



For Public Consultation:

DRAFT DIGITAL ASSETS AND REGISTERED EXCHANGES (AMENDMENT) BILL, 2022

The Securities Commission of The Bahamas (the Commission), in administration of the Digital Assets and Registered Exchanges Act, 2020 (No.28 of 2020) (DARE), has issued the draft Digital Assets and Registered Exchanges (Amendment) Bill, 2022 for public consultation. The draft Bill may be found on the Commission's website: <https://www.scb.gov.bs/legislative-framework/consultation-documents/>.

Summary

The draft Digital Assets and Registered Exchanges (Amendment) Bill, 2022 establishes a framework for the monitoring and sanctioning of persons carrying on or purporting to carry on digital asset business activities without the requisite registration pursuant to DARE.

These proposed Amendments are premised on international developments particularly the revised FATF Recommendation 15 deficiencies as requiring an expansion of the Commission's regulatory, enforcement and cooperative powers to be applied to the digital asset space. The proposed amendments establish a regulatory framework for the monitoring of unregistered persons engaging in digital asset business and extends the Commission's sanction powers as it relates to registrants under DARE.

The Amendments principally:

- introduce an obligation on behalf of the Commission to monitor unregistered persons carrying on, involved in or purporting to carry on or be involved in digital asset business;
- strengthen the Commission's enforcement powers as it relates to Virtual Assets Service Providers (VASPs) including freezing powers and the compelling of information and evidence; and
- give the Commission the authority to compel the production of information and evidence.

Scope

The proposed Amendments would apply to any person carrying on, involved in or purporting to carry on or be involved in digital asset business pursuant to the Digital Assets and Registered Exchanges Act, 2020.

Consultation Period

The consultation period commences on 26 **April 2022** and ends on 13 **May 2022**, during which time the Commission invites the public to share comments with regard to the draft Digital Assets and Registered Exchanges (Amendment) Bill, 2022. Comments may be submitted via email to DAREconsultation@scb.gov.bs.

Alternatively, comments may be submitted in writing to:

The Executive Director

Securities Commission of The Bahamas
Poinciana House
31A East Bay Street
P. O. Box N-8347
Nassau, The Bahamas



Issued: 26 April 2022

DIGITAL ASSETS AND REGISTERED EXCHANGES (AMENDMENT) BILL, 2022

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DIGITAL ASSETS AND REGISTERED EXCHANGES (AMENDMENT) BILL, 2022

A BILL FOR AN ACT TO AMEND THE DIGITAL ASSETS AND REGISTERED EXCHANGES ACT TO PROVIDE FOR THE MONITORING AND SANCTION OF PERSONS CARRYING ON OR PURPORTING TO CARRY ON DIGITAL ASSET BUSINESS ACTIVITIES WITHOUT THE REQUISITE REGISTRATION

Enacted by the Parliament of The Bahamas

1. Short title.

This Act, which amends the Digital Asset and Registered Exchanges Act, 2020 (*No. 28 of 2020*) may be cited as the Digital Asset and Registered Exchanges (Amendment) Act, 2022.

2. Amendment of Part V of the principal Act.

The subheading of Part V of the principal Act is deleted and substituted as follows –

“PART V – INVESTIGATION, MONITORING AND COOPERATION”.

3. Amendment of section 39 of the principal Act.

Section 39 of the principal Act is amended by the insertion immediately after subsection (2), of the following new subsection –

- “(3) The Commission shall implement systems to identify any person who is not registered under sections 8 or 9 of this Act and who —
- (i) is carrying on or involved in digital asset business activities;
 - or

- (ii) who purports to carry on or to be involved in digital asset business.”.

4. Insertion of new sections 40A and 40B into the principal Act.

The principal Act is amended by the insertion immediately after section 40 of the following new sections —

“40A. Powers to compel.

Where the Commission considers that a person is or may be able to give information or produce a document, which is or may be relevant to an investigation, it may —

- (a) require such person to attend before it at a specified time and place to answer questions, including under oath or affirmation that the statements that the person will make will be true;
- (b) require such person to produce, or procure the production of specified documents or documents of a specified description;
- (c) require such person to give an explanation of or further particulars regarding any information or document produced under paragraphs (a) and (b).

