



# The Bahamas' Approach to the Regulation of Digital Asset Businesses



Policy Statement: PS1/2022 (r)  
Contact: [FITLink@scb.gov.bs](mailto:FITLink@scb.gov.bs)

Board Approval Date: 21 September 2022  
Updated 28 September 2022

# Contents

1. Definitions .....	5
2. Introduction .....	7
2.1. Introduction to the Securities Commission of The Bahamas.....	8
3. The Bahamas’ Digital Asset Business Regulatory Philosophy and Approach .....	8
3.1. Digital Assets Regulatory Vision.....	9
3.2. Digital Assets Regulatory Mission .....	9
3.3. Objectives.....	10
3.4. Development of the DARE Act .....	10
3.4.1. Crypto Asset Working Group .....	10
3.4.2. Initial Research and Benchmarking.....	11
3.4.3. First Draft of the DARE Bill .....	11
3.4.4. DARE Bill and FATF Recommendation 15 .....	11
4. Digital Assets Sector - Regulatory Framework.....	12
4.1. What Does the DARE Act Do? .....	12
4.1.1. Regulatory Capital.....	13
4.2. The Financial and Corporate Service Providers Act, 2020 - Licensing Regime for Wallet Service Providers and Custody Services .....	13
4.3. Exemptions from the DARE Act .....	13
4.4. Digital Assets AML/CFT/CPF Provisions .....	13
4.4.1. Activity-based registration by competent authority .....	14
4.4.2. Risk-based supervision and customer due diligence and prevention measures .....	14
4.5. Expectations of DARE Act Registrants.....	14
4.5.1. Behavioural Standards .....	14
4.5.2. Management and Operational Standards .....	15
5. Risks and Concerns.....	15
6. Mitigating Risks and Concerns .....	16
6.1. Digital Asset Sector National Risk Assessment .....	16
6.2. Capacity Building Efforts .....	16
6.2.1. Restructuring and Updating Supervisory Departments.....	16
6.2.2. Creation of SCB FITLink .....	17
6.2.3. Staff Training .....	19

6.2.4.	Collaboration with the University of The Bahamas .....	19
6.2.5.	National Cooperation Efforts .....	19
6.3.	International Cooperation and Agreements.....	20
7.	Additional Consumer and Investor Protection Measures.....	20
8.	Future Strategy and Next Steps for the Digital Asset Regime .....	21
	Annex I: DARE Act Frequently Asked Questions .....	24
	Annex II: DARE Application Process for a Digital Asset Business .....	32

## Questions or Comments

**Please send any questions or  
comments related to PS1/2022  
to:**

Office of the Executive Director  
Policy and Research Unit  
2<sup>nd</sup> Floor, Poinciana House  
31A East Bay Street  
P.O. Box N-8347  
Nassau, The Bahamas  
242-397-4100

Email: [info@scb.gov.bs](mailto:info@scb.gov.bs) or  
[FITLink@scb.gov.bs](mailto:FITLink@scb.gov.bs)

# 1. Definitions

Key words and abbreviations used throughout this document.

TERM	DEFINITION/INTERPRETATION
<b>AML/CFT/CPF</b>	Anti-Money Laundering/Countering the Financing of Terrorism/Countering Proliferation Financing
<b>ATA</b>	Anti-Terrorism Act, 2018
<b>CBOB</b>	Central Bank of The Bahamas
<b>CDD</b>	Customer Due Diligence
<b>DAB</b>	Digital Asset Business has the same meaning as Virtual Asset Service Provider (VASP) as defined by the Financial Action Task Force
<b>DARE ACT</b>	Digital Assets and Registered Exchanges Act, 2020
<b>DARE RULES</b>	Digital Assets and Registered Exchanges (Anti-Money Laundering, Countering Financing of Terrorism and Countering Financing of Proliferation) Rules
<b>DEFI</b>	Decentralised Finance
<b>DPC</b>	Digital Asset Policy Committee
<b>FATF</b>	Financial Action Task Force
<b>FATF 15</b>	FATF's Recommendation 15
<b>FAQ</b>	Frequently Asked Questions Toolkit
<b>FCSPA</b>	Financial and Corporate Service Providers Act, 2020
<b>FCSPA RULES</b>	Financial and Corporate Service Providers (Anti-Money Laundering and Countering the Financing of Terrorism) Rules, 2019
<b>FINTECH</b>	Financial Technology
<b>FIU</b>	Financial Intelligence Unit
<b>FTRA</b>	Financial Transactions Reporting Act, 2018
<b>IFA</b>	Investment Funds Act, 2019
<b>ITO</b>	Initial Token Offering
<b>KYC</b>	Know Your Customer
<b>MLRO</b>	Money Laundering Reporting Officer
<b>ML/TF/PF</b>	Money Laundering / Terrorist Financing / Proliferation Financing
<b>NFT</b>	Non-Fungible Token
<b>POCA</b>	Proceeds of Crime Act, 2018
<b>SIA</b>	Securities Industry Act, 2011
<b>THE COMMISSION</b>	Securities Commission of The Bahamas

<b>VASP</b>	Virtual Asset Service Provider
<b>WIRE TRANSFERS REGULATIONS</b>	Financial Transactions Reporting (Wire Transfers) Regulations, 2018

## 2. Introduction

Digital assets, businesses, services, products, and technologies that utilise decentralised platforms<sup>1</sup> have the potential to foster financial innovation and inclusion, and to generate wealth and financial opportunities for investors and other stakeholders. The products, technologies, and services are profound and have a unique potential to transform the financial services, securities and capital markets sector unlike ever before. Cryptocurrencies such as Bitcoin, and other digital assets such as stablecoins, not only promise the potential to redefine what regulators and consumers once thought of as the functions of money, but also have created a new category of entrepreneur, whose existence is disrupting traditional financial services incumbents. However, the cross-border nature and pseudo-anonymous features associated with these assets and activities create new opportunities for criminals to perpetrate illegal schemes, launder proceeds and finance illicit activities.

Given the development of – and inherent risks associated with – these new digital assets and digital asset businesses (“DABs”) in the financial services sector, the Securities Commission of The Bahamas (“the Commission”), as the statutory regulator of the securities and capital markets sector in The Bahamas, monitored the digital asset sector for several years. The Commission observed the potential that DABs represented to the entire financial services sector to grow, and the threat represented if the sector was left behind. Finally, consistent with our mandate of protecting investors, fostering market integrity and reducing systemic risks, the Commission saw the need to provide legal clarity for DABs in order to facilitate the orderly growth and development of this sector and to adopt an appropriately regulated and internationally compliant regulatory framework. Ultimately, the Commission’s development of the regulatory framework for the digital assets sector in The Bahamas has been thoughtful and deliberate, culminating with the adoption of both the Digital Assets and Registered Exchanges Act, 2020 (“DARE Act”) and the Financial and Corporate Service Providers Act, 2020 (“FCSPA”).

This Policy Statement (“the Statement”) does the following:

- Explains the Commission’s considerations in developing the digital asset regulatory framework, including examining the risks and threats associated with digital asset activities and the respective measures to mitigate those activities;
- Describes the Commission’s philosophy regarding the regulation of DABs;
- Clarifies the registration and supervision process for DABs; and
- Outlines the Commission’s future legal and regulatory considerations for the digital asset sector.

Finally, the Statement is intended to assist DABs and prospective DABs with both understanding and complying with the Commission’s regulatory requirements, including registering with and adhering to the Commission’s ongoing monitoring requirements. To assist with this, the Statement, among other things, includes a DARE Act Frequently Asked Questions Toolkit (“the FAQ”) in **Annex I**, which explains the Commission’s policy position on the most frequently asked questions received from stakeholders since the adoption of the DARE Act.

---

<sup>1</sup> Such as distributed ledger technologies, inclusive of smart contracts, and layer 1 and layer 2 protocols, which facilitate the creation of smart contracts.



## 2.1. Introduction to the Securities Commission of The Bahamas

The Commission is a statutory body established in 1995, under the Securities Board Act, 1995, which has since been repealed and replaced. The Commission is the sole competent authority responsible for overseeing The Bahamas' securities, capital markets, investment funds, financial and corporate service providers, and digital asset businesses via the following legislation:

- Securities Industry Act, 2011;
- Investment Funds Act, 2019;
- Financial and Corporate Service Providers Act, 2020; and
- Digital Assets and Registered Exchanges Act, 2020.

