any actions it has taken.

### Advisory Panel

9 (1) The Authority may appoint a panel to advise it in relation to the effect of digital asset business on—

- (a) persons licensed or registered under the Insurance Act 1978, Banks and Deposit Companies Act 1999, Trusts (Regulation of Trust Business) Act 2001, Investment Business Act 2003, Investment Funds Act 2006, Credit Unions Act 2010, Corporate Service Business Provider Act 2012 and Money Service Business Act 2016;
- (b) persons who conduct business with licensed or registered persons under subsection (a);
- (c) the economy of Bermuda;
- (d) digital asset business regulation.

(2) In particular, the panel may advise the Authority about anything referred to it by the Authority.

(3) The panel shall be appointed by the Authority and consist of—

- (a) one or more persons, who in the Authority's opinion represents the interests of those persons under subsection (1)(a);
- (b) one or more persons, who in the Authority's opinion have an expertise in law relating to the financial systems of Bermuda;
- (c) one or more persons, who in the Authority's opinion has expertise in any or all of the digital asset business activities set out under section 2(2); or
- (d) one or more persons, holding such qualifications as the Authority deems appropriate.

PART 2  
LICENSING

Restriction on carrying on digital asset business without a licence

10 (1) Subject to section 11, a person shall not carry on digital asset business in or from within Bermuda unless that person is for the time being a licensed undertaking in one of the classes specified in section 12(3).

(2) The Authority may 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;
  - (c) operating as an electronic exchange;
  - (d) providing custodial wallet services;
  - (e) operating as a digital assets services vendor.
- (3) A person who contravenes this section 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.

Exemption order

11 (1) Section 10 shall not apply to any person exempted by or under an exemption order issued in terms of this section.

(2) The Minister acting on the advice of the Authority 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 10.

(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 such digital asset business activities;
- (c) in respect of specified circumstances.

(4) An exemption order may be subject to conditions.

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(5) The following activities shall not constitute digital asset business for the purposes of section 10(1)—

- (a) contributing connectivity software 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.

(6) In subsection (3)(c), “specified” means specified by the exemption order.

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

### Digital asset business licence

12 (1) An application for a digital asset business licence may be made to the Authority.

(2) An application shall state the class of digital asset business licence required.

(3) The classes of digital asset business licences referred to in subsection (2) which may be applied for under this Act are a—

- (a) class F 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) class M 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 Authority.

(4) The Authority, where it has made a determination or on the application of a licensed undertaking, may extend the defined period of a class M licence for such additional period of time as it deems appropriate.

(5) An application in respect of any extension to the defined period of a class M licence in accordance with subsection (4) shall be in such form as the Authority may direct, accompanied by such information as the Authority may require and the application fee of such amount prescribed by the Authority under the Bermuda Monetary Authority Act 1969.

(6) An application shall be made in such manner as the Authority may direct and shall be accompanied by—

- (a) a business plan setting out the nature and scale of the digital asset business activity which is to be carried on by the applicant;

- (b) particulars of the applicant's arrangements for the management of the business;
- (c) policies and procedures to be adopted by the applicant to meet the obligations under this Act and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;
- (d) such other information and documents as the Authority may reasonably require for the purpose of determining the application; and
- (e) an application fee which shall be an amount determined by the Authority commensurate to the nature, scale and complexity of the digital asset business to be carried on by the undertaking and as may be prescribed under the Bermuda Monetary Authority Act 1969.

(7) An application may be withdrawn by notice in writing to the Authority at any time before it has determined the application.

#### Grant and refusal of applications

13 (1) Subject to this section, the Authority may on an application duly made in accordance with section 12, and after being provided with all such information, documents and reports as it may reasonably require under that section, grant or refuse the application for a licence.

(2) The Authority shall not grant an application unless it is satisfied that the minimum criteria set out in Schedule 1 are fulfilled with respect to the applicant.

(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 Authority may determine to be appropriate having regard to the nature and scale of the proposed business.

(4) The Authority may where it has made a determination or on application made by a licensed undertaking, vary or remove any limitation imposed on the scope of its licence.

(5) The Minister, acting on the advice of the Authority, may by order amend Schedule 1 by adding new criteria or by amending or deleting the criteria for the time being specified in the Schedule.

#### Determination of class of licence

14 (1) Notwithstanding an application submitted by an undertaking under section 12, the Authority may determine whether an undertaking proposing to carry on digital asset business shall be issued a different class of licence.

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

- (a) interests of those clients or potential clients and of the public generally; and

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- (b) obligations the Authority is of the view should be imposed on the undertaking due to the nature of the digital asset business activities it intends to carry on.

### Display and registration of licence

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

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

### Fees

16 (1) A licensed undertaking shall pay such fee as may be determined by the Authority and prescribed under the Bermuda Monetary Authority Act 1969—

- (a) on the grant of a licence under section 13;
- (b) annually, before 31 March in every year following the year in which it was licensed under section 13;
- (c) at the time of making an application under section 8 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 under section 12(5);
- (e) at the time of making an application for variance of a direction under section 23(4).

(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 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 Authority, 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.

### Separate accounts

17 A licensed undertaking holding client assets shall keep its accounts in respect of such assets separate from any accounts kept in respect of any other business.



Custody and protection of client assets

18 (1) A licensed undertaking holding client assets shall maintain a surety bond or trust account, or indemnity insurance for the benefit of its client in such form and amount as is acceptable to the Authority for the protection of its clients or such other arrangements as the Authority may approve.

(2) To the extent that a licensed undertaking maintains a trust account in accordance with this section, such trust account must be maintained with a qualified custodian.

(3) A licensed undertaking that has custody of one or more digital assets for one or more clients must maintain in its custody a sufficient amount of each type of digital asset in order to meet its obligations to clients.

- (4) For the purposes of this section, the digital asset referred to is that which is—
- (a) held by the licensed undertaking for the client entitled to the digital assets;
  - (b) not property or digital assets of the licensed undertaking; and
  - (c) not subject to the claims of creditors of the licensed undertaking.

Senior representative

19 (1) Every licensed undertaking shall appoint a senior representative that satisfies the requirements of subsection (2).

