



BIFS 2023 Financial Services Week Conference

Theme: Continuing Your Professional Development:
Re-engaging and Progressing Your Performance in
Financial Services

Digital Assets and Registered Exchanges Bill 2023

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Grand Hyatt, Baha Mar
Wednesday 24 May 2023
11:45 a.m. to 12:15 p.m.

- Initial Development of DARE Act 2020
- Background and Scope
- Review and Amendment
- Summary of Amendments
- Other Aspects of DARE Bill 2023
- Consultation on the DARE Bill 2023

- Bespoke legal and regulatory environment for digital assets
- The DARE framework takes an “activities-based” and “risk-based” approach to supervision.
- Benchmarked 13 jurisdictions, considering various regulatory approaches -
 - Benchmarking led by the Commission’s Policy and Research Unit;
 - Research supported by a leading international consultant.

Meanwhile...

- Securities and other financial regulation does not clearly cover the scope for digital assets.
- Digital Asset Businesses expressing interest in setting up businesses from or within The Bahamas.
- DABs outside the perimeter of regulation not expressly prohibited (regulatory clarity).

WHAT DOES DARE DO?

- Came into effect on 14 December 2020
- Legislation created a legal definition for digital assets and a regulatory framework for DABs and digital asset activities in The Bahamas along with **AML/CFT/CPF obligations**.

The DARE Act applies to:

- **Digital Assets**, broadly defined as a digital representation of value or a right which may be transferred and stored electronically, using DLT or similar technology.
- **Digital Asset Business** carrying out digital asset activities by way of business in or from within The Bahamas.
- **Issuers** of Digital Assets in or from within The Bahamas

The DARE Act does not apply to:

- **Individuals** acting in their professional capacity on behalf of persons engaged in procuring the organisation, promotion, issuance, sale or trade of digital assets.
- Transactions or digital assets as part of **an affinity or rewards program**, which value cannot be taken from or exchanged for legal tender, bank credit or any digital asset are not in scope.
- **Digital assets used within a game**, sold by the publisher or offered on a gaming platform are not in scope.
- **NFTs which are not used for payment or investment purposes** and are not digital representations of any other financial asset are not in scope.
- **Central Bank Digital Currencies**, which are electronic representations of fiat currency are not in scope.



- In April 2022 the Commission began consolidating its ongoing review of DARE.
- Commission engaged international law firm Hogan Lovells to draft DARE Bill 2023; will collaborate until completed.
- DARE Bill 2023 will establish **new regulatory frameworks** as a result of recent growth and development in the digital asset space.
- Ensures the regime for DABs remains **current, competitive,** and **compliant with international best practices.**

Key Objectives of DARE Bill 2023

- Robust Risk Management
- Consumer and Investor Protection
- Market Growth and Innovation

The DARE Bill 2023 captures an extensive range of digital asset activities, and in this context is more comprehensive relative to international standards.

A **digital asset business** includes any person who as a business conducts one or more of the following activities:

- Executing orders for digital assets;
- Placing digital assets;
- Providing the reception and transmission of orders for digital assets;
- Providing transfer services;
- Providing the custody of digital assets;
- Providing custodial wallet services;
- Providing advice on digital assets;
- Providing management of digital assets;
- Providing DLT network node services;
- Providing anonymity-enhancing services;
- Providing digital asset derivative services;
- Providing staking services;

Additional requirements for DABs operating a digital asset exchange

- A digital asset exchange which additionally provides **custody of digital assets or custodial wallet services** on behalf of third parties, must also comply with all the requirements under the DARE Act applicable to DABs providing custody of digital assets or digital wallet services (as applicable).
 - **Includes exchanges that provide digital wallet services as an ancillary service to the exchange, which stores private cryptographic keys and enables users to send, receive, and monitor their digital assets.**
- Operators of a digital asset exchange must ensure that the **systems and controls** used in its activities are adequate and appropriate for the scale and nature of its business.
- The Commission may **prescribe additional rules** applicable to digital asset exchanges.



A single bespoke framework

- The relevant provisions applicable to persons providing custody or wallet services under the FCSPA 2020 are repealed.
- Custody of digital assets and custodial wallet services will be in scope of DARE Bill 2023.