The functions of the Commission are to<sup>2</sup>:

- a. Advise the Minister (Finance) on all matters relating to the capital markets and its participants;
- b. Maintain surveillance over the capital markets and ensure orderly, fair and equitable dealings in securities;
- c. Foster timely, accurate, fair and efficient disclosure of information to the investing public and the capital markets;
- d. Protect the integrity of the capital markets against any abuses arising from financial crime, market misconduct and other unfair and improper practices;
- e. Promote an understanding by the public of the capital markets and its participants and the benefits, risks, and liabilities associated with investing;
- f. Create and promote conditions that facilitate the orderly development of the capital markets; and
- g. Perform any other function conferred or imposed on it by securities and digital asset laws or Parliament to support our statutory mandate and obligations.

As part of its functions, in recent years, the Commission has worked to ensure growth in its regulated sectors through innovative and necessary legislation and policies. Some of the initiatives include:

- Update of the investment funds' regulatory regime;
- Expansion of the financial and corporate service providers' regulatory regime; and
- The expanded coverage in the securities and capital markets with the introduction of the:
  - Securities Industry (Contracts for Differences) Rules, 2020; and
  - Securities Industry (Business Capital) Rules, 2021.

## 3. The Bahamas' Digital Asset Business Regulatory Philosophy and Approach

The Commission recognizes the important opportunities that the digital assets sector presents to all stakeholders and we are cognizant of our role in creating and facilitating a regulatory environment that

---

<sup>2</sup> Securities Industry Act, available at: <https://www.scb.gov.bs/wp-content/uploads/2019/04/Gazetted-Securities-Industry-Act-2011-1.pdf>.



allows entrepreneurs to develop their commendable business activities, while ensuring that the market operates with fairness to and equity for all participants. We do not consider that regulation and innovation are mutually exclusive, but rather are equally necessary to ensure that markets perform at their optimum. The regulator should define the rules of engagement to operate in a jurisdiction and participants should be made aware of which DAB activities are allowed, which are excluded, and which can receive an exemption. A transparent regulatory framework presents no surprises both to entrepreneurs, who can be assured that they will not be subject to the capricious and arbitrary decisions of the regulator, and to consumers and investors, who will be afforded basic regulatory safeguards such as disclosure of information, recourse against bad actors and access to suitable financial products.

Our regulatory philosophy is that digital asset activity is a part of the capital markets in general, but we recognise that there are aspects, which do not fall within traditional capital markets activity, thus we created a bespoke framework for digital assets that addresses the peculiar nuances of this sector. The Commission's regulatory framework provides a holistic approach, giving digital assets their own space without boxing them in due to the many different forms and characteristics of DAs.

A key principle underlying our regulatory approach is that of technology-neutrality. Accordingly, our regulatory requirements apply regardless of the technological platform or the technology involved. As technology changes, evolves, and can become obsolete, our digital assets regulatory framework has sufficient flexibility to apply the framework to existing technologies as well as to evolving and emerging technologies, without requiring extensive revisions.

Finally, our philosophy is that an appropriate regulatory framework should be adopted to address regulatory gaps, not create tedious, frustrating and overlapping regulatory requirements among regulators. We believe that the DARE Act encourages innovative companies, while concurrently allowing for the protection of investors and the mitigation of consequential risks.

### 3.1. Digital Assets Regulatory Vision

The Commission's vision is to contribute to the establishment of The Bahamas as an international FinTech hub, through strategic collaboration and progressive and 'best-in-class' legislation and policies.

### 3.2. Digital Assets Regulatory Mission

To actualise its vision, the Commission's mission is to:

1. **Maintain honesty, integrity and fairness** by prescribing robust ethical and professional conduct requirements, and monitoring compliance with those standards.
2. **Facilitate** the orderly growth and development of the digital assets sector, through the legislative framework, supervisory function, enforcement actions, and using the FinTech hub, SCB FITLink, to develop rules, policy, guidance and codes of practice in connection with the conduct of DABs and other market participants.
3. **Promote Investor and Market Education** including digital asset risks, opportunities and AML/CFT/CPF obligations.
4. **Collaborate and engage** with industry stakeholders, including DABs, industry leaders, government agencies, market participants, think tanks, accelerators, and domestic and international regulators, to ensure an appropriately regulated digital asset sector that promotes

financial innovation and inclusion, while adhering to the traditional and effective regulatory tenets of investor protection and mitigating systemic risks.

### 3.3. Objectives

The Commission’s approach to developing an appropriate and robust digital asset framework is supported by five objectives:

1. **Consumer Investor Protection** – Digital assets are risky and many of the market participants in this sector are not necessarily familiar with establishing or adhering to appropriate investor and consumer protections, such as disclosure of information and product suitability. A core objective of the Commission’s regulatory framework was establishing an appropriate registration and supervision process to ensure the protection of investors and other stakeholders.
2. **Robust AML/CFT Framework** – DABs are obliged to have the same full set of AML/CFT obligations as traditional financial institutions and designated non-financial businesses and professions. The framework requires DABs to examine and understand the ML/TF/PF risks associated with digital asset activities, to design and implement a risk-based AML/CFT/CPF regulatory and supervisory framework for those activities, including the application of preventative measures such as customer due diligence, record-keeping and suspicious transaction reporting, and to take appropriate mitigating measures to address those risks.
3. **Manage Risks** – The framework aims to minimise risks, especially systematic and contagion risks, and requires DABs to demonstrate an understanding of the risks posed by digital asset activities and to take appropriate mitigating measures to address the identified risks.
4. **Growth and Innovation** – To facilitate the orderly growth and development of DAB activities and to promote financial innovation.
5. **Capacity Building** – To promote an understanding of the public of the various typologies of digital assets and DABs, and to ensure that the Commission’s staff both understands and can apply consistent supervisory procedures to facilitate fair and equitable treatment of investors.

### 3.4. Development of the DARE Act

As the sole competent authority for the securities and capital markets sector, in line with the Financial Action Task Force’s (“FATF”) Recommendation 15, the Commission noted the increasing popularity of and participation in the sale of digital assets<sup>3</sup> in other jurisdictions and also received and fielded multiple inquiries from a number of persons relevant to the digital asset market. Many of these inquiries were from persons who were interested in either buying and selling digital assets or creating their own digital assets for sale in the Bahamian investment market.

#### 3.4.1. *Crypto Asset Working Group*

In March 2018, the Commission began an initiative with the purpose of initiating a collective regulatory review and analysis of digital tokens<sup>4</sup> and their potential offerings in The Bahamas. As a result, in May 2018, a Crypto Asset Working Group (the “Working Group”) was formed to comprehensively review the

<sup>3</sup> Note on terminology: The Statement will interchangeably use the term “digital assets” and “crypto assets”.

<sup>4</sup> Note on terminology: “Digital tokens” is the Commission’s generic term for all digital representations of value. Some digital tokens, such as asset tokens, are under the purview of the DARE Act. Other digital tokens, such as non-fungible tokens, do not fall under the purview of the DARE Act.

considerations and requirements for the registration of DABs in or from within The Bahamas. The Working Group comprised various governmental agencies and regulators that had a stake in the orderly growth and development of the financial technology and digital asset sector in The Bahamas.

### 3.4.2. *Initial Research and Benchmarking*

In July 2018, the Commission conducted the initial benchmarking exercise to determine how other jurisdictions regulated DABs. Later, we engaged a leading international consultant to support the research and development phase. The consultant also performed benchmarking and, in all, thirteen (13) jurisdictions were benchmarked<sup>5</sup>. In addition to the jurisdictions benchmarked, the Commission also monitored industry expectations and evolving international regulatory standards, such as FATF's "Guidance for a Risk-Based Approach for Virtual Assets and Virtual Asset Service Providers", as outlined in their Recommendation 15.

### 3.4.3. *First Draft of the DARE Bill*

After extensive research and benchmarking, considering the unique businesses, assets, technology, characteristics and risks associated with this nascent sector, the Commission determined that establishing customized legislation for this emerging sector was crucial to further the development of The Bahamas' financial services industry. Moreover, the bespoke legislation helps to ensure that market participants and stakeholders were robustly protected.

During the fourth quarter of 2018, the Commission commenced working on the first draft of the DARE Bill, which encompassed international best practices for digital asset regulation and considered the responsible development of The Bahamas' financial services industry. This draft served as the foundation for the current version of the DARE Act and was subsequently internally reviewed, analysed and amended.

The DARE Bill was issued to the public for consultation on 3 April 2019 to request input and comments from industry participants and other stakeholders. The consultative process yielded significant response and comments, which were collected, reviewed, and taken into consideration for further amendment.