(2) The senior representative shall be a person approved by the Authority to act in such capacity on behalf of the licensed undertaking.

(3) The approved senior representative shall maintain an office in Bermuda.

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

- (a) location of the senior representative's office;
- (b) particulars of the senior representative.

(5) If any information required by notification in accordance with subsection (4) is altered, the licensed undertaking shall give particulars of the alteration in writing within 14 days of the date the alteration was made.

(6) Without reason acceptable to the Authority—

- (a) a licensed undertaking shall not terminate the appointment of its senior representative; and
- (b) a senior representative shall not cease to act as such, until it or he gives 30 days' notice in writing to the Authority of the intention to do so.

(7) If a senior representative wilfully fails to give notice required in accordance with subsection (6) to the Authority he commits an offence.

Senior representative to report certain events

20 (1) A senior representative shall forthwith notify the Authority, 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; or
- (b) on its coming to his knowledge, or his having reason to believe, that an event to which this section applies has occurred.

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

(3) As respects any senior representative, this section applies to the following events, being events in which the licensed undertaking for which he acts as senior representative 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 Authority;
- (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 Authority;
- (c) involvement of the licensed undertaking in any criminal proceedings whether in Bermuda or abroad;
- (d) the licensed undertaking ceasing to carry on digital asset business in or from within Bermuda;
- (e) a material change to the business of the licensed undertaking;
- (f) a cyber reporting event.

Head Office

21 (1) Every licensed undertaking shall maintain a head office in Bermuda, satisfying the requirements of subsection (2).

(2) The digital asset business of the licensed undertaking must be directed and managed from Bermuda and, in determining whether the licensed undertaking complies with this requirement, the Authority shall consider, inter alia, the factors set out in subsection (3).

(3) The factors referred to in subsection (2) are—

- (a) where the strategy, risk management and operational decision making of the licensed undertaking occurs;
- (b) whether the presence of senior executives who are responsible for, and involved in, the decision making related to the digital asset business of the licensed undertakings are located in Bermuda;

(c) where meetings of the board of directors of the licensed undertaking occur.

(4) Notwithstanding the considerations set out in subsection (3), the Authority may also have regard to the following matters—

- (a) the location where management of the licensed undertaking meets to effect policy decisions of the licensed undertaking;
- (b) the residence of the officers or employees of the licensed undertaking; or
- (c) the residence of one or more directors of the licensed undertaking in Bermuda.

#### Material change to business

22 (1) No licensed undertaking shall effect a material change within the meaning of subsection (2) unless it has notified the Authority 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 Authority.

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

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

- (a) the licensed undertaking has served on the Authority a notice in writing stating that the licensed undertaking intends to effect such a material change; and
- (b) either—
  - (i) the Authority, 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 Authority 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 Authority may direct and the Authority, after receiving such a notice from any person, may by notice in writing require it to provide such additional information or documents as the Authority 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 Authority 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 Authority shall serve the person concerned with a preliminary written notice stating that the Authority 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 Authority is not satisfied about and subject to subsection (6), the reasons for which it is not satisfied; and
- (b) shall 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 Authority; and
- (b) where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(10) A notice of objection under this section shall—

- (a) specify which of the matters mentioned in subsection (2) the Authority is not satisfied about and, subject to subsection (11), the reasons for which it is not satisfied; and
- (b) give particulars of the rights conferred by section 48.

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

#### Restriction of licence

23 (1) Subject to section 26, the Authority may restrict a licence—

- (a) if it is satisfied of the matters specified in paragraph (a), (b), (d) or (e) of section 24, but it appears to the Authority that the circumstances are not such as justify revocation;
  - (b) if it is satisfied that a person has become a controller of a licensed undertaking in contravention of section 34 or has become or remains a controller after being given a notice of objection pursuant to section 35 or 36;
  - (c) 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
  - (d) at any time after the licensed undertaking has served a notice surrendering its licence with effect from a later date.
- (2) The Authority 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 Authority.
- (4) The Authority 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.

Revocation of licence

24 Subject to section 25, the Authority may revoke the licence of a licensed undertaking if the Authority is satisfied that—

- (a) any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the licensed undertaking;
- (b) the licensed undertaking has failed to comply with any obligation imposed on it by or under this Act or is carrying on business in a manner not authorised by its licence;
- (c) a person has become a majority shareholder controller of the licensed undertaking in contravention of section 34 or has become or remains such a controller after being given a notice of objection pursuant to section 35 or 36;
- (d) the Authority 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;
- (e) the interests of the clients or potential clients of the licensed undertaking are in any way threatened; or
- (f) the fixed period of a class M licence has expired.

Winding up on petition from the Authority

25 (1) On a petition presented by the Authority 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 XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of a licensed undertaking under this section.

Notice of restriction or revocation of licence

26 (1) Where the Authority proposes to—

- (a) restrict a licence under section 23(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 24(a) to (f),

the Authority shall give to the licensed undertaking concerned a warning notice under section 53.

(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 Authority that the criterion in paragraph

1 of the Schedule 1 is not or has not been fulfilled, or 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 Authority shall give that person a copy of the warning notice but the Authority 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 53(2), the Authority 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 Authority has made a decision under subsection (3), it shall forthwith provide either a decision notice under section 54 or a notice of discontinuance under section 55, as the case may be.

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

#### Restriction in cases of urgency

27 (1) No notice need be given under section 26 in respect of the imposition or variation of a restriction on a licensed undertaking's licence in any case in which the Authority considers that the restriction should be imposed or varied as a matter of urgency.

(2) In any such case, the Authority may by written notice to the undertaking impose or vary the restriction.

(3) Any such notice shall state the reason for which the Authority has acted and particulars of the rights conferred by subsection (5).

(4) Section 23(2) shall apply to a notice under subsection (2) imposing or varying a restriction as it applies to a notice under section 23(1) in respect of a proposal to impose or vary a restriction; but the Authority may omit from a copy given to a person by virtue of this subsection any matter which does not relate to him.

(5) A licensed undertaking to which a notice is given under this section of the imposition or variation of a restriction and a person who is given a copy of it by virtue of subsection (4) may within the period of 14 days beginning with the day on which the notice was given make representations to the Authority.

