



BERMUDA

DIGITAL ASSET ISSUANCE ACT 2020

2020 : 18

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#### SCHEDULE 1

Minimum Criteria for Authorisation

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SCHEDULE 2  
Consequential Amendments

SCHEDULE 3  
Repeals and Revocations

WHEREAS it is expedient to make provision for the Bermuda Monetary Authority to regulate persons carrying on an offering of digital assets via a digital asset issuance and for the protection of the interests of digital asset acquirers or potential digital asset acquirers; and for connected purposes;

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 Issuance Act 2020.

#### 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;

“accredited digital asset exchange” means a digital asset business licensed by the Authority pursuant to the Digital Asset Business Act 2018 to carry on digital asset business as an exchange;

“code of conduct” means a code of conduct issued by the Authority pursuant to section 8;

“company” means a body corporate wherever incorporated;

“competent authority” means a regulatory authority that is empowered by the law of an overseas jurisdiction to supervise digital asset issuances or some digital asset issuances and that has standards that the Authority determines to be equivalent to those established by or under this Act;

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

“Court” means the Supreme Court;

“decision notice” means a notice prepared in accordance with section 58;

“digital asset” and “digital asset business” have the meanings given in section 2 of the Digital Asset Business Act 2018;

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- “digital asset acquirer” means a person who acquires, seeks to acquire or is solicited to acquire a digital asset pursuant to a digital asset issuance;
- “digital asset issuance” means an offer to the public to acquire digital assets or to enter into an agreement to acquire digital assets at a future date, and “offer, or offering, via a digital asset issuance” shall be construed accordingly;
- “digital asset issuance document” or “issuance document” means the document provided by the undertaking containing relevant information to facilitate a sale or acquisition of digital assets;
- “digital asset issuance platform” in relation to a digital asset issuance, includes a website or an electronic database or other software platform for the purpose of selling digital assets or providing information to the public with regards to a digital asset issuance or on boarding, processing or otherwise soliciting digital asset acquirers;
- “director” has the meaning given in section 3(2);
- “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;
- “electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;
- “exempted partnership” means an exempted partnership registered under the Exempted Partnerships Act 1992;
- “expert” includes a technologist, software engineer, valuer, accountant and any other person whose profession, experience or education give authority to a statement made by him relating to a digital asset issuance;
- “fit and proper person” has the meaning given in Schedule 1;
- “limited liability company” has the meaning given in section 2 of the Limited Liability Company Act 2016;
- “limited partnership” means a limited partnership registered under the Limited Partnerships Act 1883;
- “local company” has the meaning given in section 2 of the Companies Act 1981;
- “manager” and “member”, in relation to a limited liability company, have the meanings given in section 2 of the Limited Liability Company Act 2016;
- “minimum criteria” means the minimum criteria for authorisation specified in Schedule 1;
- “Minister” means the Minister of Finance;
- “officer” in relation to an undertaking, means director, secretary or senior executive of the undertaking by whatever name called;

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“overseas partnership” means an overseas partnership registered under the Overseas Partnerships Act 1985;

“partnership” includes limited, exempted and overseas partnerships;

“project” includes the product, service and platform to be created or developed as set forth in the issuance document;

“promoter” has the meaning given in subsection (2);

“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;

“undertaking” means a company, limited liability company or partnership;

“warning notice” means a notice prepared in accordance with section 57.

(2) “Promoter” includes—

(a) any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business of an offer via a digital asset issuance or; and

(b) any person who, in connection with the founding and organizing of the business of a digital asset issuance or, directly or indirectly receives in consideration of services or property—

(i) 10% or more of any offering of digital assets of the digital asset issuance; or

(ii) 10% or more of the proceeds from the sale of any class or series of such digital assets,

but a person who receives such digital assets or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the business,

but does not include any person by reason only of his acting in a professional capacity for persons engaged in procuring the formation of the company.

(3) For the purposes of this Act, a statement included in an issuance document shall be deemed to be untrue if it is false or misleading in the form and context in which it is included; and a statement shall be deemed to be included in an issuance document if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

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 the provisions of this section.

- (2) “Director”, in relation to an undertaking includes—
- (a) an alternate director and any person who occupies the position of director, by whatever name called; and
  - (b) a member of a limited liability company; and
  - (c) where it is used in subsections (6) and (7), a partner of a partnership.
- (3) “Controller”, in relation to an undertaking, means—
- (a) a managing director of the undertaking or of another undertaking of which the undertaking is a subsidiary;
  - (b) in the case of a limited liability company, a manager;
  - (c) in the case of an undertaking which is a partnership, the managing partner;
  - (d) in the case of an undertaking which is an unincorporated association, a member of the firm;
  - (e) a chief executive of the undertaking or of another undertaking of which the undertaking is a subsidiary;
  - (f) a person who falls within the definition of “shareholder controller” in subsection (4);
  - (g) a person in accordance with whose directions or instructions—
    - (i) the directors of the undertaking;
    - (ii) the directors of another company of which the undertaking is a subsidiary; or
    - (iii) persons who are shareholder controllers of the undertaking by virtue of paragraph (f),or any of those persons are accustomed to act.
- (4) For the purpose of subsection (3)(f), 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 undertaking 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 or members’ meeting of the undertaking or another undertaking 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 undertaking of which the undertaking is such a subsidiary by virtue of—
    - (i) a holding of shares in it; or

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(ii) an entitlement to exercise, or control the exercise of, the voting power at any general or members' meeting of the undertaking, or as the case may be, the other undertaking 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, manager, senior partner or managing member or chief executive of the undertaking—

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

(7) "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) "Associate" in relation to a person entitled to exercise or control the exercise of voting power in a undertaking, or in relation to a person holding shares in an undertaking, 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; or
- (c) if that person is a limited liability company, a member of that limited liability company;
- (d) if that person is a partnership, a partner of that partnership;
- (e) 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 undertaking 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)(a)(ii), "settlement" includes any disposition or arrangement under which property is held in trust.



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### Conducting digital asset issuances in Bermuda

4 (1) For the purposes of this Act and subject to section 13, an undertaking conducts an offer via a digital asset issuance in Bermuda where—

- (a) the undertaking is incorporated or formed in Bermuda and conducts any digital asset issuance in or from within Bermuda;
- (b) is incorporated or formed outside Bermuda and conducts a digital asset issuance in or from within Bermuda.