### 3.4.4. *DARE Bill and FATF Recommendation 15*

In December 2019, the Commission initiated the process of updating the DARE Bill and the national AML/CFT/CPF legislative framework ("national framework") to comply with the updated recommendations set out in the FATF Guidance on Virtual Assets and Virtual Asset Service Providers ("FATF 15").

The most significant amendments to the national framework, as well as to the DARE Bill, were ensuring that DABs were incorporated under The Bahamas' national framework, including the Proceeds of Crime Act, 2018 ("POCA"), the Anti-Terrorism Act, 2018 ("ATA"), and the Financial Transactions and Reporting Act, 2018 ("FTRA"). The inclusion of the digital asset framework in the national AML/CFT/CPF regime ensures that, at a minimum:

- The competent authority is required to conduct a national risk assessment on all digital asset activities;
- A country-wide risk-based approach and coordination for all digital asset activities;

---

<sup>5</sup> Namely: Bermuda, Malta, Switzerland, Singapore, United States of America, Luxembourg, Jersey, Gibraltar, Thailand, Hong Kong, Abu Dhabi, United Kingdom, and Ireland.

- Requirement that DABs take action to identify the natural/legal persons that carry out digital asset activities;
- Enforcement and sanctions applicable to DABs for failure to comply;
- Timely access to material and accurate information about DAB activities; and
- Information exchange and cooperation between domestic and international competent authorities.

The DARE Act was adopted on 14 December 2020.

## 4. Digital Assets Sector - Regulatory Framework

The regulatory framework consists of the:

- DARE Act;
- FCSPA;
- Digital Assets and Registered Exchanges (Anti-Money Laundering, Countering Financing of Terrorism and Countering Financing of Proliferation) Rules, 2022;
- Financial and Corporate Service Providers (Anti-Money Laundering and Countering the Financing of Terrorism), Rules 2019; and
- Policy guidance.

### 4.1. What Does the DARE Act Do?

The DARE Act regulates the issuance, sale and trade of digital assets, in or from within The Bahamas. Additionally, the DARE Act prescribes the registration process for any person that intends to be involved in a DAB in or from within The Bahamas. DABs include:

- A digital token exchange;
- Providing services related to a digital token exchange;
- Operating as a payment service provider business utilising digital assets;
- Operating as a digital asset service provider, including providing DLT platforms that facilitate:
  - the exchange between digital assets and fiat currencies;
  - the exchange between one or more forms of digital assets; and
  - the transfer of digital assets;
- Participation in and provision of financial services related to an issuer's offer or sale of a digital asset; and
- Any other activity that may be prescribed by regulations.

The DARE Act requires all persons carrying on or involved in digital assets business, operating in or from within The Bahamas, to be registered or licensed. This includes companies, partnerships, trusts and any other legal entity. The Commission is the sole competent authority responsible for registering and licensing DABs.

The DARE Act also requires registrants to maintain professional conduct and to comply with all other aspects of the Act. Examples of professional conduct requirements include duties to act honestly and fairly, to have effective corporate governance arrangements in place, to refrain from improper or illegal conduct, and to have effective arrangements in place to protect client assets and money.

#### 4.1.1. *Regulatory Capital*

Section 11 of the DARE Act requires DABs to meet all financial requirements that may be prescribed. The Commission does not currently, but intends to prescribe regulatory capital for DABs. As demonstration of its financial resources requirement, however, a DAB should satisfy the Commission that the company, at a Board of Directors' meeting, has reviewed and discussed the appropriate regulatory capital commitment, having regard to the size, nature and complexity of the digital asset business.

## 4.2. The Financial and Corporate Service Providers Act, 2020 - Licensing Regime for Wallet Service Providers and Custody Services

The FCSPA applies to all persons engaged in the business of providing financial or corporate services as defined by this Act, in or from within The Bahamas. The FCSPA provides a robust AML/CFT framework for persons wishing to license as these types of businesses, which includes conduct requirements, reporting requirements, and customer due diligence requirements.

A license is required under the FCSPA to engage in two specific DAB activities: wallet service providers<sup>6</sup> and custody of digital assets<sup>7</sup>, unless it is as an ancillary service to a digital token exchange registered under the DARE Act.

## 4.3. Exemptions from the DARE Act

Generally, the DARE Act's remit encompasses the financial conduct or activity surrounding digital assets and how it poses money laundering and terrorism financing risks. Consequently, the DARE Act does not seek to capture closed-loop tokens that are non-financial, non-exchangeable, non-transferable and non-fungible. Accordingly, the DARE Act expressly exempts non-fungible tokens ("NFTs")<sup>8</sup> and other digital representations used within an online game, game platform or family of games sold by a publisher or offered on a gaming platform.<sup>9</sup>

Additionally, the DARE Act does not regulate electronic money (electronic representations of fiat currency), specifically Central Bank Digital Currencies ("CBDCs"), which for the purposes of the DARE Act, are defined as electronic representations of a fiat currency. CBDCs are regulated by the Central Bank of The Bahamas, under the Central Bank of The Bahamas' Payment Act, 2012.

## 4.4. Digital Assets AML/CFT/CPF Provisions

The digital asset regulatory framework includes robust AML/CFT/CPF provisions, which are embedded in various legislation including, POCA, ATA and the FTRA.

---

<sup>6</sup>Wallet Services Provider means a person who provides digital wallet services by use of a computer software or program that interfaces with fiat and virtual currencies and assets, stores private and public keys and interacts with distributed ledger technology to enable users to send, receive and monitor their digital assets.

<sup>7</sup> Custody of digital assets means any arrangement under which a person is authorized to hold directly or indirectly a customer's access keys, smart contracts or other forms of digital assets.

<sup>8</sup> A unique digital token for use in specific applications, which cannot be divided and is not interchangeable with any other type of digital token. The DARE Act is activity and functioned based, accordingly an "NFT" may be required to register under the DARE Act if its functions and characteristics are determined to be consistent with the Commission's definition of a digital asset.

<sup>9</sup> See Section 3(2), DARE Act.

Additionally, the Commission recently published both the Digital Assets and Registered Exchanges (Anti-Money Laundering, Countering Financing of Terrorism and Countering Financing of Proliferation) Rules, 2022 (“the DARE Rules”) and the Financial and Corporate Service Providers (Anti-Money Laundering and Countering the Financing of Terrorism) Rules, 2019 (“the FCSPA Rules”) (together, the “Rules”). In particular, the Rules were adopted to clarify how AML/CFT/CPF requirements apply specifically to digital asset activities and registered DABs, and to help entities seeking to engage in digital asset activities to better understand their AML/CFT/CPF obligations.

#### *4.4.1. Activity-based registration by competent authority*

The DARE Act imposes specific activity-based AML/CFT/CPF requirements on DABs to ensure compliance with these obligations and includes both remedial and administrative sanctions for non-compliance. The regime also establishes a risk-based approach for DABs, including registration and ongoing supervision requirements.

In accordance with internationally accepted best practices, the DARE Rules further prescribe risk-based preventative measures such as customer due diligence (“CDD”), record keeping, suspicious transaction reporting, enforcement measures and international cooperation and mandates that DABs have the same full set of AML/CFT/CPF obligations as financial institutions and designated non-financial businesses or professions.

#### *4.4.2. Risk-based supervision and customer due diligence and prevention measures*

The DARE Rules prescribe risk-based preventative measures such as CDD processes that assist DAB in assessing the ML/TF/PF risks associated with digital activities, in either established business relationships or occasional transactions above a certain threshold. CDD also comprises identifying the customer and verifying the customer’s identity and using enhanced due diligence measures to mitigate potential higher risks. The AML/CFT/CPF Rules also require that DABs:

- Have specific record keeping requirements (7 years);
- Have appropriate risk management systems in place, beyond normal CDD;
- Have internal controls in place with a view to establishing the effectiveness of AML/CFT/CPF policies;
- Appoint a compliance officer and a money laundering reporting officer with the requisite experience and education with digital asset activities;
- Report suspicious transactions to the Financial Intelligence Unit; and
- Comply with the FTFA.

### **4.5. Expectations of DARE Act Registrants**

DARE Act registrants are expected to conduct their business in accordance with behavioral, management, and AML/CFT/CPF standards that align with the legal and regulatory requirements of the DARE Act.

#### *4.5.1. Behavioural Standards*

DARE Act registrants should conduct their business as follows:

- Business activities should be conducted with honesty, integrity, fairness, and professionalism;

- Exercise appropriate due care, regard, skill and diligence when conducting business on behalf of clients;
- Timely and proper communication with clients in a fair, clear and non-misleading manner;
- Special consideration of risks relating to its own business, those of its clients, and relevant exchanges when reviewing products and services;
- Have primary responsibility for the conduct of their employees;
- Uphold the integrity and reputation of The Bahamas; and
- Avoid conflicts of interest, where possible. When such conflicts occur,
  - customers are to be treated fairly; and
  - relevant conflicts of interest are disclosed.