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(6) After giving a notice under subsection (2) imposing or varying a restriction and taking into account any representations made in accordance with subsection (5), the Authority shall decide whether—

- (a) to confirm or rescind its original decision; or
- (b) to impose a different restriction or to vary the restriction in a different manner.

(7) The Authority shall within the period of 28 days beginning with the day on which the notice was given under subsection (2) give the undertaking concerned written notice of its decision under subsection (6) and, except where the decision is to rescind the original decision, the notice shall state the reason for the decision.

(8) Where the notice under subsection (7) is of a decision to take the action specified in subsection (6)(b), the notice under subsection (7) shall have the effect of imposing the restriction or making the variation specified in the notice with effect from the date on which it is given.

### Directions to protect interests of clients

28 (1) The Authority may give a licensed undertaking directions under this section at any time if it appears to the Authority that a licensed undertaking is in breach of any provision of this Act, regulations or rules applicable to it.

(2) Directions under this section shall be such as appear to the Authority to be desirable for safeguarding the interests of the licensed undertaking's clients or proposed clients.

(3) A licensed undertaking which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section commits an offence and is liable—

- (a) on summary conviction, to a fine of \$50,000;
- (b) on conviction on indictment, to a fine of \$2,000,000.

### Notification and confirmation of directions

29 (1) A direction under section 28 shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Authority by a notice in writing to the licensed undertaking concerned.

(2) A direction under section 28(1), except one varying a previous direction, shall—

- (a) state the reasons for which it is given and give particulars of the licensed undertaking's rights under subsection (3) and section 48 where appropriate; and
- (b) cease to have effect at the end of the period which may be set out by the Authority in the notice.



(3) A licensed undertaking to which a direction is given under subsection (2) may, within the period of 14 days beginning with the day on which the direction is given, make written representations to the Authority; and the Authority shall take any such representations into account in deciding whether to confirm the direction.

#### Surrender of licence

30 (1) A licensed undertaking with the prior approval of the Authority may surrender its licence by written notice to the Authority.

(2) A surrender shall take effect on the date of the giving of approval by the Authority.

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

### PART 3 AUDITED ACCOUNTS

#### Duty to prepare annual audited financial statements and accounts

31 (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 Authority 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 Authority 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 Authority.

(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) Notwithstanding subsection (1), the Authority may require a licensed undertaking to prepare financial statements or accounts in such manner as it may direct.

#### Appointment of auditors

32 (1) Every licensed undertaking shall annually appoint an approved auditor to audit its financial statements.

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(2) If a licensed undertaking fails to appoint an approved auditor as required by subsection (1) or, at any time, fails to fill a vacancy for such auditor, the Authority may appoint an approved auditor and shall fix the remuneration to be paid by that digital asset business to such auditor.

(3) A licensed undertaking shall forthwith give written notice to the Authority if it—

- (a) proposes to remove an auditor before the expiration of his term of office; or
- (b) proposes to replace an auditor at the expiration of the term of his office with a different auditor.

(4) 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.

(5) 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 Authority for the purposes of this Act.

(6) 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.

### Auditor to communicate certain matters to Authority

33 (1) An auditor of a licensed undertaking shall in the circumstances specified in subsection (2) forthwith give written notice to the Authority 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 Authority 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 Authority’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 4

OBJECTIONS TO SHAREHOLDER CONTROLLERS

Notification of new or increased control

34 (1) No person shall become a 10% shareholder controller or a majority shareholder controller of a licensed undertaking which is a company unless—

- (a) he has served on the Authority a written notice stating that he intends to become such a controller of the licensed undertaking; and
- (b) either the Authority has, before the end of the period of three months beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming such a controller of the licensed undertaking, or that period has elapsed without the Authority having served him under section 35 a written notice of objection to his becoming such a controller of the licensed undertaking.

(2) A notice under subsection (1)(a) shall contain such information as the Authority may direct and the Authority may, after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

(3) Where additional information or documents are required from any person by a notice under subsection (2), 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 (1)(b).

Objection to new or increased control

35 (1) The Authority may serve a notice of objection under this section on a person who has given notice under section 34 unless it is satisfied—

- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the licensed undertaking;
- (b) that the interests of clients and potential clients of the licensed undertaking would not be in any manner threatened by that person becoming a controller of that description of the licensed undertaking; and
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensed undertaking as a controller of the description in question, the criteria in Schedule 1 would continue to be fulfilled in the case of the licensed undertaking or, if any of those criteria is not fulfilled, that that person is likely to undertake adequate remedial action.

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

(a) shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied with and, subject to subsection (5), the reasons for which it is not satisfied; and

(b) shall give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of 28 days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

(a) specify which of the matters mentioned in subsection (1) the Authority is not satisfied with and, subject to subsection (5), the reasons for which it is not satisfied; and

(b) give particulars of the rights conferred by section 48.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

(6) Where a person required to give a notice under section 34 in relation to becoming a controller of any description becomes a controller of that description without having given the notice, the Authority may serve him with a notice of objection under this section at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such a notice, require him by notice in writing to provide such information or documents as the Authority may reasonably require.

(7) The period mentioned in section 34(1)(b) (with any extension under subsection (3) of that section) and the period mentioned in subsection (6) shall not expire, if they would otherwise do so, until 14 days after the end of the period within which representations can be made under subsection (3).

#### Objection to existing controller

36 (1) Where it appears to the Authority that a person who is a controller of any description of a licensed undertaking is not or is no longer a fit and proper person to be such a controller of the licensed undertaking, it may serve him with a written notice of objection to his being such a controller of the licensed undertaking.

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

(a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and

(b) give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of 28 days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

- (a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and
- (b) give particulars of the rights conferred by section 48.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

#### Contraventions by controller

37 (1) Subject to subsection (2), any person who contravenes section 34 by—

- (a) failing to give the notice required by subsection (1)(a) of that section; or
- (b) becoming a controller of any description to which that section applies before the end of the period mentioned in subsection (1)(b) of that section in a case where the Authority has not served him with a preliminary notice under section 35(2),

commits an offence.

