

Update: Bermuda FinTech Initiatives

1. Introduction

- 1.1 The Bermuda government, in collaboration with the Bermuda Business Development Agency and the Bermuda Monetary Authority (the “BMA”), has been developing a robust legal and regulatory framework governing initial coin and token offerings (“ICOs”) and digital asset business.
- 1.2 Bermuda’s blockchain and digital assets market is rapidly developing, as evidenced by the recent announcement of the Bermuda government's Memorandum of Understanding with Shyft, a global blockchain-based network offering data protection for governments, industry and consumers. Under the agreement, Shyft has agreed to commit \$10 million to create new jobs, help re-skill labour, and invest in businesses, education and infrastructure, as well as collaborate on creating a robust legal and regulatory framework.
- 1.3 Two primary pieces of legislation have been introduced as part of Bermuda’s pioneering efforts to develop and implement a globally recognized standard for regulating the Fintech sector in Bermuda: (1) the Companies and Limited Liability Company (Initial Coin Offering) Amendment Act 2018 (the “ICO Act”); and (2) the Digital Asset Business Act 2018 (the “DAB Act”).

2. Companies and Limited Liability Company (Initial Coin Offering) Amendment Act 2018

- 2.1 The ICO Act was passed by the Bermuda House of Assembly on 27 April 2018 and is awaiting approval of the Senate and Royal Assent. This legislation is aimed at issuers who are looking at conducting ICOs for crowdfunding purposes. It regulates offerings of “digital assets” including utility tokens, security tokens and equity tokens. The legislation amends the Companies Act 1981 and the Limited Liability Companies Act 2016 to treat ICOs as a ‘Restricted Business Activity’ that will require the consent of the Minister of Finance before the offer can be made to the public. The minimum criteria for the offering document/ white paper include details about:
 - the founders/ promoter;
 - the business or proposed business;
 - the proposed project, timeline and any milestones;
 - the target market and any restrictions regarding participants;
 - the amount of money to be raised and the purpose of the fundraise;
 - the digital assets rights;
 - the technology which will be used; and
 - general risk statement (e.g. what happens if the project fails and what is the impact on proposed investors) and imposes penalties for untrue statements.

- 2.2 The issuer will also be required to collect, verify and maintain customer identity information from an AML/ATF perspective.
- 2.3 The provisions of the ICO Act are largely similar to the provisions of Bermuda law which relate to initial public offerings, including requirements to file the ICO offering document with the Registrar of Companies (the “Registrar”) and to file updates of the offering document with the Registrar on an ongoing basis.
- 2.4 The ICO Act will become operative by notice of the Minister of Finance. This was originally expected in May but we are continuing to monitor the ICO Act’s progress.

3. Digital Asset Business Act 2018

- 3.1 The DAB Act establishes a licensing and supervisory regime aimed at issuers of virtual currencies and those operating digital asset exchanges, as well as anyone providing services related to digital assets (e.g. those operating e-wallets and similar structures). Such issuers/operators would be regulated by the BMA.
- 3.2 Summary details of applying for a Digital Asset Business Licence are as follows:
 - a. The two classes of digital asset business licence that may be applied for under DAB Act are:
 - i. **Class F (full licence):** Where a person is licensed to provide any or all of the digital asset business activities; or
 - ii. **Class M (temporary license – meant for start-ups):** Where a person is licensed to provide any or all of the digital asset business for a defined period. The Class M licence is a “sandbox licence”, designed to allow for novelty start-ups looking to test new products or services for a defined period of time (which can be extended), with modified requirements under the supervision of the BMA. After the sandbox licence period has expired, and if testing is successful, the expectation is that the company will apply for a Class F licence.
 - b. An application for a licence must include:
 - i. a business plan setting out the nature and scale of the digital asset business activity which is to be carried on by the applicant;
 - ii. particulars of the applicant’s arrangements for the management of the business;
 - iii. policies and procedures to be adopted by the applicant to meet the obligations under the DAB Act and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;

- iv. such other information and documents as the BMA may reasonably require for the purpose of determining the application; and
- v. an application fee.

3.3 Other essential features of this DAB Act regime are:

- a. Disciplinary matters and civil penalties for breach of requirements;
- b. BMA oversight similar as for insurance companies (on site visits);
- c. Minimum criteria for licensing;
- d. Requirement for directors to be fit and proper;
- e. Requirement for business to be conducted in a prudent manner and non-compliance with applicable law, AML/ATF, minimum capital requirements, proper business and accounting systems;
- f. Sufficient integrity and skill;
- g. Corporate governance appropriate to the nature, size, complexity and risk profile;
- h. Requirements to disclose certain information on digital asset products to clients;
- i. Requirement to have a surety bond, trust account, indemnity insurance or another arrangement in place;
- j. Appointment of a senior representative with an office in Bermuda; and
- k. Appointment of a BMA advisory panel.

3.4 The DAB Act has been approved by both the Bermuda House of Assembly and the Senate and now only requires Royal Assent and a notice of the Minister of Finance to become operative. We will update you once further progress has been made.

4. FinTech Areas to Watch

4.1 E-ID

Another government initiative in this space includes a Bermuda digital identification platform ("E-ID") anticipated in July 2018. The aims of the scheme will include removing the need for multiple hard copies of documents and to give individuals control over their data - by allowing them to grant data permissions of specific data for a specified time. Shyft is partnering with Trunomi, a Bermuda founded global data rights company with expertise in consumer consent frameworks, to support Bermuda in its vision of an innovative E-ID platform. A key feature of E-ID is that individuals and enterprises looking to leverage Bermuda's world class regulatory framework will not be limited by nationality or geography. The E-ID's issued will be globally interoperable, enabling entities to transcend borders and operate globally.

4.2 Banking and Virtual Currency Exchange

The Virtual Currency Exchange targeted for September 2018 is another initiative, which intends to allow customers purchase and sell virtual currencies using either fiat currency (e.g. GBP, USD etc.) or another virtual currency. The virtual currency exchange may also facilitate the offer of new coins/tokens that are sold pursuant to ICOs/Initial Token Offerings (“ITO”).

Once the legislative and regulatory framework has been enacted, we expect the banks in Bermuda to become much more willing to accept virtual currency clients. Please note that unless it is a company conducting ICOs/ITOs, it is not necessary for a Bermuda company/LLC operating in this space to have a Bermuda based bank account.

4.3 Land Title Registry

The Bermuda Government has touted Blockchain as a sensible, modern solution to land registry in Bermuda. The digitising of deed documents and placing them in a decentralised, verifiable distributed ledger technology, is claimed to have cost saving benefits.

5. **Conclusion**

5.1 The collaboration of the Bermuda Government with industry stakeholders to develop a robust legal and regulatory regime is paramount for protecting both consumers and Bermuda’s reputation as a leading international financial centre. Bermuda’s commitment as a global leader in this dynamic sector is ideal for innovators and entrepreneurs seeking to operate in a stable jurisdiction in compliance with prudential international standards.

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