#### 4.5.2. *Management and Operational Standards*

DARE registrants are required to comply with the following:

- Uphold fit and proper management standards, which include:
  - Adequate educational requirements or other qualifications;
  - Have good reputation and character; and
  - The ability to conduct business competently and reliably.
- Ensure that the business has adequate processes and procedures in place in relation to:
  - Segregation of client's assets;
  - Digital asset purchases, sales, and transfers; and
  - Internal compliance and risk management systems and policies.
- Retention of full responsibility, liability and accountability for outsourced activities.
- Collection and maintenance of beneficial owner information.
- Proper policies and procedures in place for regulatory reporting.

## 5. Risks and Concerns

The digital asset sector has many potential benefits, inclusive of faster and cheaper transactions and the integration of disadvantaged individuals into the financial system. However, it also presents material risks, challenges and concerns for participants and stakeholders, including regulators. The digital asset regulatory framework was created in accordance with the Commission's core mandate and functions, including investor protection and mitigating systemic risks. To accomplish this, the Commission identified key risks and concerns, inherent to the nature of digital assets and their underlying technologies, to ensure that the applicable legislation adequately addresses the identified risks and concerns and incorporates effective and proportional mitigation measures to address the risks. The most significant risks identified are as follows:

**Fraud Risks** – Typically, consumers rely on the integrity and robust disclosures of the creator/coder in assessing whether a digital asset is as described or that proceeds raised will be utilised as disclosed. However, not all participants in this sector have operated honestly, ethically or with due care. Generally, fraudulent schemes include front running, rug pulls and Ponzi schemes.

**Cybersecurity Risks** – Digital elements such as wallets, protocols, and smart contracts are susceptible to hacking; consequently, a responsible regulatory framework should require that



DABs have the appropriate data protection systems in place. Hacks can result in the leak of sensitive information and the loss of funds, often with no recourse.

**Market Abuse** – Digital assets activities can involve risks associated with traditional markets, such as speculative trading, pump and dump schemes, lending and borrowing, sometimes involving highly leveraged strategies. These risks include those caused by trading and price misinformation or manipulation and conflicts of interest.

**AML/CFT Risks** – Many jurisdictions have either not adopted or have inconsistently applied AML/CFT measures, presenting potentially significant cross-border, money laundering and terrorist financing risks. Further, there is the risk of illicit actors using sophisticated anonymity-enhancing technologies, such as anonymity-enhanced cryptocurrencies (AECs), mixers, tumblers and other technologies, to obfuscate the details of financial transactions. The result is that, under the cloak of anonymity, they can easily circumvent traditional AML/CFT frameworks and similar supervisory regimes, store proceeds of crime, elude sanctions, and launder money.

## 6. Mitigating Risks and Concerns

To supplement the legal and regulatory framework, the Commission has implemented a variety of initiatives to mitigate the risks posed by digital assets and DABs.

### 6.1. Digital Asset Sector National Risk Assessment

In line with FATF's standards requiring countries to identify, assess and understand the country's exposure to DAB activities, the Commission engaged an international consultant to conduct a VASP national risk assessment ("VASP NRA"), which was completed in 2022. As a part of that assessment, the international consultant, using the World Bank's VASP methodology, evaluated digital asset activities in The Bahamas to assess the risks these activities and businesses posed to The Bahamas. After a thorough and robust VASP NRA, overall, The Bahamas was assessed as having a low risk rating. The result of the VASP NRA indicates that there is a low threat of ML risks for VASPs in The Bahamas.

### 6.2. Capacity Building Efforts

The Commission has increased its internal capacity building efforts to ensure that the appropriate departments and staff have sufficient knowledge and subject matter expertise to assess the types of DABs applying for registration, and to assess the potential risks posed to the market, the customer and the jurisdiction if those businesses are registered to engage in digital asset activities. The following initiatives have been introduced in order to ensure proficiency in this regard:

1. Restructuring and updating Supervisory departments;
2. Establishment of SCB FITLink, the Commission's FinTech Hub;
3. Staff Training; and
4. Collaboration with the University of The Bahamas.

#### 6.2.1. *Restructuring and Updating Supervisory Departments*

Since the adoption of the DARE Act, the Commission has restructured and updated the following departments:

- Supervision; and
- Examinations.

The Supervision Department (“SUD”) is responsible for processing applications for the licensing and registration of persons wishing to conduct registrable and licensable activities in The Bahamas, under the DARE Act, SIA, IFA, and FCSPA (“the Acts”). Additionally, SUD is responsible for the offsite monitoring and supervision of all of the Commission’s registrants and licensees, including the review and registration of prospectuses for initial public offerings and private placements.

Upon the adoption of the DARE Act, the Commission created a new unit within SUD that is responsible for the review, registration and offsite monitoring of DABs, solely. The committed resources for the new unit underscores the Commission’s commitment to both protecting investors, facilitating the orderly growth and development of the digital asset sector, and establishing a progressive and internationally compliant registration and supervisory regime. The DARE Application process is illustrated in **Annex II**.

The Examinations department (“ED”) is responsible for the onsite examinations of all of the Commission’s registrants and licensees. Since the adoption of the DARE Act, the Commission has restructured and updated ED by creating a new onsite work plan customised for registrants under the DARE Act. The 11 objectives of the DARE Act work plan are:

1. Ensure Corporate Governance rules are fulfilled;
2. Ensure AML/CFT/CPF Rules are being adhered to;
3. Ensure the registrant or licensee has effective policies and procedures, as well as adequate systems and/or software;
4. Determine whether the registrant has implemented an appropriate risk rating framework;
5. Ensure that the staff are appropriately qualified and experienced for the level of their responsibility;
6. Determine whether the registrant/licensee is carrying out proper customer and employee due diligence;
7. Certify that registrants obtain independent and reliable source documents, data and other information;
8. Determine whether transaction records are properly maintained and verify whether any suspicious transaction reports were reported to the FIU;
9. Determine the cross jurisdictional activity of the registrant;
10. Inspect, determine and document whether any client complaints et al were made during the year.

### 6.2.2. *Creation of SCB FITLink*

SCB FITLink<sup>10</sup> (the “Hub”) is the Commission’s FinTech Hub, and was approved for launch in October 2019. The establishment of SCB FITLink is a proactive and clear signal that The Bahamas recognises the importance of FinTech and innovation in the financial services industry and is willing to collaborate with market participants to ensure a robust and appropriately regulated securities and capital markets sector.

---

<sup>10</sup> Financial Innovation and Technology Link.

SCB FITLink serves as the central point of contact for the Commission's engagement with the public on various issues related to FinTech, such as virtual asset business, crowdfunding, distributed ledger technology, artificial intelligence and initial token offerings. The duties of the Hub include:

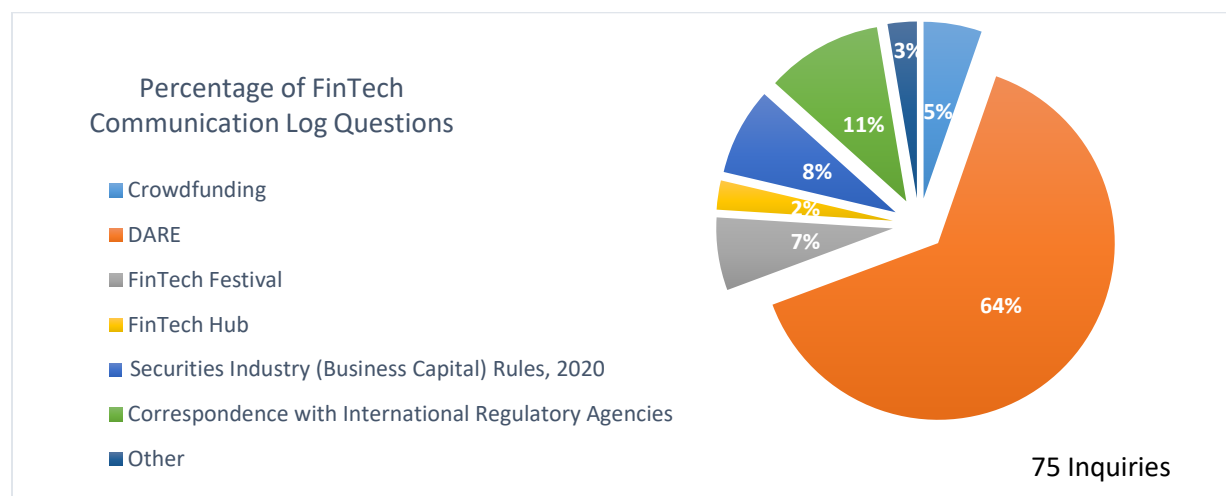
- Assist FinTech innovators and incumbents with navigating the Commission's digital asset regulatory landscape;

## 7. Research, establish, and create policy, rules, and guidelines for FinTech-related products and services;

- Educate the Commission's staff about emerging FinTech trends, opportunities and risks;
- Provide website updates to assist industry participants with understanding FinTech policies; and
- Consult with domestic and overseas regulatory authorities regarding innovative technologies.