(2) A person shall not be guilty of an offence under subsection (1) if he shows that he did not know of the acts or circumstances by virtue of which he became a controller of the relevant description; but where any person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he has become such a controller he commits an offence unless he gives the Authority written notice of the fact that he has become such a controller within 14 days of becoming aware of the fact.

(3) Any person who—

- (a) before the end of the period mentioned in section 34(1)(b), becomes a controller of any description to which that subsection applies after being served with a preliminary notice under section 35(2);
- (b) contravenes section 34 by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or
- (c) having become a controller of any description in contravention of that section (whether before or after being served with such notice of objection), continues to be such a controller after such a notice has been served on him,

commits an offence.

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(4) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of \$25,000.

(5) A person who commits an offence under subsection (3) is liable—

- (a) on summary conviction, to a fine of \$25,000 and in respect of an offence under paragraph (c) of that subsection, to a fine of \$500 for each day on which the offence has continued;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

### Restriction on sale of shares

38 (1) The powers conferred by this section shall be exercisable where a person—

- (a) has contravened section 34 by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description;
- (b) having become a controller of any description in contravention of section 34, continues to be one after a notice has been served on him; or
- (c) continues to be a controller of any description after being served under section 35 with a notice of objection to his being a controller of that description.

(2) The Authority may by notice in writing served on the person concerned direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—

- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or agreement to transfer the right to be issued with them, shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; or
- (d) except in liquidation, no payment shall be made of any sums due from the undertaking on the shares, whether in respect of capital or otherwise.

(3) The Court may, on the application of the Authority, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions.

(4) No order shall be made under subsection (3) in a case where the notice of objection was served under section 35 or 36—

- (a) until the end of the period within which an appeal can be brought against the notice of objection; and
- (b) if an appeal is brought, until it has been determined or withdrawn.

(5) Where an order has been made under subsection (3), the Court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) Where shares are sold in pursuance of an order under this section, the proceeds of sale, less the costs of the sale, shall be paid into the Court for the benefit of the persons beneficially interested in them; and any such person may apply to the Court for the whole or part of the proceeds to be paid to him.

(7) This section applies—

- (a) to all the shares in the licensed undertaking of which the person in question is a controller of the relevant description which are held by him or any associate of his and were not so held immediately before he became such a controller of the licensed undertaking; and
- (b) where the person in question became a controller of the relevant description as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held before he became such a controller of that licensed undertaking.

(8) A copy of the notice served on the person concerned under subsection (2) shall be served on the licensed undertaking or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

## PART 5

### DISCIPLINARY MEASURES

#### Power to impose civil penalties for breach of requirements

39 (1) Except as provided in section 7, 16, 57 or 66, every person who fails to comply with any requirement or contravenes any prohibition imposed by or under this Act is liable to such civil penalty not exceeding \$10,000,000, as the Authority considers appropriate, for each such failure.

(2) For the purposes of subsection (1), “appropriate” means effective, proportionate and dissuasive.

(3) The Authority shall not impose a civil penalty where it is satisfied that the person concerned took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

#### Civil penalties procedures

40 (1) If the Authority proposes to impose a civil penalty, it must give the licensed undertaking concerned a warning notice.

(2) If the Authority decides to impose a civil penalty, it must give the licensed undertaking concerned a decision notice.

Public censure

41 (1) If the Authority considers that a licensed undertaking has contravened a requirement imposed on it by or under this Act, the Authority may publish a statement to that effect.

(2) After a statement under this section is published, the Authority shall send a copy of it to the licensed undertaking.

Public censure procedure

42 (1) If the Authority proposes to publish a statement in respect of a licensed undertaking under section 41, it must give the licensed undertaking a warning notice.

(2) If the Authority decides to publish a statement under section 41 (whether or not in the terms proposed), it must give the licensed undertaking concerned a decision notice.

Prohibition orders

43 (1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by a person who is licensed by the Authority under this Act ("a regulated person").

(2) The Authority may make a prohibition order prohibiting the individual from performing a specified function, any function falling within a specified description, or any function.

(3) A prohibition order may relate to—

- (a) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities;
- (b) regulated persons generally, or any person within a specified class of regulated persons.

(4) In exercising its discretion to make a prohibition order under subsection (2), the Authority must have regard (among other things) to such factors, including assessment criteria, as the Authority may establish in a statement of principles.

(5) A licensed undertaking must ensure that no function performed in relation to the carrying on of a regulated activity, is performed by an individual who is prohibited from performing that function by a prohibition order.

(6) The Authority may, on the application of the individual named in a prohibition order, vary or revoke the order.

(7) The Authority shall publish a prohibition order that is in effect, and every variation of such order, in such manner as it considers appropriate to bring the order to the attention of the public.

(8) This section applies to the performance of functions in relation to a regulated activity carried on by a person who is an exempted person in relation to that activity as it



applies to the performance of functions in relation to a regulated activity carried on by a regulated person.

(9) Any person who fails to comply with the terms of a prohibition order commits an offence and is liable—

- (a) on summary conviction, to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment;
- (b) on conviction on indictment, to a fine of \$200,000 or to imprisonment for four years or to both such fine and imprisonment.

(10) In this section—

“exempted person” means a person who is exempted in accordance with section 11 from the requirement to hold a licence by or under this Act;

“regulated activity” means any activity that is carried on by way of a business requiring licensing or other authority under any provision of this Act, regulations or orders made thereunder;

“specified” means specified in the prohibition order.

Prohibition orders: procedures

44 (1) If the Authority proposes to make a prohibition order, it must give the individual concerned a warning notice.

(2) If the Authority decides to make a prohibition order, it must give the individual concerned a decision notice.

Applications relating to prohibition orders: procedures

45 (1) This section applies to an application for the variation or revocation of a prohibition order.

(2) If the Authority decides to grant the application, it must give the applicant written notice of its decision.

(3) If the Authority decides to refuse the application, it must give the applicant a decision notice.

Determination of applications for variation, etc.

46 (1) The Authority may grant an application made under section 45 if it is satisfied that the applicant is a fit and proper person to perform the function to which the application relates.