Segregation of client assets

The regulatory framework concerning custodial services contains several new requirements, specifically:

- The segregation of client assets from the assets belonging to the DAB or other non-client assets
- Maintaining separate accounts, to ensure client assets are insulated from creditors
- Where client assets are held under an omnibus arrangement, the custodian or wallet provider must maintain appropriate procedures to be able to identify the digital assets and transactions belonging to each individual client.

A robust approach to protecting client interests

The DARE Bill 2023 additionally sets out a robust framework specific to:

- DABs providing custody or custodial wallet services, such as in relation to their ability to return client assets, maintain procedures to ensure continued safekeeping and accessibility of digital assets in event of unexpected disruptions, and the required client disclosures.



The DARE Bill 2023 captures the activity of staking digital assets belonging to clients or the operation or management of a staking pool, as a business. The intention is not to capture individuals staking on DLT-based networks on their own account.

A dedicated disclosure regime

DARE registrants authorised to provide staking services are required to disclose certain information to clients and to the Commission, including:

- Summary of the terms of the client agreement;
- Details regarding the staking protocol;
- Details of how digital assets are staked (including how and for what period of time staked assets are “locked up”);
- Details of rewards or interest to be earned through staking;
- Details of any penalties which may be imposed through staking;
- Where applicable, how staking participants are chosen to validate; and
- Any other information as may be required by the Commission from time to time.

The DARE Act 2020

- Persons issuing/registering digital assets in or from within The Bahamas must comply with a number of obligations aimed at protecting investors, primarily as it relates to the initial token offering and the registration of existing tokens.

The DARE Bill 2023 New Provisions

- **Voluntary registration regime** for persons who issue digital assets from outside of The Bahamas to persons outside of The Bahamas or otherwise not in scope of the issuer requirements under the new DARE Act.
- **Offering memorandum exemption**, e.g.
 - The digital assets are distributed as a reward for the maintenance of the DLT or the validation of transactions; or
 - The digital assets are offered to fewer than 150 natural or legal persons.
- **Continuing obligations to disclose**
- **The Commission will not accept a privacy token for registration under the Act**
- **Provisions for stablecoin regulation**



Additional requirements for stablecoin issuers

- Stablecoin issuers must back stablecoins with reserve assets, at all times;
- Reserve assets may consist of any combination of either fiat currencies, legal tender, commodities, digital assets, or any other form of reserve asset not prohibited by the Commission;
- Reserve assets must be available for examination and verification of the issuer's disclosures upon request of the Commission;
- Issuers must publish any event likely to have an impact on the value of the stablecoin or on the reserve asset;
- Redemption of stablecoins shall be subject to reasonable, non-burdensome conditions.

Algorithmic stablecoins

The issuance of algorithmic stablecoins (i.e. stablecoins that aim to maintain a stable value via protocols that provide for the increase or decrease of the supply of such stablecoins or other digital assets in response to changes in demand) is prohibited.



- Non-fungible tokens (NFTs) are categorised between whether they are financial or consumer assets, with financial NFTs now falling within the scope of regulation.
- Standards for addressing conflicts of interest and/or connected third party relationships are established.
- Development and dissemination of software in and of itself does not constitute a digital asset activity.
- The new Bill provides certain restrictions on proof of work mining of digital assets in or from within The Bahamas.
- The Commission intends to prescribe **minimum regulatory capital requirements** which will have regard to the specific risks applicable to the registrant—the Act sets out a non-exhaustive list of factors which the Commission may consider.
- With respect to **financial reporting obligations**, the Act provides the flexibility for the Commission to prescribe different reporting requirements for different categories of registrant.

- The public consultation documents are available on the Securities Commission of The Bahamas website www.scb.gov.bs/legislative-framework/consultation-documents .
- Interested parties may submit their comments via email to DAREconsultation@scb.gov.bs indicating “Public Consultation” in the subject line.
- Where feedback relates to specific sections of the Bill, these should be identified (e.g. Section 2(a)(i)).
- All feedback must be received by **Wednesday 31 May 2023**.

Thank you!



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