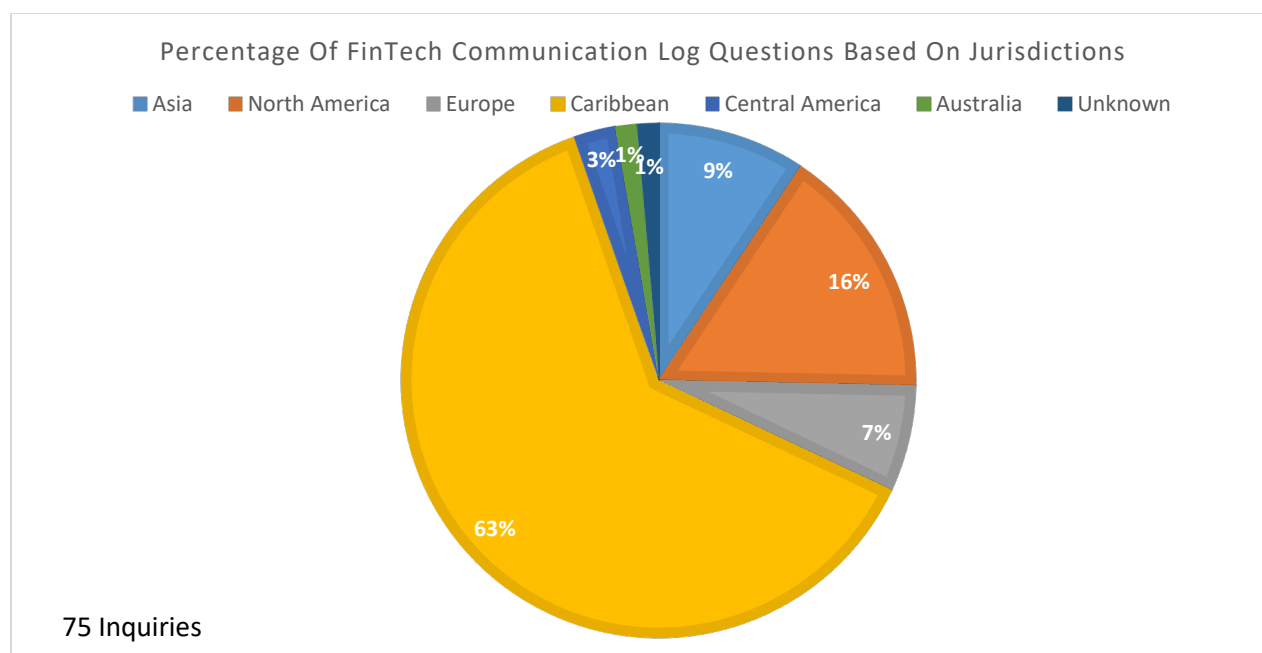
In addition to regulatory consultation, another primary activity of SCB FITLink is to engage with both local and international stakeholders. Between 1 January 2021 and year-end 31 December 2021, SCB FITLink held either in-person or virtual meetings with 75 stakeholders.

The ensuing pie chart depicts the most frequently asked questions that were submitted to the Commission, via SCB FITLink in 2021.<sup>11</sup>



The pie chart below shows both the various jurisdictions that met with SCB FITLink and the percentage of questions asked from each jurisdiction.

<sup>11</sup> All questions and the Commission's responses are attached as Annex I.



#### 7.1.1. Staff Training

With continued efforts to ensure proficiency in the digital assets sector, the Commission offers and fully subsidises training courses on cryptocurrency, blockchain technologies, decentralised finance, etc. to our staff. Select courses that staff have participated in and have received certificates include:

- Cambridge FinTech and Regulatory Innovation;
- MIT Media Lab – Cryptocurrency Course;
- Wharton Economics of Blockchain and Digital Assets; and
- MIT Management Executive Education – Blockchain Technologies: Business Innovation and Application.

#### 7.1.2. Collaboration with the University of The Bahamas

As a part of its functions, the Commission promotes an understanding by the public of the capital markets, its participants and the benefits, risks, and liabilities associated with investing in digital assets. To further this endeavour, the Commission intends to collaborate with the University of The Bahamas on three 8-week courses focused on the digital assets sector. These courses will serve as professional continuing education courses and will provide the foundational knowledge needed to work with DAB and FinTech, and to understand The Bahamas' DAB regulatory framework. Attendees will earn a certificate, upon successful completion of the course, which can be used to demonstrate to the Commission that the individual possesses the requisite education and knowledge to engage in DAB registrable activities in The Bahamas.

#### 7.1.3. National Cooperation Efforts

The Commission maintains that cooperation with domestic and international supervisory authorities is essential. At the national level, the Government of The Bahamas ("GoB") is establishing a Digital Advisory Panel ("the Panel"), comprising digital asset experts, to continually monitor digital assets and related digital developments, emerging trends, and associated risks. The Panel is primarily tasked with keeping

the GoB and the Digital Asset Policy Committee (“DPC”) regularly updated, with the aim of solidifying The Bahamas as the preeminent digital asset jurisdiction.

Additionally, the Executive Director of the Commission is a member of the DPC, which is a committee formed by the GoB to ensure that The Bahamas’ digital asset and FinTech policy objectives are implemented and that all branches of government and the private sector are aligned and working together to deliver desired outcomes.

## 7.2. International Cooperation and Agreements

A primary tenet of effective DAB supervision is that international supervisors must exchange relevant information. This is particularly important as, to date, there remains no uniform digital asset standards or typologies. To mitigate against digital asset market fragmentation, the Commission has executed a number of international cooperation and agreements, and is a committee member of various international digital asset standards setting bodies. A significant membership is with the International Organization of Securities Commissions (“IOSCO”), of which the Commission is also an “A signatory” of the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (“MMoU”) and a signatory of the Enhanced Multilateral Memorandum of Understanding (“EMMoU”) Concerning Consultation and Cooperation and the Exchange of Information. According to IOSCO, the EMMoU “fosters greater cross-border enforcement cooperation and assistance among securities regulators, enabling them to respond to the risks and challenges posed by globalisation and advances in technology.”

As a part of the IOSCO membership, the Commission sits on various committees, including the IOSCO FinTech Steering Group, which allows members to share and discuss opportunities, challenges, and experiences in all areas related to FinTech, including digital assets, initial token offerings, and FinTech regulation and solutions.

The Commission is also a member of the following:

- The Global Financial Innovation Network (“GFIN”), which is an organisation that was launched in January 2019, and currently consists of 57 members. The United Kingdom’s Financial Conduct Authority presently chairs GFIN. The purpose of GFIN is to support financial innovation and protect investors and consumers on a global scale. On 22 January 2020, The Commission’s application to become a member was approved. The Commission is a member of one of GFIN’s work streams.
- The Caribbean Group of Securities Regulators’ (“CGSR”) FinTech Group, which is the technology network comprising select Caribbean securities and capital markets regulators. CGSR’s mandate is to grow and regulate FinTech in the region.

## 8. Additional Consumer and Investor Protection Measures

As a key component of the Commission’s mandate is to protect the interest of investors and consumers, the DARE Act has a number of embedded provisions aimed at protecting investors, specifically as it relates to the ITO process. Moreover, the recently adopted DARE Rules assists with protecting against money laundering and fraud. The Commission intends to release additional guidance on ongoing requirements for DARE Act registrants, as well.

The protections embedded in the DARE Act related to ITOs are the obligations of a token issuer to disclose, the purchaser's right to rescission or damages, and the purchaser's right of withdrawal.

#### *Continuing obligations of an issuer to disclose*

Disclosure is an important aspect of raising funds from the public as it encourages trust in the financial system. The Commission is adamant that purchasers should be able to make a sound and informed decision with proper disclosure mechanisms in place. The DARE Act has a number of disclosure requirements for ITOs that must be outlined in the offering memorandum for the benefit of investors. Through this process, there is complete transparency, which is a top priority to the Commission.