(2) In deciding that question, the Authority may have regard (among other things) to whether the applicant—

- (a) has obtained a qualification;
- (b) has undergone, or is undergoing, training; or

- (c) possesses a level of competence required in relation to persons performing functions of the kind to which the application relates.

**Injunctions**

- 47 (1) If, on the application of the Authority, the Court is satisfied—
- (a) that there is a reasonable likelihood that any person will contravene a relevant requirement; or
  - (b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may make an order restraining the contravention.

- (2) If, on the application of the Authority, the Court is satisfied—

- (a) that any person has contravened a relevant requirement; and
- (b) that there are steps which could be taken for remedying the contravention,

the Court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the Court may direct to remedy it.

- (3) If, on the application of the Authority, the Court is satisfied that any person may have—

- (a) contravened a relevant requirement; or
- (b) been knowingly concerned in the contravention of such a requirement,

the Court may make an order restraining such person from disposing of, or otherwise dealing with, any of his assets which it is satisfied the person is reasonably likely to dispose of or otherwise deal with.

- (4) In subsection (2), references to remedying a contravention include references to mitigating its effect.

- (5) “Relevant requirement”, in relation to an application by the Authority, means a requirement which is imposed by or under this Act.

**PART 6**

**RIGHTS OF APPEAL**

**Rights of appeal**

- 48 (1) A licensed undertaking granted a Class F licence which is aggrieved by a decision of the Authority—

- (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 under section 39;
- (d) to publish a statement in respect of it pursuant to section 41; or
- (e) to remove an officer or a controller pursuant to section 23,

may appeal against the decision to the tribunal constituted in accordance with section 49 (the tribunal).

(2) Where—

- (a) the ground or a ground for a decision within subsection (1)(a) or (b) is that mentioned in section 26(2)(a); or
- (b) the effect of a decision within subsection (1)(a) is to require the removal of a person as an officer or a controller of an undertaking under subsection (1)(e),

the officer or controller to whom the ground relates or whose removal is required may appeal to the tribunal against the finding that there is such a ground for the decision or, as the case may be, against the decision to require his removal.

(3) Any person on whom a notice of objection is served under section 35 or 36 may appeal to the tribunal against the decision of the Authority to serve the notice; but this subsection does not apply to a person in any case in which he has failed to give a notice or become or continued to be a controller in circumstances in which his doing so constitutes an offence under subsection (1) and (3) of section 37.

(4) Any individual in respect of whom a prohibition order has been made under section 43 may appeal to the tribunal.

(5) Any person in respect of whom a decision notice has been issued refusing a revocation or variation of a prohibition order may appeal to the tribunal.

(6) The tribunal may suspend the operation of a restriction or a variation of a restriction pending the determination of an appeal in respect of the decision.

(7) The revocation of a licensed undertaking's licence pursuant to a decision against which there is a right of appeal under this section shall not have effect—

- (a) until the end of the period within which the appeal can be brought; and
- (b) if such appeal is brought, until it is determined or withdrawn.

#### Constitution of tribunals

49 (1) A tribunal shall be constituted in accordance with this section, where an appeal is brought under section 48, to determine the appeal.

(2) The tribunal shall consist of a chairman or, in his absence, a deputy chairman and two other members.

(3) The chairman and the deputy chairman shall be appointed by the Minister for a term not exceeding three years, and shall be barristers and attorneys of at least seven years' standing.

(4) The two other members of the tribunal shall be selected by the chairman or, in his absence, the deputy chairman, from a panel of members appointed by the Minister under subsection (6), who shall be persons appearing to the chairman or, as the case may be, the deputy chairman, to have relevant experience.

(5) During any period of time when the chairman or deputy chairman is absent from Bermuda or is for any other reason unable to act, the Minister may appoint another person to act in his place for the period of his absence or inability to act.

(6) The Minister shall appoint a panel of not less than nine persons with relevant experience to serve as members of appeal tribunals.

(7) A person shall not be eligible for appointment as chairman, deputy chairman or member of the tribunal if he is or has at any time during the period of two years ending with the date of his appointment been an officer, servant or agent of the Authority or of any licensed undertaking.

#### Determination of appeals

50 (1) On an appeal made under section 48, the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.

(2) On any such appeal, the tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that—

- (a) where the decision was to impose or vary any restriction, the tribunal may direct the Authority to impose different restrictions or to vary them in a different way; or
- (b) where the decision was to revoke a licence, the tribunal may direct the Authority to restrict it instead.

(3) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Authority; and, unless the tribunal otherwise directs, the determination shall come into operation when the notice is given to the appellant and to the Authority.

#### Costs, procedure and evidence

51 (1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.

(2) The Minister may make regulations with respect to appeals and those regulations may in particular make provision—

- (a) as to the period within which and the manner in which such appeals are to be brought;
- (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private and as to the persons entitled to appear on behalf of the parties;

- (c) as to the procedure to be adopted where appeals are brought both by a licensed undertaking and by a person who is to be a controller or officer of a licensed undertaking, including provision for the hearing of the appeals together and for the mutual disclosure of information;
- (d) for requiring an appellant or the Authority to disclose or allow the inspection of documents in his or its custody or under his or its control;
- (e) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
- (f) for enabling an appellant to withdraw an appeal or the Authority to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
- (g) for taxing or otherwise settling any costs or expenses which the tribunal directs to be paid and for the enforcement of any such direction;
- (h) for enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman or, as the case may be, the deputy chairman of the tribunal; and
- (i) as to any other matter connected with such appeals.

(3) Regulations made under subsection (2) shall be subject to the negative resolution procedure.

(4) A person who, having been required in accordance with regulations made under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence, commits an offence and is liable on summary conviction to a fine of \$10,000.

(5) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, 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.

Further appeals on a point of law

52 (1) A licensed undertaking or other person who has appealed to a tribunal may appeal to the Court on any question of law arising from the decision on the appeal by the tribunal and an appeal on any such question shall also lie at the instance of the Authority; and if the Court is of the opinion that the decision was erroneous in any point of law it shall remit the matter to the tribunal for rehearing and determination by it.

(2) No appeal to the Court of Appeal shall be brought from a decision under subsection (1), except with leave of that court.