(2) Notwithstanding subsection (1), a person shall be regarded as conducting a digital asset issuance 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 a digital asset issuance in Bermuda;
- (b) not carrying on a digital asset issuance 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.

### Offering digital assets to the public

5 (1) Any reference in this Act to the offering of digital assets via a digital asset issuance to the public shall, subject to any provision to the contrary contained herein, be construed as including a reference to offering to any section of the public; and references in this Act or in an undertaking's bye-laws to invitations to the public to acquire digital assets shall, subject as aforesaid, be similarly construed.

(2) Subsection (1) shall not be taken as requiring any digital asset issuance or invitation to be treated as made to the public if it is—

- (a) an offer which the board considers as not being calculated to result, directly or indirectly, in the digital assets becoming available to more than 150 persons;
- (b) an offer to qualified acquirers; or
- (c) an offer which the board considers as not being calculated to result, directly or indirectly, in digital assets becoming available to persons other than persons whose ordinary business involves the acquisition, disposal or holding of digital assets, whether as principal or agent.

(3) Undertakings relying on subsection 2(a), (b) or (c) shall file a digital asset placement declaration form with the Authority in the specified format prior to entering into any transaction.

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(4) In this section, “board” includes the managers of a limited liability company or the partners of a partnership, as the case may be.

### Qualified acquirers

- 6 (1) In section 5(2)(b), “qualified acquirer” means—
- (a) a high income private acquirer;
  - (b) a high net worth private acquirer;
  - (c) a body corporate which has total assets of not less than \$5,000,000, where such assets are held solely by the body corporate or held partly by the body corporate and partly by one or more members of a group of which it is a member;
  - (d) an unincorporated association, partnership or trust, which has total assets of not less than \$5,000,000, where such assets are held solely by such association, partnership or trust or held partly by it and partly by one or more members of a group of which it is a member;
  - (e) a body corporate, all of whose shareholders fall within one or more paragraphs of this subsection;
  - (f) a partnership, all of whose members fall within one or more paragraphs of this subsection;
  - (g) a trust, all of whose beneficiaries fall within one or more paragraphs of this subsection;
  - (h) limited liability companies, all of whose members fall within one or more paragraphs of this subsection.
- (2) For the purposes of subsection (1)—
- “high income private acquirer” means an individual who has had a personal income in excess of \$200,000 in each of the two years preceding the current year, or has had a joint income with that person’s spouse in excess of \$300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the year in which he acquires a digital asset;
- “high net worth private acquirer” means an individual whose net worth or joint net worth with his spouse in the year in which he acquires a digital asset exceeds \$1,000,000, excluding the value of his residence and benefits or rights under a contract of insurance; where “net worth” means the excess of total assets at fair market value over total liabilities.

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

- 7 (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 31;
- (b) in exercising its power to grant, revoke or restrict an authorisation;
- (c) in exercising its power to obtain information and reports and to require production of documents;
- (d) in exercising its powers—
  - (i) under section 43 to impose a civil penalty;
  - (ii) under section 45 to censure publicly;
  - (iii) under section 47 to make a prohibition order; and
  - (iv) under section 60 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.

#### Codes of Conduct

8 (1) The Authority may issue codes of conduct in connection with the manner by which authorised undertakings shall carry on their digital asset issuance.

(2) Without prejudice to the generality of subsection (1), the Authority may issue codes of conduct 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 a digital asset issuance.

(3) Before issuing a code of conduct, 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 authorised undertaking shall in the conduct of its digital asset issuance have regard to any code of conduct issued by the Authority.

(5) A failure on the part of an authorised 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 Authorisation).

#### Rules

- 9 (1) The Authority may make Rules in relation to certain matters including—
- (a) disclosures to digital asset acquirers;

- (b) custody of digital asset acquirers' assets;
- (c) information technology and cyber security;
- (d) risk management;
- (e) financial reporting;
- (f) verification of identity, enhanced due diligence and record keeping;
- (g) exemptions; and
- (h) any other matter where the Authority deems it appropriate to do so,

which shall be complied with by all authorised undertakings where applicable.

(2) The Authority may in such Rules impose different requirements to be complied with by authorised undertakings in different situations or in respect of different activities.

(3) An authorised undertaking shall file with the Authority any applicable return or document required to be prepared by it under this section within the period prescribed in its authorisation.

(4) An authorised undertaking shall keep a copy of the most recent return or document filed with the Authority at its local registered office or the office of its local representative for a period of not less than five years, beginning with its filing date under subsection (3).

(5) An authorised undertaking that fails to file any applicable return or document within the period specified in subsection (3) shall be liable to a civil penalty not exceeding \$5,000 for each week or part of a week that it is in default.

(6) Sections 6, 7 and 8 of the Statutory Instruments Act 1977 shall not apply to Rules made under this section.

Authority may exempt or modify Rules or take necessary actions

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

(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 obligations of the authorised undertaking towards its digital asset acquirers.

(4) 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 authorised undertaking.

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

(6) An authorised undertaking served with a notice under subsection (5) may, within a period of ten 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.

(7) Without prejudice to its powers under subsection (1), the Authority where it has made a determination that the circumstances warrant it to do so, may take any action necessary or desirable to protect the public, digital asset acquirers or potential acquirers of the authorised undertaking.

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

(9) An authorised undertaking served with a notice under subsection (8) may, within a period of ten 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.

(10) The Authority shall notify an authorised undertaking of any actions it has taken.

(11) The circumstances referred to in subsection (7) are such circumstances as would cause the Authority to conclude that due to the nature, scale, complexity and risk profile of the authorised undertaking, such action is necessary and in the interest of the public or is required to be taken for the protection of digital asset acquirers or potential digital asset acquirers.

## PART 2

### AUTHORISATION

#### Restriction on digital asset issuance without authorisation

11 (1) Subject to exemptions granted by the Authority pursuant to the requirements of a Rule, a person shall not conduct a digital asset issuance in or from within Bermuda unless that person is for the time being an authorised undertaking specified in subsection (2).

(2) The Authority may authorise an undertaking to conduct a digital asset issuance for the period specified in the authorisation.