If an issuer fails to disclose in the time to disclose relevant information specified in the DARE Act, the issuer might be subject to penalties and/or sanctions.

#### *Purchaser's right to rescission or damages*

If an issuer publishes an offering memorandum – or any amendments – which contains a material misrepresentation, a purchaser shall have a right of action against the issuer for the rescission of the subscription or damages.

#### *Purchaser's right of withdrawal*

A purchaser of a token offered under the provisions of the DARE Act is entitled to withdraw their purchase by written notice to the issuer within 72 hours. Once a notice is made, an issuer has within two days of the purchaser's request to pay all funds to the purchaser.

#### *Commission's authority to investigate*

The Commission has the authority to conduct onsite or offsite inspections of the business of any DARE Act registrant to ensure that they are complying with the Commission's regulatory framework and that of any other relevant law.

## 9. Future Strategy and Next Steps for the Digital Asset Regime

Having met the minimum AML/CFT/CPF and regulatory thresholds currently required in the VASP sector, the Commission intends to monitor developments in this area for the immediate future, with a view to determining the appropriate regulatory response as the need arises, and to use these experiences to inform the establishment of a comprehensive digital asset regime as the industry develops.

In this regard, there are immediate plans to review and update the DARE Act, where necessary, to develop a regulatory approach for the following FinTech and digital asset trends. Contemplated updates may include:

- **Regulatory accounting considerations and treatment of digital assets.** As part of our objective to ensure the orderly growth and development of the digital asset sector and the protection of consumers and investors, the Commission is likely to prescribe rules requiring DABs to disclose the risks to investors from digital assets held on behalf of customers.
- **Segregation of client assets.** The Commission expects DABs to hold client assets "off balance sheet". The Commission will likely approve the use of a segregated omnibus account for this purpose.

- **Decentralised Finance (“DeFi”).** DeFi is an emerging FinTech that involves peer-to-peer financial services on public blockchains. Effectively, DeFi removes traditional financial services gatekeepers such as central securities depositories and traditional financial institutions. Proponents of DeFi assert that removing the gatekeepers allows for the faster, more efficient and cheaper execution of transactions. However, the gatekeepers perform essential market and investor protections that seek to, among other things, minimise fraud, reduce systemic risks and contribute to the fair and equitable treatment of investors. Further, DeFi protocols are becoming a popular alternative channel for financial crime, including fraud and money laundering. The Commission will review this area with a view to curtailing the risks associated with DeFi activities.
- **Staking.** Commonly used in proof of stake consensus mechanisms, staking is a process that involves committing participants’ digital assets into a smart contract to support a blockchain network and confirm transactions. Participants pledge their digital assets to the protocol, the protocol chooses validators to confirm blocks of transactions from those participants, and then the validators are rewarded when a new block is added to the blockchain. Participants earn rewards with their staked digital assets, however, there are customer risks associated with staking activities. Though the Commission may not necessarily regulate staking, at a minimum, we will require that networks, including exchanges that offer staking services, must provide certain disclosures for participants in the staking program. Such disclosures will include, but are not limited to:
  - How the staking program works?
  - Validator selection process.
  - Types of rewards offered (crypto/governance controls/etc.).
  - How are the awards earned?
  - Limitations to the size of the staking pool, if applicable.
  - Server “uptime” for a prescribed period.
  - Minimum lock up periods, if any.
  - Reward limitations, if any.
  - Process and length of unstaking process.
  - Minimum and maximum staking investment, if applicable.
- **Yield Farming.** In this activity, a decentralised exchange is used to facilitate the lending and/or borrowing of digital assets. A purchaser can stake coins to earn interest on a digital asset by depositing them for a certain period. At a minimum, the Commission intends to prescribe a disclosure regime for this activity.
- **Advertising of Digital Assets to Investors.** The use of social media and internet platforms to advertise, sell and/or distribute products, particularly on a cross-border basis, has increased. The potential risks of this activity include the offering of unsuitable products to investors, data privacy issues and the potential to circumvent securities and capital markets laws (market surveillance and enforcement limitations). The Commission will consider what measures will be adopted to promote investor protection for retail investors in the internet environment.
- **Stablecoins.** Stablecoins are digital assets whose values are fixed to that of a currency, algorithm or basket of securities, with the purpose of reducing the inherent volatility of the digital assets. There are key considerations that the Commission will review, including customer protection, AML/CFT, and where digital currencies interact with traditional fiat currency the potential for contagion risks, in traditional financial markets. At a minimum, the Commission will aim to



introduce a regulatory regime that adheres to international principles and standards that are applicable to stablecoins, while ensuring financial and monetary stability. To support the regulatory regime, the Commission will also introduce valuation and financial disclosure requirements, in particular prescribing that registrants disclose the nature/composition of the underlying assets, the basis for valuation of the underlying assets, outlining how reserves are held and mandating attestation/audit requirements.

- **Web3.** An alternative version of the internet, built using decentralised blockchains, most often, the Ethereum blockchain.
- **NFTs.** As mentioned in section 4.3, NFTs are currently exempt from the Commission's regulatory framework. The Commission intends to examine and define the categories of NFTs, the characteristics, use and manner in which an NFT is offered and sold or resold, and the structure and rights attached to the NFT to determine whether the NFT is either a consumer asset or financial asset used to facilitate capital market activity.

Depending on the recommendations provided, as well as the Commission's own research and judgment, either amendments will be made to the respect legislation or additional policy statements will be issued by the Commission. In the interim, the Commission will continue to actively engage in discussions with market participants and stakeholders to cultivate a regulatory environment that not only encourages innovation and economic growth, but also discourages and provides effective enforcement measures against bad actors. We look forward to continued collaboration with all stakeholders during this very exciting period.

# Annex I: DARE Act Frequently Asked Questions

## I. Overview

1. What is the role of the Securities Commission of The Bahamas (the “Commission”) as it relates to the DARE Act?

For the purposes of the DARE Act, the role of the Commission is to:

- a) Regulate, monitor and supervise the issuance of digital assets and persons conducting digital asset business in or from within The Bahamas;
- b) Develop rules, guidance and codes of practice in connection with the conduct of digital asset business and initial token offers;
- c) Advise the Minister on all matters relating to digital asset business; and
- d) Promote investor education and other conditions that facilitate innovation and development of digital asset business within The Bahamas.

2. To whom does the DARE Act apply?

The DARE Act applies to:

- a) Any person who as organiser, issuer, founder, purchaser or investor participates in the formation, promotion, maintenance, organization, sale or redemption of an initial token offering (ITO); and
- b) Any legal entity carrying on digital asset business in or from within The Bahamas, irrespective of the physical location from where the activity is carried out.

3. What is a digital asset business?

A digital asset business is defined as:

- a) A digital token exchange;
- b) Providing services related to a digital token exchange;
- c) Operating as a payment service provider business utilising digital assets;
- d) Operating as a digital asset service provider, including providing distributed ledger technology platforms that facilitate:
  - i) the exchange between digital assets and fiat currencies;
  - ii) the exchange between one or more forms of digital assets; and
  - iii) the transfer<sup>12</sup> of digital assets;
- e) Participation in and provision of financial services related to an issuer’s offer or sale of a digital asset; and
- f) Any other activity which may be prescribed

4. How does a digital token exchange differ from other digital asset businesses?

---

<sup>12</sup> As defined in Section 2, DARE Act.

A digital asset business is one of the businesses defined in question three.

A digital token exchange is a virtual platform, which uses distributed ledger technology, or other decentralised technology, for the sale, trade or exchange of digital tokens, whether for fiat currency or one or more digital assets (tokens). Generally, digital token exchanges have more rigorous application requirements than that of other digital asset businesses.

## II. Conduct and Compliance Requirements

5. Can firms trade digital assets for its own account?

There are no restrictions from trading digital assets for a digital asset businesses' own account.

6. What is the regulatory capital requirement for firms registered under the DARE Act?

The Commission does not currently, but intends to prescribe regulatory capital for DABs; however, registrants are required to have adequate resources to both meet the nature, scope and complexity of its business activities, to remain solvent and to meet its risks in the event of disruption, suspension or termination of its registration with the Commission.

As demonstration of its financial resources requirement, a DAB should satisfy the Commission that the company, at a Board of Directors' meeting, has reviewed and discussed the appropriate financial resources commitment, having regard to the nature, size and complexity of the business.

