

ADVISORY | INDUSTRY INFORMATION

# Digital Asset Business Act

On 19 May 2023, Bermuda Government has passed legislation to amend the Digital Asset Business Act 2018 ("**DABA**" or the "**Act**") which further enhances the legal and regulatory digital asset business ("**DAB**") framework and provides further clarity on the classes of DAB activity which require a license from the Bermuda Monetary Authority ("**BMA**") as well as to make changes to facilitate more effective administration of the Act.

The following changes were made to the Act:

## a) New DAB Activity

The introduction of an additional licensable activity of 'digital asset lending or digital asset borrowing or digital asset repurchase transactions services providers'<sup>1</sup>.

Further to the above, undertakings granted a licence after the new activity is effected will be subject to a proposed new annual fee (which will account for the nature and complexity of DAB), whereas undertakings already licensed and carrying out this DAB activity will be subject to the said annual fee upon such fee next becoming due.

## b) Exemption for Entities Licensed Under the Investment Business Act 2003 (the "**IBA**");

An exemption that would ensure that entities licensed under the IBA and carrying out DABA-related activities in an 'ancillary' manner would be exempted from licensing under DABA. Supplementary to this exemption, there will be a notification requirement on DAB's senior representative to notify the Authority where the DAB ceases to provide IBA services in an 'ancillary' manner.

## c) Approach To Exemptions

A new exemption rule-making powers under DABA (the "**Exemption Rules**") where all exemptions are to be consolidated under the Exemption Rules. This

amendment is intended to facilitate greater flexibility in cases where the Authority identifies a new business model as falling either within (where an existing exemption would be removed from the Exemption Rules) or outside the scope of the Act (where a new exemption would be introduced under the Exemption Rules).

## d) Clarification Regarding Administrative Penalties

To avoid any ambiguity in the current wording around penalties the removal of the word "civil" from sections 7, 16, 57 and 66 so that these penalties are distinct from the civil penalties under section 39.

The BMA continuously reviews the fitness for purpose of DABA and these changes demonstrate its commitment to ensuring that the demand for legal certainty, streamlining of the application process and the suitability of the rules to this ever changing sector continues to be met in Bermuda.

Walkers' dedicated Fintech Team can advise on the applicable relevant activity classifications and can assist entities to determine how to meet any applicable DABA requirements.

Should you require assistance please do not hesitate to contact Natalie Neto or Rachel Nightingale at the contact details provided overleaf.

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1 Defined as a person facilitating digital assets lending or digital assets borrowing or digital assets repurchase transactions either as principal or agent.

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## Further information

For further information please speak with your usual contact or contact:



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