PART 7

NOTICES AND INFORMATION

Warning notices

53 (1) A warning notice must—

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

(2) The warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make representations to the Authority; and where such representations are made, the Authority shall take them into account in deciding whether to give a decision notice.

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

(4) A warning notice about a proposal to publish a statement under section 41 must set out the terms of the statement.

(5) A warning notice given under section 43 must set out the terms of the prohibition.

Decision notices

54 (1) A decision notice must—

- (a) be in writing;
- (b) give reasons for the Authority'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 tribunal under section 48.

(2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 53 was given; and if no decision notice under subsection (1) is given within that period, the Authority shall be treated as having at the end of that period given a notice of discontinuance under section 55.

(3) A decision notice about the imposition of a civil penalty under section 39 must state the date when payment is required.

(4) A decision notice about public censure under section 41 must—

- (a) set out the terms of the statement;

- (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 made under section 43(2) must—
  - (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 Authority 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) The Authority may give a further decision notice as a result of subsection (7) only if the person to whom the original notice was given consents.
- (9) 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 tribunal, he has that right as respects the decision notice under subsection (7).

#### Notices of discontinuance

- 55
- (1) Subject to section 54(2), if the Authority 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.

#### Publication

- 56
- (1) Subject to sections 26, 41 and 43, the Authority may publish such information about a matter to which a decision notice relates as it considers appropriate.
  - (2) The Authority must not publish a decision notice under subsection (1)—
    - (a) before notifying the person concerned; and
    - (b) pending an appeal under section 49.

#### Notification of change of controller or officer

- 57
- (1) A licensed undertaking shall give written notice to the Authority 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.

Power to obtain information and reports

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

- (a) require the undertaking to provide the Authority (or such person acting on behalf of the Authority 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority under this Act.

General power to require production of documents

59 (1) The Authority 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 Authority, 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 Authority may reasonably require for the performance of its functions under this Act.

(2) Where, by virtue of subsection (1), the Authority or any officer, servant or agent of the Authority has power to require the production of any documents from a licensed undertaking, the Authority 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) If it appears to the Authority to be desirable in the interests of the clients or potential clients of a licensed undertaking which is a company to do so, it may also exercise the powers conferred by section 58 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 Authority 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 Authority, within such time as may be specified in the notice, with such information or documents as the Authority 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 Bermuda.

Right of entry to obtain information and documents

60 (1) Any officer, servant or agent of the Authority 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 58(1) and 59(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 59(3).

(2) Any officer, servant or agent of the Authority 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 58(1) and 59(1) for the purpose of obtaining there such information or documents as are specified in the authority, but the Authority 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.

## PART 8 INVESTIGATIONS

### Investigations on behalf of the Authority

61 (1) If it appears to the Authority desirable to do so in the interests of the clients or potential clients of a licensed undertaking, the Authority may appoint one or more competent persons to investigate and report to the Authority 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 Authority 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 58(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 Authority otherwise directs, the licensed undertaking under investigation shall pay to the Authority 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 Bermuda.

Investigations of suspected contraventions

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

- (a) a person may have contravened section 10;
- (b) any exempted person may have contravened any restriction or exemption or condition given under an exemption order under section 11;
- (c) an undertaking may have contravened a requirement imposed by or under this Act, regulations or orders made thereunder;
- (d) an individual may not be a fit and proper person to perform functions in relation to a regulated activity within the meaning of section 43.

(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.

Power to require production of documents during investigation

63 (1) The Authority may by notice in writing require the person who is the subject of an investigation under section 62 (“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 Authority 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 Authority may require.

(2) The Authority 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 Authority, within such time and at such place as the Authority 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 Authority at such time and place as the Authority may require and answer questions relevant to the investigation as the Authority may require; and
- (c) to take such actions as the Authority may direct in connection with the investigation.

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

(4) Any officer, servant or agent of the Authority 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) 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.

(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 Bermuda.

(8) 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.

#### Powers of entry

64 (1) A magistrate may issue a warrant under this section if satisfied on information on oath that the Authority is conducting an investigation under sections 61 and 62—

- (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 63; or
- (c) that there are reasonable grounds for suspecting that if a notice were served on the person under section 63 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 62.

(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 62.

(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.

#### Obstruction of investigations

65 (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 10 or a term or condition of an exemption order made under section 11; or

(b) under section 62,

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 9

### CERTIFICATE OF COMPLIANCE

#### Certificates of compliance

66 (1) Every licensed undertaking shall, within four months from the end of its financial year, deliver to the Authority a certificate of compliance, signed by two directors, or one director and an officer of the undertaking, made up to the end of its financial year, certifying that to the best of their knowledge the undertaking has complied with the minimum criteria and codes of practice.

(2) A licensed undertaking that fails to deliver a certificate as required by subsection (1) within the time specified therein is liable to a civil penalty not exceeding \$5,000 for each week or part of a week that the undertaking is in default.

## PART 10

### RESTRICTION ON DISCLOSURE OF INFORMATION

#### Restricted information

67 (1) Except as provided by sections 68, 69 and 70, no person who—

- (a) under or for the purposes of this Act, receives information relating to the business or other affairs of any person; and
- (b) obtains information directly or indirectly from a person who has received it as provided under paragraph (a),

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.

(2) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources or to information in

the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Any person who discloses information in contravention of this section commits an offence and is liable—

- (a) on summary conviction, to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment;
- (b) on conviction on indictment, to a fine of \$100,000 or to imprisonment for five years or to both such fine and imprisonment.

Disclosure for facilitating the discharge of functions of the Authority

68 (1) Section 67 does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Authority to discharge—

- (a) its functions under this Act; and
- (b) its functions under the Bermuda Monetary Authority Act 1969.

(2) Without prejudice to the generality of subsection (1), section 67 does not preclude the disclosure of information by the Authority to the auditor or accountant of a licensed undertaking, or to the person appointed to make a report under section 59(1)(b) if it appears to the Authority that disclosing the information would enable or assist the Authority to discharge the functions mentioned in that section or would otherwise be in the interests of the clients or potential clients of a licensed undertaking.