(3) A person who contravenes this section is guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$25,000 or to imprisonment for one year 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.

Digital asset issuance authorisation application

12 (1) An application for authorisation to conduct a digital asset issuance may be made to the Authority.

(2) 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 issuance which is to be carried on by the applicant;
- (b) a copy of the issuance document to be made available to digital asset acquirers;
- (c) particulars of the applicant's arrangements for the management of the offering via the issuance;
- (d) such other information and documents as the Authority may reasonably require for the purpose of determining the application; and
- (e) the application fee set out in the Fourth Schedule to the Bermuda Monetary Authority Act 1969.

(3) An application may be withdrawn by notice in writing to the Authority at any time before the Authority 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 an authorisation.

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

(3) An authorisation issued under this section may be subject to such limitations on the scope of the digital asset issuance or the manner of conducting the digital asset issuance as the Authority may determine to be appropriate having regard to the nature and scale of the proposed offering via the issuance.

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

(5) An authorisation issued to a partnership shall be issued in the partnership name, and shall not be affected by any change in the name of the partners.

(6) 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.

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### Publication of authorisation

14 The Authority shall publish the following information in relation to authorised undertakings—

- (a) a list of all authorised undertakings;
- (b) the minimum and maximum amount of capital the undertaking is intending to raise in or from within Bermuda in Bermuda dollars equivalent;
- (c) the minimum and maximum number of digital assets to be offered via the issuance;
- (d) the beginning date of the authorisation;
- (e) the expiration date of the authorisation;
- (f) the address of the undertaking in Bermuda;
- (g) a digital copy of the signed issuance document and subsequent documents as required under section 9;
- (h) any other information as required by the Authority.

### Fees

15 (1) An authorised 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 an authorisation under section 13;
- (b) at the time of making an application under section 10 in relation to exemption from or modification of, prudential rules or requirements;
- (c) at the time of making an application for variance of a condition under section 30(4).

(2) For each week or part of a week that an authorised undertaking fails to comply with a requirement imposed on it by subsection (1), it shall be liable to a civil penalty not exceeding \$5,000.

### Authorised undertaking shall publish an issuance document

16 (1) Subject to subsection (2), no undertaking shall offer digital assets to the public via a digital asset issuance unless—

- (a) prior to such offer it publishes in electronic form an issuance document; and
- (b) prior to, or as soon as reasonably practicable after, publication of such issuance document, the undertaking shall file with the Authority (in such form as the Authority may require), a copy signed by or on behalf of all of the directors of the undertaking.

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(2) It is not necessary to file an issuance document with the Authority under subsection (1) at any time or in any circumstances where—

- (a) the digital assets are listed on an appointed stock exchange or on an accredited digital asset exchange;
- (b) an application has been made for the digital assets to be so listed, and the rules of the appointed stock exchange or accredited digital asset exchange do not require the undertaking to publish and file an issuance document at such time or in such circumstances;
- (c) the undertaking is subject to the rules or regulations of a competent authority, and such rules or regulations do not require the undertaking to publish and file an issuance document at such time or in such circumstances, except where exemption from publication and filing of an issuance document is given by reason of the offer via the digital asset issuance being made only to persons who are resident outside the jurisdiction of the competent authority; or
- (d) an appointed stock exchange, accredited digital asset business or any competent authority has received or otherwise accepted an issuance document or other document in connection with the offering via the digital asset issuance to the public.

(3) The Authority shall not accept for filing a copy of an issuance document unless—

- (a) it is accompanied by a certificate signed by an attorney or an officer of the undertaking certifying that the issuance document contains the particulars required by rules made under section 9; or
- (b) the undertaking has filed its issuance document with an appointed digital asset business accredited by the Authority for receiving and reviewing such filings.

(4) The directors of any undertaking and promoters of any digital asset issuance that fail to comply with this section shall each be liable to a civil penalty.

Undertakings offering digital assets to the public via digital asset issuance

17 (1) Where any undertaking offers digital assets to the public via a digital asset issuance and any of the particulars in an issuance document published by that undertaking ceases to be accurate in a material respect, the undertaking, as soon as reasonably practicable after becoming aware of that fact, shall—

- (a) publish supplementary particulars disclosing the material changes; and
- (b) file a copy of the supplementary particulars with the Authority.

(2) Each of the directors of any undertaking that fails to comply with this section shall be liable to a civil penalty.



Providing a communication facility

18 The promoter shall at all times while the offer via the digital asset issuance is open or suspended, provide an electronic facility that can be used for the following purposes—

- (a) for people who access the issuance document through the issuance platform—
  - (i) to post messages relating to such offer;
  - (ii) to see messages relating to such offer made by others; and
  - (iii) to ask the authorised undertaking making the offer via the issuance document, or other service provider, questions relating to the offer; and
- (b) for the undertaking or other service provider, as the case may be, to respond to questions and messages.

Cooling-off rights

19 (1) If a person in relation to an offering via a digital asset issuance makes an application pursuant to the digital asset issuance, the person may withdraw the application within three business days after the application is made.

(2) The withdrawal of an application pursuant to subsection (1) can be made by a method specified on the issuance platform or by any other means of correspondence available to the digital asset acquirer, and the issuance platform shall include specific instructions and a means to withdraw.

Risk warning

20 (1) The promoter shall ensure that the risk warning appears in the issuance document and prominently on the issuance platform at all times while the offer via the issuance document is open or suspended.

- (2) The risk warning is a statement that includes the following—
  - (a) detailed information regarding any substantial risks to the project which are known or reasonably foreseeable;
  - (b) detailed information as to a person's rights or options if the project which is the subject of the offer via the digital asset issuance in question does not go forward;
  - (c) a description of any rights in relation to the digital assets that are being offered in the issuance document;
  - (d) information regarding any disclaimer in respect of guarantees or warranties in relation to the project to be developed or any other asset related to the offer via the digital asset issuance.

Identification of persons in relation to issuance document

21 (1) An authorised undertaking shall, in relation to an offering via a digital asset issuance, ensure that it applies appropriate measures relating to identification and verification of the identity of persons participating in the digital asset issuance.

(2) For the purposes of subsection (1), the Authority may make such rules or regulations as it considers appropriate.