7. Are digital asset businesses and digital token exchanges required to maintain a physical presence in The Bahamas?

The DARE Act does not explicitly address this issue. The Commission's policy, however, requires digital token exchanges to establish a physical presence. For such approved digital asset businesses, the Commission expects that registrants adhere to the Commission's Securities Industry (Physical Presence) Rules, 2012, inclusive of ensuring that the CEO and the Compliance Officer/Money Laundering Reporting Officer are domiciled in The Bahamas.

8. What are the ongoing requirements for digital asset businesses?

The annual update form and applicable fees. Moreover, the Commission is in the process of drafting policy documents that will outline the necessary requirements.

9. What are the AML/CFT requirements for digital asset businesses?

In accordance with Section 26, DARE Act, and Section 23, FCSPA, all registrants must conduct periodic self-risk assessments, and to implement and maintain policies and procedures to ensure compliance with provisions of The Proceeds of Crime Act, 2018, Anti-Terrorism Act, 2018 and the Financial Transactions Reporting Act, 2018.

Further, the Commission has adopted and published the Digital Assets and Registered Exchanges (Anti-Money Laundering and Countering The Financing of Terrorism) Rules, 2022, which outline the AML/CFT requirements for registrants under DARE.

Licensees under the Financial and Corporate Service Providers Act, 2020, who engage in either custody of digital assets or wallet service providers, are required to comply with the Financial and Corporate Service Providers (Anti-Money Laundering and Countering the Financing of Terrorism) Rules, 2019.

10. Does the Commission maintain a register of all beneficial owners of digital assets?

No, the Commission does not maintain a register of all beneficial owners of digital assets. As a part of its risk management systems and controls, however, DARE registrants must demonstrate to the Commission the ability to identify the ultimate beneficial owners of clients' transactions and client accounts.

11. Does the Commission accept digital submissions of documents to satisfy Know Your Client ("KYC")/due diligence requirements?

The Commission allows the initial digital submission of KYC documents, however, it is expected that the originals will be submitted shortly after such a submission.

12. Does the Commission allow digital asset businesses to maintain records via cloud service providers?

Yes. The books, records and data must be maintained in compliance with the provisions of Section 15, Financial Transactions Reporting Act, 2018.

13. What is the Travel Rule and are Digital Asset Businesses (DABs) required to comply?

The Travel Rule refers to FATF's Recommendation 16 and its application to Virtual Asset Service Providers (VASPs). Yes, DABs are required to comply, please review the Commission's upcoming Guidance Note on the Travel Rule.

14. Can DABs conduct business with persons in jurisdictions that have not enacted the Travel Rule?

Yes, however, they must comply with the Financial Transactions Reporting (Wire Transfers) Regulations, 2018 and the Financial Transactions Reporting (WIRE TRANSFERS) (Amendment) Regulations, 2022. Regulation 3A of the Amendment Regulations specifically addresses this issue.

### III. Activities not explicitly covered under the DARE Act.

15. If a firm wants to provide digital asset business that are not explicitly outlined in the DARE Act, is registration required?

It depends on the type of activity or business that will be performed. The DARE Act expressly exempts certain assets or businesses from its purview and, accordingly, such assets or businesses are not required to register with the Commission. Please see Section 3(2), DARE Act, for the complete list of activities, tokens and transactions that are exempt from the Commission's legislative framework.

Under Section 6, DARE Act, the Commission reserves the right, however, to prescribe other activities as “digital asset businesses.” In such instances, registration with the Commission will be required.

Current registrants should seek the Commission’s permission prior to conducting additional digital asset business. Questions can be directed to the Commission’s Supervision Department at [supervisiondare@scb.gov.bs](mailto:supervisiondare@scb.gov.bs).

16. Which license would be required for a legal entity to engage in custody of digital assets or provide wallet services?

A legal entity, who as a means of business, only provides either custody of digital assets or wallet service providers (together, “providers”), must apply for a license under the Financial and Corporate Service Providers Act, 2020.

The Commission intends to amend the definition of ‘digital asset business’, however, to include both custody of digital assets and wallet service providers. Because of this amendment, both activities will require registration under DARE. Existing FCSPA licensees will be granted a ‘grandfather’ provision under DARE.

17. If a digital asset business wants to include custody/wallet services in their business model, will they require a separate license or registration with the Commission?

Generally, yes. The exception is digital asset businesses registered with the Commission, under the DARE Act, as a digital token exchange, who provide either custody of digital assets or wallet services as an ancillary part of their digital token exchange business.

If you have any questions regarding digital asset business registration requirements, please reach out to the Commission’s financial technology hub, SCB FITLink, at either (242) 397-4100 or [FITLink@scb.gov.bs](mailto:FITLink@scb.gov.bs) or the Supervision Department at [supervisiondare@scb.gov.bs](mailto:supervisiondare@scb.gov.bs).

18. Does a firm need to be registered with the Commission to buy and sell non-fungible tokens (NFTs)?

No. Currently, the DARE Act excludes non-fungible tokens from the Commission’s regulatory purview. Please note, however, that the Commission is reviewing the regulatory treatment of NFTs and, if necessary, will issue a new policy statement regarding NFTs.

19. Should a firm be licensed under the DARE Act or the Securities Industry Act (SIA), 2011 to trade derivatives of digital assets?

Firms are required to be registered under the appropriate legislation depending on the underlying asset of the derivative. For example, a derivative that has a digital asset as the underlying asset is required to be registered under the DARE Act. Alternatively, if the derivative comprises securities as the underlying asset, then the firm should be registered under the SIA.

20. Are mining services providers required to register under the DARE Act?

No. Currently persons that engage exclusively in mining, or related, services are not required to either register with or obtain a license from the Commission. If, however, a person is engaged in

a digital asset business, in addition to their mining activities, then that person is required to register under the DARE Act.

21. Which legislation covers digital asset investment funds?

Investment funds that comprise digital assets as a part of its overall portfolio are required to be licensed under the Investment Funds Act, 2020.

#### IV. Registration

22. What is the timeline for the entire registration process?

The Supervision Department (“SUD”) aims to complete the registration process within 30 days of receiving a completed application. This timeline may be affected, however, if SUD requires additional information that has not been provided in the initial application. The applicant may receive an ‘In Principle Approval’ if, at a minimum, the detailed business plan outlining the organizational structure and explaining how the operations will work in depth has been submitted.

23. What constitutes as a completed application?

A completed application refers to an application in which all aspects of the application and supporting documents have been submitted.

24. Who can register as a digital asset business?

Any legal entity formed/established in accordance with the Companies Act (Ch. 308), International Business Companies Act (Ch. 309), the Partnership Act (Ch. 310), the Partnership Limited Liability Act (Ch. 311), and the Exempted Limited Partnership Act (Ch. 312).

The above-mentioned entities must apply for registration (the DARE Act) by way of a formal application to SUD. Completed applications should be submitted to [supervisiondare@scb.gov.bs](mailto:supervisiondare@scb.gov.bs).

25. Is obtaining prior approval from The Bahamas Investment Authority (BIA) a requirement for a non-resident business that is considering registering under the DARE act?

No. Approval from BIA is not a requirement for a non-resident business to set up a digital asset business in The Bahamas. However, the digital asset business may need government approvals for other aspects of the business (e.g. work permits, etc.).

26. Can a legal entity formed/established in a foreign jurisdiction apply for registration under the DARE Act?

Yes. Such entities, however, may be required to incorporate/establish a legal entity in accordance with Bahamian laws.

27. Can existing registrants of the Commission (i.e. registered or licensed under the Securities Industry Act, 2011, Investment Funds Act, 2019 and Financial Corporate Service Providers Act, 2020) register as a digital asset business?

Yes, existing registrants and licensees can register under the DARE Act. Section 9, DARE Act outlines the registration requirements for all existing registrants and licensees.

28. If a person is registered under the DARE Act and would like to expand their existing business model to include other digital asset businesses activities, are they required apply to the Commission to receive a separate registration?

Depending on the type of additional digital asset businesses, a separate registration may not be required, though at all times the digital asset business must notify the Commission of the additional business activity.

Please note that in accordance with Section 13 of the DARE Act, existing DARE registrants cannot undertake new digital asset business without prior written approval of the Commission.

If a separate registration is required, the digital asset business must comply with Section 9 of the DARE Act.

29. Is there an example available for the DARE application?

At this time, there is no DARE application template; however, the following Forms are available as a guideline for application completion:

- Part A – Form 1 – Application for Registration as Digital Asset Business;
- Part A – Form 3 – Application for Registration as CEO or Compliance Officer;
- Part B – Form 1 – Application by Registered Digital Asset Business, Registered Firm, or Financial and Corporate Service Provider to Carry on Digital Asset Business Services;
- Part C – Form 1 – Application for Registration of Digital Token Exchange; and
- Part D – Form 1 – Application for Registration of Initial Token Offering.