Disclosure for facilitating the discharge of functions by other authorities

69 (1) Section 67 does not preclude the disclosure of information to the Minister or other authority in Bermuda in any case in which the disclosure is for the purpose of enabling or assisting him or it to discharge his or its regulatory functions.

(2) Section 67 does not preclude the disclosure of information for the purpose of enabling or assisting an authority in a country or territory outside Bermuda to exercise functions corresponding to the functions of the Authority under this Act.

(3) Subsection (2) does not apply in relation to disclosures to an authority unless the Authority is satisfied that the authority is subject to restrictions on further disclosure at least equivalent to those imposed by sections 67 and 70 and this section.

(4) Section 70 does not preclude the disclosure of information—

- (a) for the purpose of enabling or assisting a person to do anything which he is required to do in pursuance of a requirement imposed under section 59(1)(b);
- (b) with a view to the undertaking of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or any other Act;
- (c) in connection with any other proceedings arising out of this Act.



(5) Section 67 does not preclude the disclosure by the Authority to the Director of Public Prosecutions or a police officer not below the rank of inspector of information obtained pursuant to section 62, 63 or 64 or of information in the possession of the Authority as to any suspected contravention in relation to which the powers conferred by those sections are exercisable.

(6) Information which is disclosed to a person in pursuance of this section shall not be used otherwise than for the purposes mentioned in this section.

Information supplied to the Authority by relevant overseas authority

70 (1) Section 67 applies to information which has been supplied to the Authority for the purposes of any relevant functions by the relevant supervisory authority in a country or territory outside Bermuda.

(2) Information supplied to the Authority as mentioned in subsection (1) shall not be disclosed except as provided by section 67 or—

(a) for the purpose of enabling or assisting the Authority to discharge its functions under this Act; or

(b) with a view to the undertaking of, or otherwise for the purpose of, criminal proceedings, whether under this Act or any other Act.

(3) In this section—

“relevant functions”, in relation to the Authority, means its functions under this Act;

“relevant supervisory authority” means the authority discharging in a country or territory outside Bermuda functions corresponding to those of the Authority under this Act.

## PART 11

### MISCELLANEOUS AND SUPPLEMENTAL

Access to and maintenance of client transaction records

71 (1) A licensed undertaking, where the Authority requires, must provide the Authority with online or automated real time 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.

False documents or information

72 (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 prove—

- (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.

#### Offences

73 (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.

#### Prohibition on use of words "digital asset business"

74 (1) No person carrying on business in or from Bermuda 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 12.

(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.

#### Notices

75 (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 Authority.

- (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 place of business; or
  - (c) sending it to him at that address 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 place of business or registered office in Bermuda; or
  - (b) sending it by registered post addressed to the company's principal place of business.

Service of notice on Authority

76 (1) No notice required by this Act to be given to or served on the Authority 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.

Civil debt and civil penalties

77 (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 Authority as a civil debt.

Regulations

78 (1) The Minister may, after consulting with the Authority, 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;

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(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.

### Transitional

79 (1) An undertaking carrying on digital asset business prior to the commencement of this Act shall be required to submit an application to the Authority in accordance with section 12 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 16(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.

### Consequential amendments

80 The consequential amendments set forth in Schedule 2 have effect.

### Commencement

81 (1) This Act shall come into operation on such day as the Minister may appoint by notice published in the Gazette.

(2) The Minister may appoint different days for different provisions.

SCHEDULE 1

(Section 13)

MINIMUM CRITERIA FOR LICENSING

Controllers and officers to be fit and proper persons

1 (1) Every person who is, or is to be, a controller or officer of the licensed undertaking is a fit and proper person to hold the particular position which he holds or is to hold.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities and to whether the interests of clients or potential clients of the licensed undertaking are, or are likely to be, in any way threatened by his holding that position.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has—

- (a) committed an offence involving fraud or other dishonesty, or violence;
- (b) contravened any provision made by or under any enactment appearing to the Authority to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
- (c) engaged in any business practices appearing to the Authority to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;
- (d) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

Business to be conducted in prudent manner

2 (1) The licensed undertaking shall conduct or, in the case of an undertaking which is not yet carrying on digital asset business, will conduct its business in a prudent manner.

(2) In determining whether a licensed undertaking is conducting its business in a prudent manner, the Authority shall take into account any failure by the undertaking to comply with the provisions of—

- (a) this Act;
- (b) any applicable law, including the provisions of the law pertaining to anti-money laundering and anti-financing of terrorism as provided in the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other

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Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;

- (c) codes of practice issued by the Authority pursuant to section 6 of this Act;
- (d) international sanctions in effect in Bermuda.

(3) A licensed undertaking shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain minimum net assets of \$100,000 or such amount as the Authority may direct taking into consideration the nature, size and complexity of the licensed undertaking.

(4) A licensed undertaking shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records, and has developed policies and procedures pertaining to its obligations under this Act or any other Act.

(5) Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the licensed undertaking to be prudently managed and the licensed undertaking to comply with the duties imposed on it by or under this Act or other provisions of law.

(6) A licensed undertaking shall not be regarded as conducting its business in a prudent manner unless it has effected a policy of insurance to cover risks inherent in the operation of its business of an amount commensurate with the nature and scale of its digital asset business or has implemented such other risk mitigation measures as the Authority may agree.

(7) Subparagraphs (2) to (6) are without prejudice to the generality of subparagraph (1).

### Integrity and skill

3 The business of the licensed undertaking is or, in the case of an undertaking which is not yet carrying on digital asset business, will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

### Corporate governance

4 (1) The licensed undertaking shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, size, complexity and risk profile of the licensed company.

(2) Without prejudice to subparagraph (1) the business of the licensed undertaking shall be—

- (a) effectively directed by at least two persons; and
- (b) under the oversight of such number of non-executive directors appointed as the Authority considers appropriate given the nature, size, complexity and risk profile of the licensed undertaking.

Consolidated supervision

5 The position of the licensed undertaking within the structure of any group to which it may belong shall be such that it will not obstruct the conduct of effective consolidated supervision.