Security of digital assets, confidentiality, disclosure of information

22 The authorised undertaking shall ensure that appropriate mechanisms are in place in respect of the security of digital assets offered via the digital asset issuance to recipients, confidentiality, disclosure of information and connected matters and that applicable Bermuda laws are complied with in these respects.

Offences relating to an issuance document

23 (1) A person commits an offence if he—

- (a) contravenes section 11; or
- (b) makes or authorizes the making of an untrue statement in an issuance document, a report or any other related information issued, unless he proves either that the statement was immaterial or that at the time he made the statement he had reasonable grounds to believe it was true.

(2) A person convicted of an offence under subsection (1), shall be liable—

- (a) on summary conviction, to a fine not exceeding \$50,000 or to imprisonment for one year, or to both such fine and imprisonment;
- (b) on conviction on indictment, to a fine not exceeding \$250,000 or to imprisonment for five years or to both, such fine and imprisonment.

Civil liability for misstatements in issuance document

24 (1) Where an issuance document invites persons to purchase digital assets of an authorised undertaking, the following persons shall be liable to pay compensation to any person who proves that he purchased any digital assets in reliance to his detriment on the issuance document for the loss or damage he sustained by reason of any untrue statement included therein which is relevant to the offering via the digital asset issuance that is to say—

- (a) every person who is an officer of the undertaking at the time of the publication of the issuance document;
- (b) every person who has consented to be named and is named in the issuance document as an officer or as having agreed to become an officer either immediately or after an interval of time; and
- (c) a promoter of the offer via the digital asset issuance.

(2) No person shall be liable under subsection (1) if he proves—

- (a) that, having consented to become an officer of the undertaking, he withdrew his consent before the issue of the issuance document, and that it was issued without his authority or consent;
  - (b) that the issuance document was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent;
  - (c) that, after the issue of the issuance document and before any offering of digital assets offered via the issuance document, he, on becoming aware of an untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or
  - (d) that as regards—
    - (i) every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable grounds to believe, and did believe up to the time of the offering of the digital assets via the issuance document, that the statement was true;
    - (ii) every untrue statement purporting to be a statement made by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it—
      - (A) fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and
      - (B) he had reasonable grounds to believe and did up to the time of the issue of the issuance document believe that the person making the statement was competent to make it and had not withdrawn or altered it; and
    - (iii) every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.
- (3) Where the issuance document contains—
- (a) the name of a person as an officer of the undertaking or as having agreed to become an officer of the undertaking thereof, and he has not consented to become an officer, or has withdrawn his consent before the publication of the issuance document, and has not authorised or consented to the issue thereof; or
  - (b) a statement by an expert or containing what purports to be a copy of or extract from a report or valuation of an expert, which the expert has withdrawn or altered,

the officers of the undertaking, except any without whose knowledge or consent the issuance document was issued, and any other person who authorised the issue thereof,

shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against the matters set forth in subsection (4).

(4) With respect to subsection (3), the officers of the undertaking referred to in that subsection shall indemnify any such person referred to in that subsection against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the issuance document or of the inclusion therein of a statement purporting to be made by him as an expert or, as the case may be, in defending himself against any action or legal proceeding brought against him in respect thereof.

(5) Notwithstanding subsection (2)(d), a person shall not be deemed for the purposes of that subsection to have authorised the issue of an issuance document by reason only of the inclusion therein of a statement purporting to be made by him as an expert.

#### When experts are not liable

25 A person referred to as an expert in an issuance document shall not be liable under section 23 or 24 if—

- (a) any untrue statement was not made by him; or
- (b) that as regards any untrue statement made by him he was competent to make the statement and—
  - (i) had reasonable grounds to believe and did believe up to the date of the issue of the issuance document that it was true; or
  - (ii) on becoming aware that the statement was untrue before the publication of the issuance document he had given reasonable public notice of his disassociation from the issuance document and the reasons therefor.

#### Separate accounts

26 An authorised undertaking holding the assets of digital asset acquirer shall keep its accounts in respect of such assets separate from any accounts kept in respect of any other business until the latest of—

- (a) the time at which the offering via the digital asset issuance has reached the minimum stated in the issuance document;
- (b) any time specified in the issuance document for the use of proceeds; and
- (c) any time required by the Authority in its authorisation.

#### Local representative

27 (1) Every authorised undertaking shall appoint a local representative that satisfies the requirements of subsection (2).

(2) The local representative shall be appointed from the beginning date of the offering via the digital asset issuance until 120 days after the end of the offering.

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(3) The local representative shall be a person approved by the Authority to act in such capacity on behalf of the authorised undertaking.

(4) The local representative shall maintain an office in Bermuda.

(5) The local representative shall maintain records of all complaints received from digital asset acquirers for a period of five years after the end of the offering via the digital asset issuance.

(6) At the time of authorisation the undertaking shall provide written notice to the Authority of the—

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

(7) If any information required by notification in accordance with subsection (6) is altered, the authorised undertaking shall give particulars of the alteration in writing within 14 days of the date the alteration was made.

(8) Without reason acceptable to the Authority—

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

(9) If a local representative wilfully fails to give notice required in accordance with subsection (8) to the Authority he commits an offence.

### Local representative to report certain events

28 (1) A local representative shall forthwith notify the Authority, in such manner as the Authority may direct—

- (a) on his reaching a view that there is a likelihood of the authorised 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 local 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 local representative, this section applies to the following events, being events in which the authorised undertaking for which he acts as local representative is involved, that is to say—

- (a) failure by the authorised undertaking to comply substantially with a condition imposed upon the authorised undertaking by the Authority;

- (b) failure by the authorised undertaking to comply with a modified provision, or with a condition, being a provision or condition specified in a direction given to the authorised undertaking by the Authority;
- (c) involvement of the authorised undertaking in any criminal proceedings whether in Bermuda or abroad;
- (d) the authorised undertaking ceasing to conduct a digital asset issuance in or from within Bermuda;
- (e) a material misstatement has been made to the public in the issuance document.