40B. Uncooperative witness liable for contempt.

On application by the Commission to the court, a person summoned under section 40A is liable to be committed for contempt, as if in breach of an order or judgement of the court, if the person neglects or refuses to —

- (a) attend;
- (b) give evidence; or
- (c) produce a document in the custody, possession or control of that person.”.

5. Insertion of new sections 42A and 42B into the principal Act.

The principal Act is amended by the insertion immediately after section 42 of the following new sections –

“42A. Compliance Orders.

Without prejudice to any action that may be instituted or taken against a person identified under section 39(3), if at any time it appears to the Commission that such person has failed to comply with any requirement under this Act, the Commission may by written notice —

- (a) direct that person to comply with the requirements within such period and on such terms and conditions as the Commission shall specify;
- (b) direct that the person cease and desist carrying on digital asset business or their involvement in digital asset business;
- (c) direct that the person cease and desist any activity which purports that the person is carrying on or is involved in digital asset business in or from within The Bahamas.

42B. Penalty.

- (1) Any person failing to comply with a directive of the Commission made under section 42A shall be subject to a penalty of up to \$100,000 for each contravention.
- (2) The Commission shall not impose a penalty under subsection (1) unless the Commission notifies the person in writing of—
 - (a) the directive or directives contravened;
 - (b) the Commission’s intention to impose a penalty, and invites the person to make a representation in writing within a period specified by the Commission, providing reasons why the Commission should not impose a penalty.
- (3) Where after considering the representation made or after the specified period for doing so has elapsed, the Commission imposes a penalty, it shall notify the person in writing of the Commission’s decision and specify the period within which the penalty shall be paid.”.

6. Insertion of new section 46A into the principal Act.

The principal Act is amended by the insertion immediately after section 46 of the following new section —

“46A Freeze Orders.

- (1) If the Commission considers it in the public interest to do so, the Commission may, for the administration of digital asset laws or to assist in the administration of the digital assets legislation of another jurisdiction, by order for a period not to exceed five days, direct —

- (a) a person having on deposit, under control or for safekeeping any funds, digital assets or other property of the person named in the order to hold them; or
 - (b) a person —
 - (i) not to withdraw any funds, digital assets or other property from any person having them on deposit, under control or for safekeeping; or
 - (ii) to hold all funds, digital assets or other property of a client of that person, or of others, in the person's possession or control in trust for a receiver, receiver-manager, trustee or liquidator appointed under an enactment of The Bahamas.
- (2) An aggrieved person may apply to a judge in chambers to discharge the order of the Commission under this section and shall serve notice on the Commission to join in the proceedings, but the order of the Commission shall remain in effect until the judge determines otherwise.
- (3) Unless expressly stated, an order made under subsection (1) does not apply to funds, digital assets or other property in the process of transfer.”.

OBJECTS AND REASONS

Clause 2 of the Bill seeks to amend the sub-heading of Part V of the Act.

Clause 3 of the Bill seeks to amend section 39 of the Act, to introduce a new subsection (3) to provide for the Commission to implement systems to identify any person who is not registered under the Act and who is carrying on, involved in or purporting to carry on or be involved in digital asset business.

Clause 4 of the Bill provides for the insertion of new sections 40A & 40B to —

- (a) give the Commission the authority to compel the production of documentation, information and evidence under oath from any person;
- (b) to set out the circumstances under which the Commission can commence contempt proceedings against any person summoned pursuant to section 40A.

Clause 5 of the Bill provides for the insertion of new sections 42A & 42B into the principal Act, Clause 42A seeks to extend the Commission’s enforcement and cooperative authority. Clause 42B seeks to provide for a penalty of up to \$100,000.00 for any person failing to comply with a directive of the Commission made under

section 42A. Clause 42B also seeks to establish a due process framework for the implementation of the aforesaid penalty.

Clause 6 of the Bill seeks to provide for the insertion of a new section 46A into the principal Act to provide for the Commission to direct any person having on deposit or control of any funds, securities or other property of the person named in the order to hold them or not withdraw them.