The above Forms are located in the First Schedule of the DARE Act.

30. What are the necessary supporting documents for applying for digital asset business registration?

Please refer to the First Schedule, Part A, Form 1 for a list of the necessary supporting documents.

31. Is there a record of all pending applications for digital asset businesses that is publicly available?

No, due to the Commission's confidentiality provisions, pending application information is not available to the public.

32. Is there a record of all registered digital asset businesses that is publicly available?

Yes, in accordance with Section 12, DARE Act, the Commission has established and currently maintains a public register of all approved digital asset businesses.



The register is available at <https://www.scb.gov.bs/registrant-licensee-search/>.

**33. When and how often must a DARE registrant renew their registration?**

In accordance with Section 8, DARE Act, on or before 31 January, all registrants are required to annually renew their registration with the Commission.

The registrant must submit the Annual Update and Declaration Form and, if applicable, a current copy of the registrant's insurance policy. The Annual Update and Declaration Form is available at <https://www.scb.gov.bs/wp-content/uploads/2022/01/Annual-Information-Update-Form-DARE.pdf>. The annual renewal fee, of \$15,000 for digital token exchanges or \$10,000 for all other digital asset businesses, must be remitted.

**34. Can a registered digital asset business make changes to its business model post-registration?**

Yes. Certain material changes, however, require the Commission's written approval prior to effecting the change (Section 13, DARE Act).

The registrant may also be required to include the changes in the Annual Update and Declaration Form and/or apply for additional registration under the DARE Act.

## **V. Initial Token Offerings (ITO)**

**35. Are organizers of an ITO required to register with the Commission?**

Yes, in accordance with Section 3, DARE Act, any person who as an organiser participates in the formation, promotion, maintenance, sale or redemption of an ITO is required to register with the Commission.

In accordance with section 31(2), at a minimum, the following must be submitted:

- i) Completed Form 1 – Part D, First Schedule;
- ii) A written legal opinion concerning the classifications of the tokens;
- iii) A copy of the Offering Memorandum; and
- iv) Requisite application fee, as set out in the Third Schedule.

**36. What is the application process for an ITO?**

See Part IV, DARE Act, which outlines the requirements and application process to issue a digital token in or from within The Bahamas.

**37. How many token offerings can take place in one year?**

The DARE Act does not prescribe a maximum number of token offerings that can be conducted in one year.

**38. What information must be included in an Offering Memorandum?**

Sections 28 and 34, DARE Act, and the Second Schedule, outline what information must be included in an Offering Memorandum.

39. If an offering is over-subscribed, can we issue additional tokens under the same offering memorandum?

No. The issuer must close the offering or obtain written permission from the Commission to amend the terms and conditions of the offering.

## VI. Other

40. To whom can applicants and prospective applicants submit questions related to the DARE Act?

Questions or comments can be submitted to either the Supervision Department or the Commission's financial technology hub, SCB FITLink, via the below methods:

Telephone: (242) 397-4100

Email Addresses:

- Supervision Department [SupervisionDare@scb.gov.bs](mailto:SupervisionDare@scb.gov.bs).
- SCB FITLink: [FITLink@scb.gov.bs](mailto:FITLink@scb.gov.bs).

For more information, you can learn more about FITLink, here: <https://www.scb.gov.bs/wp-content/uploads/2019/07/Securities-Commission-Launches-FinTech-Hub-Press-Release.pdf>.

41. Does the Commission allow applicants to provide a demo of the business model prior to making an application?

The Commission encourages applicants to set up an initial meeting in order to review their business proposal, and the application to be submitted. Once the application has been submitted, the Commission may request additional meetings to provide further explanation.

42. Does the Commission provide either banking or law firm recommendations?

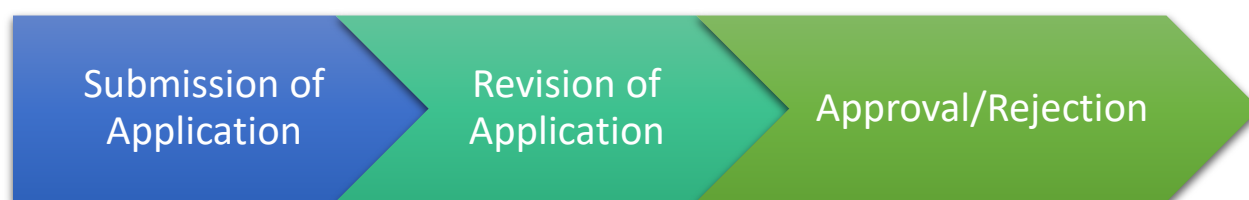
The Commission does not provide law firm recommendations. Please see a list of attorneys in good standing with The Bahamas Bar Association, here: <https://bahamasbarassociation.com/service/members-directory/>.

The Commission also does not provide commercial bank recommendations. Please see a list of banks in good standing with the Central Bank of The Bahamas, here: <https://www.centralbankbahamas.com/faq-s>.

Please note that the Commission provides these link for information purposes only and neither endorses nor assumes responsibility for the professional ability or integrity of the persons or firms whose names appear on the websites.

## Annex II: DARE Application Process for a Digital Asset Business

Figure 1: Flowchart of DARE Application Process



### Step 1: Submission of Application Form

Prospective DARE registrants may begin the application process by submitting their application forms and other supporting documents to the Supervision Department. For applicants, the necessary application forms and supporting documents are outlined in Sections 8, 9, and 15 of the DARE Act, and include:

- The completed requisite application form<sup>13</sup> for either:
  - A digital token exchange;
  - Other types of DABs; and
  - Existing registrants of the Commission wishing to register as a DAB.
- A copy of a detailed and current business plan with projections for the next three years;
- A certified copy of the Certificate of Incorporation, Memorandum and Articles of Association, Register of Directors and Officers, Register of shareholders or equivalent documents;
- A schedule of proposed fees;
- Rules of the exchange, if applicable;
- Information of the beneficial owners of the DAB; and
- Information on the DAB's Chief Executive Officer and Compliance Officer.

The Commission reserves the right to request additional information to aid in the decision making process during the application process. All applicants may submit the application and supporting documents to the Supervision Department either via email or physically at the Commission's premises.

Once the application form and supporting documents are submitted, the Supervision Department sends an acknowledgement email and assigns a Supervision Officer to begin the application review process.

Applicants that may have questions about the application process, including questions regarding the type of application they are to submit, are free to contact the Supervision Department to set up a meeting prior to submitting an application.

### Step 2: Revision of the Application

The application review timeline officially commences once a **completed** application form is submitted. This means that the application and all supporting documents are complete and void of critical errors.

<sup>13</sup> Application forms are found in the Schedules to the DARE Act.

Once the review process begins, the Supervision Department may identify concerns with the application and/or supporting documents, and reserves the right to contact the applicant for clarification of the concerns/issues identified.

Once the Supervision Department is satisfied with submitted documents, the internal review process continues, which includes various checks, reviews, and internal approvals. The Supervision Department follows internal standard operating procedures and checklists to determine whether an application should be approved or denied. Some elements taken into consideration during the application process includes:

- Whether the DAB has appropriate and sufficient systems and controls to perform its functions and manage its risks;
- Whether the DAB has the ability to meet solvency standards and levels of capital; and
- Whether the DAB has designed a digital asset framework that addresses, but is not limited to:
  - Technology and security;
  - Governance;
  - Scalability;
  - Identified risk framework;
  - Data protection and storage.

### **Step 3: Approval/Rejection**

Once the review process is complete, the applicant is sent a letter of approval or rejection. There are three types of approval that an applicant may receive:

1. Absolute Approval – The DAB may start business operations.
2. Conditional Approval – The DAB may start business operations, but all deficiencies must be rectified in the timeframe stipulated in the approval letter.
3. In Principle Approval – The DAB may not start business operations until all deficiencies have been rectified as stipulated in the approval letter, or they receive a Conditional Approval at a minimum.

### **Process in case of a Rejection**

If an application has been denied by the Commission, the Supervision Department will contact the applicant to express concerns and allow them to make additional submissions. If the additional submissions are insufficient, the applicant will receive a letter of denial.

Upon receipt of the letter, the applicant has two courses to appeal:

1. The applicant may appeal to the Board of the Commission in the first instance; and
2. The applicant may apply for judicial review in the second instance. The judicial review will not overturn the Commission's decision, but it may ask the Commission to review its process in making the decision.