Material change to business

29 (1) An authorised undertaking shall make an application in order to obtain the Authority's prior written approval for—

- (a) any plan or proposal to offer a new or additional digital asset or to make a material change to the authorised offering via the digital asset issuance;
- (b) amalgamation with or acquisition of another firm;
- (c) sale of a subsidiary;
- (d) acquisition of controlling interest in an undertaking;
- (e) outsourcing of the functions of the digital asset issuance;
- (f) any change to the most recent issuance document submitted to the Authority.

(2) An application under this section shall be in such form, shall contain such information and shall be accompanied by such documents as the Authority may require.

Restriction of authorisation

30 (1) Subject to section 31, the Authority may restrict an authorisation—

- (a) if it is satisfied of the matters specified in paragraph (a), (b), (d) or (e) of section 29, but it appears to the Authority that the circumstances are not such as to justify revocation;
- (b) if it is satisfied that a person has become a controller of an authorised undertaking in contravention of section 38 or has become or remains a controller after being given a notice of objection pursuant to section 39 or 40;
- (c) in connection with the revocation of an authorisation—
  - (i) when giving the authorised undertaking notice that it proposes to revoke its authorisation; or
  - (ii) at any time after such notice has been given to the authorised undertaking; or

(d) at any time after the authorised undertaking has served a notice surrendering its authorisation with effect from a later date.

(2) The Authority may restrict an authorisation by imposing such conditions as it thinks desirable for the protection of the authorised undertaking's digital asset acquirers or potential digital asset acquirers and may in particular—

- (a) require the authorised undertaking to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its offering via the digital asset issuance in a particular way;
- (b) impose limitations on the digital asset issuance;
- (c) prohibit the authorised undertaking from soliciting with regards to their digital asset issuance either the public generally or persons who are not already its digital asset acquirers;
- (d) prohibit the authorised undertaking from offering additional digital assets with respect to its digital asset issuance;
- (e) prohibit the authorised 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 authorised 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 an authorised undertaking, vary any condition imposed on its authorisation.

(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 authorisation in question but shall not invalidate any transaction entered into before the date of revocation.

#### Revocation of authorisation

31 Subject to section 27, the Authority may revoke the authorisation of an authorised 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 authorised undertaking;
- (b) the authorised undertaking has failed to comply with any obligation imposed on it by or under this Act or is carrying on an offer via a digital asset issuance in a manner not authorised by its authorisation;
- (c) a person has become a majority shareholder controller of the authorised undertaking in contravention of section 38 or has become or remains such

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a controller after being given a notice of objection pursuant to sections 39 or 40;

- (d) the Authority has been provided with false, misleading or inaccurate information by or on behalf of the authorised undertaking or, in connection with an application for an authorisation, by or on behalf of a person who is or is to be an officer or controller of the undertaking; or
- (e) the interests of the acquirers or potential acquirers of the authorised undertaking are in any way threatened.

### Winding up on petition from the Authority

32 (1) On a petition presented by the Authority by virtue of this section, the Court may wind up an authorised undertaking which is a company, a limited liability company or a partnership in respect of which an authorisation 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, Part 13 (Dissolution) of the Limited Liability Company Act 2016 or section 35 of the Partnership Act 1902 (as the case may be) shall apply to the winding up of an authorised undertaking under this section.

### Notice of restriction or revocation of authorisation

33 (1) Where the Authority proposes to—

- (a) restrict an authorisation under section 30(1);
- (b) vary a restriction imposed on an authorisation otherwise than with the agreement of the authorised undertaking concerned; or
- (c) revoke an authorisation under section 31(a) to (e),

the Authority shall give to the authorised undertaking concerned a warning notice under section 57.

(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 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 57(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 authorisation, to restrict its authorisation instead; or
- (d) if the proposed action was to restrict the undertaking's authorisation or to vary the restrictions on an authorisation, 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 58 or a notice of discontinuance under section 59, 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 an authorisation under this Act.

#### Restriction in cases of urgency

34 (1) No notice need be given under section 33 in respect of the imposition or variation of a restriction on an undertaking's authorisation 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 authorised 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) and section 52.

(4) Section 30(2) shall apply to a notice under subsection (2) imposing or varying a restriction as it applies to a notice under section 30(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) An authorised 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.

(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 digital asset acquirers

35 (1) The Authority may give an authorised undertaking directions under this section at any time, including after revocation, surrender or expiration of its authorisation, if it appears to the Authority that an authorised undertaking is or was 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 digital asset acquirers of the authorised undertaking or potential digital asset acquirers.

(3) An authorised undertaking which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$25,000;
- (b) on conviction on indictment, to a fine of \$75,000.

Notification and confirmation of directions

36 (1) A direction under section 35 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 authorised undertaking concerned.

(2) A direction under section 35(1), except one varying a previous direction, shall—

- (a) state the reasons for which it is given and give particulars of the authorised undertaking's rights under subsection (3) and section 52 where appropriate; and
- (b) cease to have effect at the end of any period which may be set out by the Authority in the notice.

(3) An authorised undertaking to which a direction is given which 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 authorisation

37 (1) An authorised undertaking may, with the prior approval of the Authority, surrender its authorisation 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 an authorisation shall be irrevocable, unless the Authority by notice in writing allows it to be withdrawn.

PART 3

OBJECTIONS TO SHAREHOLDER CONTROLLERS

Notification of new or increased control

38 (1) No person shall become a 10% shareholder controller or a majority shareholder controller of an authorised 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 authorised 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 authorised undertaking, or that period has elapsed without the Authority having served on him under section 39 a written notice of objection to his becoming such a controller of the authorised undertaking.

(2) Subsection (1) applies also in relation to a person becoming—

- (a) a member of an authorised undertaking which is a limited liability company or unincorporated association;
- (b) a partner in an authorised undertaking which is a partnership.

(3) 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.

(4) Where additional information or documents are required from any person by a notice under subsection (3), 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

39 (1) The Authority may serve a notice of objection under this section on a person who has given notice under section 38 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 authorised undertaking;
- (b) that the interests of digital asset acquirers and potential digital asset acquirers of the authorised undertaking would not be in any manner threatened by that person becoming a controller of that description of the authorised undertaking; and
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the authorised undertaking as a controller of the description in question, the criteria in Schedule 1 would continue to be fulfilled in the case of the authorised 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 52.