SCHEDULE 2

(Section 79)

CONSEQUENTIAL AMENDMENTS

Amends Bermuda Monetary Authority Act 1969

1 The Bermuda Monetary Authority Act is amended—

- (a) in the Third Schedule, by adding the words “Undertaking licensed under the Digital Asset Business Act 2018”;
- (b) in the Fourth Schedule, by adding—

“ Digital Asset Business Act 2018

- (1) Application fee pursuant to section 12 \$2,266
- (2) Grant of licence to carry on digital asset business pursuant to Section 16(1)(a)—
  - (a) The fee payable by a licensed undertaking carrying on digital asset business in accordance with section 10(2)(a), shall be the lower of amounts calculated under paragraphs (i) and (ii) where—
    - (i) equals \$450,000; and
    - (ii) equals the higher of \$15,000 and 0.00075 multiplied by the estimated client receipts.
  - (b) The fee payable by a licensed undertaking carrying on digital asset business in accordance with section 10(2)(b), shall be the lower of amounts calculated under paragraphs (i) and (ii) where—
    - (i) equals \$450,000; and
    - (ii) equals the higher of \$15,000 and 0.00075 multiplied by the estimated client receipts.
  - (c) The fee payable by a licensed undertaking carrying on the digital asset business activity of maintaining custody of client private keys in accordance with section 10(2)(c) shall be—
    - (i) the lower of amounts calculated under paragraphs (a) and (b) where—
      - (a) equals \$450,000; and
      - (b) equals the higher of \$150,000 and 0.00075 multiplied by the estimated client receipts.
    - (ii) where a licensed undertaking does not carry on the digital asset business activity under paragraph (c)



above, the fee payable shall be the lower of amounts calculated under paragraphs (a) and (b) where—

(a) equals \$450,000; and

(b) equals the higher of \$100,000 and 0.00075 multiplied by the estimated client receipts.

(d) The fee payable by a licensed undertaking carrying on the digital asset business activity under section 10(2)(d) shall be the lower of amounts calculated under paragraphs (i) and (ii) where—

(i) equals \$450,000; and

(ii) equals the higher of \$150,000 and 0.00075 multiplied by the estimated client receipts.

(e) The fee payable by a licensed undertaking carrying on the digital asset business activity under section 10(2)(e), shall be the lower of amounts calculated under paragraphs (i) and (ii) where—

(i) equals \$450,000; and

(ii) equals the higher of \$15,000 and 0.00075 multiplied by the estimated client receipts.

(3) Annual fee pursuant to section 16(1)(b)—

(a) The annual fee payable by a licensed undertaking carrying on digital asset business in accordance with section 10(2)(a), shall be the lower of amounts calculated under paragraphs (i) and (ii) where—

(i) equals \$450,000; and

(ii) equals the higher of \$15,000 and 0.00075 multiplied by the estimated client receipts.

(b) The annual fee payable by a licensed undertaking carrying on digital asset business in accordance with section 10(2)(b), shall be the lower of amounts calculated under paragraphs (i) and (ii) where—

(i) equals \$450,000; and

(ii) equals the higher of \$15,000 and 0.00075 multiplied by the estimated client receipts.

(c) The annual fee payable by a licensed undertaking carrying on the digital asset business activity of maintaining custody of client private keys in accordance with section 10(2)(c) shall be—

(i) the lower of amounts calculated under paragraphs (a) and (b) where—

- (a) equals \$450,000; and
  - (b) equals the higher of \$15,000 and 0.00075 multiplied by the estimated client receipts.
  - (ii) where a licensed undertaking does not carry on the digital asset business activity under paragraph (c) above, the annual fee payable shall be the lower of amounts calculated under paragraphs (a) and (b) where—
    - (a) equals \$450,000; and
    - (b) equals the higher of \$100,000 and 0.00075 multiplied by the estimated client receipts.
  - (d) The annual fee payable by a licensed undertaking carrying on the digital asset business activity under section 10(2)(d) shall be the lower of amounts calculated under paragraphs (i) and (ii) where—
    - (i) equals \$450,000; and
    - (ii) equals the higher of \$15,000 and 0.00075 multiplied by the estimated client receipts.
  - (e) The annual fee payable by a licensed undertaking carrying on the digital asset business activity under section 10(2)(e), shall be the lower of amounts calculated under paragraphs (i) and (ii) where—
    - (i) equals \$450,000; and
    - (ii) equals the higher of \$15,000 and 0.00075 multiplied by the estimated client receipts.
- (4) For the purposes of this Schedule—

“client receipts” means gross revenue from digital asset business services provided to clients by a licensed undertaking;

“estimated client receipts” means estimated gross revenue earned from digital asset business services provided to clients by a licensed undertaking for the next year.”.

Amends Anti-Terrorism (Financial and Other Measures) Act 2004

2 The Anti-Terrorism (Financial and Other Measures) Act 2004 is amended, in section 2 in the definition of “AML/ATF regulated financial institution”, by inserting the following new paragraph after paragraph (f)—

“(g) carries on digital asset business within the meaning of section 2(2) of the Digital Asset Business Act 2018;”.

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Amends Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008

3 The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 is amended in section 2(1)—

(a) in the definition of “AML/ATF regulated financial institution”, by inserting the following subsection after subsection “(i)”—

“(j) carries on digital asset business in accordance with section 2 of the Digital Asset Business Act 2018;”

(b) in the definition of “regulatory Acts”, by inserting a new paragraph after paragraph (h) —

“(i) Digital Asset Business Act 2018.”

Amends Proceeds of Crime Act 1997

4 The Proceeds of Crime Act 1997 is amended, in section 42A(1) in the definition of “AML/ATF regulated financial institution”, by inserting the following paragraph after paragraph (h)—

“(i) is a licensed undertaking carrying on digital asset business within the meaning of section 4 of the Digital Asset Business Act 2018.”.

Amends Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008

5 The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 are amended, in section 2(2) in the definition of “AML/ATF regulated financial institution”, by deleting “or” from the end of paragraph (h), deleting the full stop at the end of paragraph (i) and substituting “; or” and inserting after paragraph (i) the following—

“(j) is a licensed undertaking carrying on digital asset business within the meaning of section 4 of the Digital Asset Business Act 2018;”.

[Assent Date: 25 June 2018]

[Operative Date: 10 September 2018]