(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 38 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 38(1)(b) (with any extension under subsection (4) 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

40 (1) Where it appears to the Authority that a person who is a controller of any description of an authorised undertaking is not or is no longer a fit and proper person to be such a controller of the authorised undertaking, it may serve him with a written notice of objection to his being such a controller of the authorised 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 52.

(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

41 (1) Subject to subsection (2), any person who contravenes section 38—

- (a) by failing to give the notice required by subsection (1)(a) of that section; or
- (b) by 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 39(2),

shall be guilty of 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 shall be guilty of 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 38(1)(b), becomes a controller of any description to which that subsection applies after being served with a preliminary notice under section 39(2);
- (b) contravenes section 38 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,

shall be guilty of an offence.

(4) A person guilty of an offence under subsection (1) or (2) shall be liable on summary conviction to a fine of \$25,000.

(5) A person guilty of an offence under subsection (3) shall be 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 etc.

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

- (a) has contravened section 38 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 38, 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 39 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; and
- (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), order 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 39 or 40—

- (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 authorised 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 authorised 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 authorised undertaking.

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

(9) This section applies with the necessary modifications in relation to the transfer of an interest in a limited liability company or partnership.

#### PART 4

#### DISCIPLINARY MEASURES

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

43 (1) Except as provided in sections 9, 15, 61 and 70, any person who fails to comply with any requirement or contravenes any prohibition imposed by or under this Act shall be liable to a 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

44 (1) If the Authority proposes to impose a civil penalty, it shall give the authorised undertaking concerned a warning notice.

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

#### Public censure

45 (1) If the Authority considers that an authorised 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 authorised undertaking.

#### Public censure procedure

46 (1) If the Authority proposes to publish a statement in respect of an authorised undertaking under section 45, it shall give the authorised undertaking a warning notice.

(2) If the Authority decides to publish a statement under section 45 (whether or not in the terms proposed), it shall give the authorised undertaking concerned a decision notice.

#### Prohibition orders

47 (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 the digital asset issuance.

(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—

(a) to a specified digital asset issuance activity, any digital asset issuance activity falling within a specified description, or all digital asset issuance activities; and

(b) to persons generally, or any person within a specified class of authorised undertakings.

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



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(5) An authorised undertaking shall ensure that no function performed in relation to the digital asset issuance 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 an offering via a digital asset issuance 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 digital asset issuance activity carried on by an authorised undertaking.

(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) “Exempted person” means a person who is exempted in accordance with any Rules made by the Authority under this Act.

### Prohibition orders: procedures

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

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

### Applications relating to prohibition orders: procedures

49 (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 shall give the applicant written notice of its decision.

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

### Determination of applications for variation etc.

50 (1) The Authority may grant an application made under section 49 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

51 (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 5 RIGHTS OF APPEAL

#### Rights of appeal

52 (1) An undertaking which is aggrieved by a decision of the Authority—

- (a) to restrict its authorisation, to restrict it in a particular manner, or to vary any restrictions of its authorisation;
- (b) to revoke its authorisation;
- (c) to impose a civil penalty under section 43; or
- (d) to publish a statement in respect of it pursuant to section 45,

may appeal against the decision to the tribunal constituted in accordance with section 53 (the tribunal).

(2) Where—

- (a) the ground or a ground for a decision within subsection (1)(a) or (b) is that mentioned in section 30(2)(a); or
- (b) the effect of a decision within subsection (1)(a) is to require the removal of a person as a controller or officer of an undertaking,

the controller or officer 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 39 or 40 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 section 41(1), (2) or (3).

(4) Any individual in respect of whom a prohibition order has been made under section 47 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 the authorisation of an undertaking 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 an appeal is brought, until it is determined or withdrawn.

#### Constitution of tribunals

53 (1) A tribunal shall be constituted in accordance with this section, where an appeal is brought under section 52, 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 authorised undertaking.

#### Determination of appeals

54 (1) On an appeal made under section 52, 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 an authorisation, 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

55 (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 an authorised undertaking and by a person who is to be a controller or officer of an authorised 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) 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, shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

(4) 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, shall be guilty of an offence and 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

56 (1) An authorised 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 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 6  
NOTICES AND INFORMATION

Warning notices

57 (1) A warning notice shall—

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

(2) The warning notice shall 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 45 shall set out the terms of the statement.

(5) A warning notice given under section 47 shall set out the terms of the prohibition.

Decision notices

58 (1) A decision notice shall—

- (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 52.

(2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 57 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 59.

(3) A decision notice about the imposition of a civil penalty under section 43 shall state the date of payment.

(4) A decision notice about public censure under section 45 shall—

- (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 47(2) shall—
  - (a) name the individual to whom the prohibition order applies;
  - (b) set out the terms of the order; and
  - (c) be given to the individual named in the order.
- (6) A decision notice shall state the day on which it is to take effect.
- (7) The 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

- 59
- (1) Subject to section 58(2), if the Authority decides not to take the action proposed in a warning notice it shall give a notice of discontinuance to the person to whom the warning notice was given.
  - (2) A notice of discontinuance shall identify the action which is being discontinued.

#### Publication

- 60
- (1) Subject to sections 33, 45 and 47, the Authority may publish such information about a matter to which a decision notice relates as it considers appropriate.
  - (2) The Authority shall not publish a decision notice under subsection (1)—
    - (a) before notifying the person concerned; and
    - (b) pending an appeal under section 52.

#### Notification of change of controller or officer

- 61
- (1) An authorised undertaking shall give written notice to the Authority of the fact of any person having become or ceasing to be a controller or officer of the authorised 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 authorised undertaking becomes aware of the relevant facts.
  - (3) An authorised undertaking which fails to give a notice required by this section shall be liable to a civil penalty calculated in accordance with subsection (4).

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

Power to obtain information and reports

62 (1) The Authority may by notice in writing served on an authorised 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 conduct, and for safeguarding the interests of digital asset acquirers and potential digital asset acquirers of the undertaking; and
- (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 an authorised undertaking to make any report required under subsection (1)(b) shall forthwith give written notice to the Authority of any matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the authorised undertaking, of the functions of the Authority under this Act.

General power to require production of documents

63 (1) The Authority may—

- (a) by notice in writing served on an authorised 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 an authorised 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 an authorised 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 the 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 authorised 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 acquirers or potential acquirers of an authorised undertaking which is a company to do so, it may also exercise the powers conferred by section 62 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) Subsection (4) applies with the necessary modifications in relation to an undertaking which is limited liability company or partnership.

(6) The Authority may by notice in writing served on any person who is or is to be a controller or officer of an authorised 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.

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

(8) 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

64 (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 section 62(1) or 63(1) for the purpose of obtaining there the information

or documents required by that notice and of exercising the powers conferred by section 63(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 section 62(1) or 63(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 shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both such fine and imprisonment.

## PART 7 INVESTIGATIONS

### Investigations on behalf of the Authority

65 (1) If it appears to the Authority desirable to do so in the interests of digital asset acquirers or potential digital asset acquirers of an authorised 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 digital asset issuance 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 or digital asset issuance 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) Subsection (2) applies with the necessary modifications in relation to an undertaking which is a limited liability company or partnership.

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

(5) It shall be the duty of every person who is or was a controller, officer, employee, agent, banker, auditor or barrister and attorney of an authorised 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 62(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).

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

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

(8) Unless the Authority otherwise directs, the authorised undertaking under investigation shall pay to the Authority all expenses of, and incidental to, the investigation.

(9) Any person who—

- (a) without reasonable excuse, fails to produce any documents which it is his duty to produce under subsection (5);
- (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 an authorised undertaking which is under investigation or an entity 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),

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

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(10) 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.

(11) 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

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

- (a) a person may have contravened section 11;
- (b) any exempted person may have contravened any restriction or exemption or condition given under an exemption;
- (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 digital asset issuance activities.

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

- (a) the conduct of a an offering via a digital asset issuance at any time when the undertaking was authorised under this Act; or
- (b) the ownership or control of an undertaking at any time when it was authorised under this Act.

### Power to require production of documents during investigation

67 (1) The Authority may by notice in writing require the person who is the subject of an investigation under section 66 (“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) shall be guilty of an offence and 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

68 (1) A magistrate may issue a warrant under this section if satisfied on information on oath that the Authority is conducting an investigation under section 66 and—

- (a) a person has failed to comply with a notice served on him under section 67;

- (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 67; or
  - (c) that there are reasonable grounds for suspecting that if a notice were served on the person under section 67 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 a 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 66.
- (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 66.
- (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) shall be guilty of an offence and 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

69 (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 11 or a term or condition of an exemption made under any Rule made by the Authority under this Act; or
- (b) under section 66,

shall be guilty of 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 shall be 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 8

CERTIFICATE OF COMPLIANCE

Certificates of compliance

70 (1) Every authorised undertaking shall deliver to the Authority—

- (a) within four months from the end of the offering via its digital asset issuance; and
- (b) within four months from the end of its financial year, if falling during the period of its authorisation under this Act,

a certificate of compliance, signed by an officer of the undertaking, certifying that the undertaking has complied with the minimum criteria and codes of conduct.

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

PART 9

RESTRICTION ON DISCLOSURE OF INFORMATION

Restricted information

71 (1) Except as provided by sections 72, 73 and 74, no person who—

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- (a) under or for the purposes of this Act, receives information relating to the business or digital asset issuance or other affairs of any person; or
- (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

72 (1) Section 71 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 71 does not preclude the disclosure of information by the Authority to the auditor or accountant of an authorised undertaking, or to the person appointed to make a report under section 62(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 digital asset acquirers or potential digital asset acquirers of an authorised undertaking.

### Disclosure for facilitating the discharge of functions by other authorities

73 (1) Section 71 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 to discharge his regulatory functions.

(2) Section 71 does not preclude the disclosure of information for the purpose of enabling or assisting a relevant supervisory 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 a relevant supervisory authority unless the Authority is satisfied that the authority is subject to restrictions on



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further disclosure at least equivalent to those imposed by sections 71 and 72 and this section.

- (4) Section 74 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 63(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 71 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 66, 67 or 68 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

74 (1) Section 71 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 71 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 and section 73—

“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 10

### MISCELLANEOUS AND SUPPLEMENTAL

False documents or information

75 (1) Any person commits an offence if, for any purposes of this Act, he—

- (a) issues a document, or supplies information, which is false or misleading in a material respect;
  - (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.
- (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

76 (1) Where an offence under this Act committed by an authorised 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 authorised undertaking, or any person who was purporting to act in any such capacity, he, as well as the authorised undertaking, shall be guilty of that offence and 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 an authorised 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 authorised undertaking.

#### Prohibition on use of words “digital asset issuance”

77 (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 a digital asset issuance unless it is an authorised undertaking under section 13 or an exempted undertaking under section 9.

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

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### Notices

78 (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 facsimile 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

79 (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 facsimile or other similar means which produces a document containing the text of the communication.

### Civil debt and civil penalties

80 (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 and Orders

81 (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 an offering via a digital asset issuance;
- (b) the requirement for any additional service or services to be deemed a digital asset issuance;
- (c) the preparation, adoption and implementation of processes or procedures relating to a digital asset issuance.

- (3) Regulations made under subsection (1) may—
- (a) prescribe penalties not exceeding \$10,000 for any breach of the regulations;
  - (b) make such transitional, incidental or supplementary provision as appears to the Minister to be necessary or expedient.
- (4) Regulations and Orders made under this Act shall be subject to the negative resolution procedure.

PART 11  
FINAL PROVISIONS

Transitional and savings

82 (1) In this section—

“initial coin offering” or “ICO” has the meaning given in—

- (a) section 2(1) of the Companies Act 1981 as relates to a company; or
- (b) section 2 of the Limited Liability Company Act 2016 as relates to a limited liability company;

“ICO regime” means the provisions of the Companies Act 1981 and the Limited Liability Company Act 2016, and regulations made under those Acts, which provide for a company or limited liability company to undertake an Initial Coin Offering, and which are amended, repealed or revoked by this Act;

“pre-commencement ICO application” means an application made before or during the transitional period under the Companies Act 1981 or the Limited Liability Company Act 2016 by a company or limited liability company for registration by the Registrar of Companies under that Act (as applicable) for authority to issue an Initial Coin Offering;

“transitional period” means the period starting with the date on which this Act receives Assent and ending immediately before the date on which this Act is brought into operation.

(2) The ICO regime shall continue to apply to Initial Coin Offerings made pursuant to a pre-commencement ICO application without the amendments, repeals and revocations effected by this Act.

(3) Accordingly, this Act shall not apply to pre-commencement ICO applications.

Consequential amendments

83 Subject to the savings in section 82, the consequential amendments in Schedule 2 have effect.

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### Repeals and revocations

84 Subject to the savings in section 82, the enactments listed in Schedule 3, which are superseded by this Act, are repealed or revoked as indicated.

### Commencement

85 This Act shall come into operation on such date as the Minister of Finance appoints by notice published in the Gazette.

SCHEDULE 1

(Section 13)

MINIMUM CRITERIA FOR AUTHORISATION

Controllers and officers to be fit and proper persons

1 (1) A person who is, or is to be, a controller or officer of the authorised undertaking shall be 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 judgment 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 the acquirers or potential acquirers of the authorised 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 digital asset issuances 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.

Digital asset issuance to be conducted in prudent manner

2 (1) The authorised undertaking shall conduct or, in the case of an undertaking which is not yet conducting a digital asset issuance, will conduct its digital asset issuance in a prudent manner.

(2) In determining whether an authorised undertaking is conducting its digital asset issuance 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;
- (c) codes of conduct issued by the Authority pursuant to section 8.

(3) An authorised undertaking shall not be regarded as conducting its digital asset issuance in a prudent manner unless it maintains or, as the case may be, will maintain adequate accounting and other records of its digital asset issuance and adequate systems of control of its offering via a digital asset issuance and records, and has developed policies and procedures pertaining to its obligations under this Act or any other Act.

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

(5) Subparagraphs (2) to (5) are without prejudice to the generality of subparagraph (1).

#### Integrity and skill

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

#### Corporate governance

4 (1) The authorised undertaking shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, size, complexity and risk profile of the digital asset issuance to be conducted by the undertaking.

(2) Without prejudice to subparagraph (1), the authorised undertaking shall be—

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

#### Consolidated supervision

5 The position of the authorised 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.

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SCHEDULE 2

(Section 83)

CONSEQUENTIAL AMENDMENTS

Amends the Bermuda Monetary Authority Act 1969

1 In the Fourth Schedule to the Bermuda Monetary Authority Act 1969 (fees), insert the following new heading at the end of Part B and Part C—

“DIGITAL ASSET ISSUANCE ACT 2020

(1) Application fee pursuant to section 12 ..... \$2,266

(2) Authorisation fee pursuant to section 15—

Size of the offering in a digital asset issuance	Direct offering in a digital asset issuance	Offering in a digital asset issuance through an accredited digital asset business
not exceeding \$20 million	\$5,000	\$2,500
Exceeds \$20 million but not \$50 million	\$10,000	\$5,000
Exceeds \$50 million but not \$150 million	\$15,000	\$7,500
Exceeds \$150 million but not 500 million	\$25,000	\$12,500
Exceeds \$500 million	\$50,000	\$25,000

(3) Exemption or modification of rules or requirements pursuant to section 10..... \$5,000

(4) Variation of a condition under section 30 ..... \$5,000”

Amends Companies Act 1981

2 In the Ninth Schedule to the Companies Act 1981 (restricted business activities), in paragraph (aa) delete “Initial Coin Offerings” and substitute “Digital Asset Issuances (as defined in the Digital Asset Issuance Act 2020)”.

Amends the Digital Asset Business Act 2018

3 In section 7(1) of the Digital Asset Business Act 2018 (prudential and other returns), after paragraph (f) insert—

“(g) accreditation of digital asset business;”.

Amends Banks and Deposit Companies Act 1999

4 In the Third Schedule to the Banks and Deposit Companies Act 1999 (specified persons Banking activities criteria)—

(a) in paragraph 1—



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- (i) in subparagraphs (a) and (b), delete the words “an initial coin offering” and substitute the words “a digital asset issuance”;
- (ii) by inserting after subparagraph (a) the following—
  - “(ba) has submitted an application, in such form as may be prescribed, to be registered as a partnership under the Limited Partnership Act 1882, Exempted Partnerships Act 1992 or the Overseas Partnership Act 1995; and has indicated on such form the intention to conduct digital asset business or undertake a digital asset issuance in Bermuda;”;
- (iii) repeal and replace subparagraph (d) as follows—
  - “(d) has obtained the authorisation from the Authority to undertake a digital asset issuance under the Digital Asset Issuance Act 2020;”
- (b) in paragraph 2, delete the definition of “initial coin offering” and insert the following in the appropriate alphabetical order—
  - “ “digital asset issuance” has the meaning given in section 2 of the Digital Asset Issuance Act 2020;”.

SCHEDULE 3

(Section 84)

REPEALS AND REVOCATIONS

Repeals

- 1 (1) In the Companies Act 1981, the following provisions are repealed—
- (a) in section 2—
    - (i) in subsection (1), the definitions of “appointed digital asset exchange”, “civil penalty” and “Initial Coin Offering or ICO”; and
    - (ii) subsection (9);
  - (b) section 4A(3A);
  - (c) Part IIIA (sections 34A to 34P) (Initial Coin Offering);
  - (d) Part XIVC (section 272F) (FinTech Advisory Committee).
- (2) In the Limited Liability Company Act 2016, the following provisions are repealed—
- (a) in section 2, the definitions of “appointed digital asset exchange”, “civil penalty” and “Initial Coin Offering or ICO”;
  - (b) section 67(3A);
  - (c) Part 10A (sections 85A to 85O) (Initial Coin Offering);
  - (d) section 255(2A);
  - (e) section 257(6) and (7).
- (3) Section 15 of the Companies and Limited Liability Company (Initial Coin Offering) Amendment Act 2018.

Revocations

- 2 The following Regulations are revoked—
- (a) Companies (Initial Coin Offering) Regulations 2018;
  - (b) Limited Liability Company (Initial Coin Offering) Regulations 2018;
  - (c) in the Government Fees Regulations 1976—
    - (i) in Head 16, paragraphs (39A) and (39B);
    - (ii) in Head 40, paragraphs (15A) and (15B).

[Assent Date: 19 March 2020]

[Operative Date: 06 May 2020]