

**A BILL**

**entitled**

**DIGITAL ASSET BUSINESS AMENDMENT ACT 2023**

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SCHEDULE  
CONSEQUENTIAL AMENDMENTS

WHEREAS it is expedient to amend the Digital Asset Business Act 2018 to provide for a new class of digital asset business, to enhance oversight by the Bermuda Monetary Authority of digital asset service providers and for purposes connected with and incidental to those matters;

Be it enacted by The King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

**Citation**

1 This Act, which amends the Digital Asset Business Act 2018 (the "principal Act"), may be cited as the Digital Asset Business Amendment Act 2023.

**Amends section 2**

2 (1) The principal Act is amended in section 2(1) as follows—  
(a) by repealing the definition of "cyber security event";

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- (b) by repealing and replacing the definition of “cyber reporting event” as follows—

“cyber reporting event” means any act that results in unauthorized access to, disruption, or misuse of the electronic systems or information stored on such systems of a licensed undertaking including any breach of security leading to the loss or unlawful destruction or unauthorized disclosure of or access to such systems or information where—

- (a) a cyber reporting event has the likelihood of adversely impacting clients;
  - (b) a licensed undertaking has reached a view that there is a likelihood that loss of its system availability will have an adverse impact on its business;
  - (c) a licensed undertaking has reached a view that there is a likelihood that the integrity of its information or data has been compromised and may have an adverse impact on its business;
  - (d) a licensed undertaking has become aware that there is a likelihood that there has been unauthorized access to its information systems whereby such would have an adverse impact on customers or clients;
  - (e) a licensed undertaking has become aware that there is a likelihood that a digital asset being kept in custody has been compromised;
  - (f) an event has occurred for which notice is required to be provided to a regulatory body or government agency;”;
- (c) in the definition of “digital asset” by deleting the words “but does not include—”, and repealing paragraphs (e) and (f);
- (d) by inserting in the appropriate alphabetical order the following—

“digital asset lending transaction” means a transaction by which a counterparty transfers or lends digital assets to a borrower subject to a commitment that the borrower will return equivalent digital assets with or without interest or premium on a future date; or when requested to do so by the lender;

“digital asset repurchase transaction” means a transaction governed by an agreement by which a counterparty transfers digital assets to a counterparty subject to a commitment to repurchase them or substituted digital assets of the same description at a specified price with or without premium, on a future date specified, or to be specified from that counterparty;

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“digital asset lending or digital asset repurchase transactions service provider” means a person facilitating digital asset lending or digital asset repurchase transactions either as principal or agent;”.

(2) The principal Act is amended in section 2(2), by substituting a semicolon for the full stop at the end of paragraph (e) and inserting after paragraph (e) the following—

“(f) operating as a digital asset lending or digital asset repurchase transactions service provider.”.

### **Amends section 4**

3 The principal Act is amended in section 4 by repealing subsection (5).

### **Amends section 7**

4 The principal Act is amended in section 7(1)(d) by deleting the word “cybersecurity” and substituting the words “cyber risk”.

### **Amends section 10**

5 The principal Act is amended in section 10(2) by substituting a semicolon for the full stop at the end of paragraph (e) and inserting after paragraph (e) the following—

“(f) operating as a digital asset lending or digital asset repurchase transactions service provider.”.

### **Amends section 11**

6 The principal Act is amended in section 11 by repealing and replacing subsection (5) as follows—

“(5) An exemption order made under this section may specify activities that shall not constitute digital asset business for the purposes of section 10(1).”.

### **Amends section 13**

7 The principal Act is amended in section 13—

- (a) in subsection (3), by inserting after the word “limitations” the words “or conditions”;
- (b) in subsection (4), by inserting after the word “limitation” the words “or condition”.

### **Amends section 15**

8 The principal Act is amended in section 15(2)(b)(iii) by inserting after the words “Class M”, the words “or Class T”.

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### **Amends section 20**

9 The principal Act is amended in section 20(3) by substituting a semicolon for the full stop at the end of paragraph (f) and inserting after paragraph (f) the following—

“(g) the licensed undertaking ceases to be eligible for an exemption from licensing under the Investment Business Act 2003, due to its investment business no longer qualifying as ancillary to the digital asset business for which it is licensed under this Act.”.

### **Amends section 71**

10 The principal Act is amended in section 71 by inserting after subsection (2) the following—

“(3) The requirement to maintain client transaction records under subsection (2) shall not apply to a person holding a Class T licence.

(4) Notwithstanding subsection (3), a person holding a Class T licence must maintain a record of both its client and its own transactions at its principal place of business for a period of not less than five years beginning from the date the transaction occurred.”.

### **Consequential amendment of Bermuda Monetary Authority Act 1969**

11 The amendments set forth in the Schedule shall have effect.

### **Commencement**

12 This Act comes into operation on such day appointed by the Minister by notice published in the Gazette.

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**SCHEDULE**

(section 11)

**CONSEQUENTIAL AMENDMENTS**

**Amends Bermuda Monetary Authority Act 1969**

1 The Bermuda Monetary Authority Act 1969 is amended in the Fourth Schedule under the heading “Digital Asset Business Act 2018” in paragraph 2 as follows—

- (a) by renumbering subparagraph (c) as subparagraph (d);
- (b) by renumbering subparagraph (d) as subparagraph (e) and in the renumbered subparagraph (e), by deleting the words “notwithstanding subparagraphs (a) to (c) above” and substituting the words “notwithstanding subparagraphs (a) to (d) above”;
- (c) by inserting as subparagraph (c) the following —

“

	(c)	The fee payable by a licensed undertaking carrying on digital asset business in accordance with section 10(2)(f) shall be the lower of the amounts calculated under paragraphs (i) and (ii) where –		
		(i) equals \$450,000; and		
		(ii) equals the higher of \$100,000 and 0.00075 multiplied by the estimated client receipts.		

”.

**Amends Bermuda Monetary Authority Act 1969**

2 The Bermuda Monetary Authority Act 1969 is amended in the Fourth Schedule under the heading “Digital Asset Business Act 2018” in paragraph 3 as follows—

- (a) by renumbering subparagraph (c) as subparagraph (d);
- (b) by renumbering subparagraph (d) as subparagraph (e), and in the renumbered subparagraph (e), by deleting the words “notwithstanding subparagraphs (a) to (c) above” and substituting the words “notwithstanding subparagraphs (a) to (d) above”;
- (c) by inserting as subparagraph (c) the following —

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“

	(c)	The fee payable by a licensed undertaking carrying on digital asset business in accordance with section 10(2)(f) shall be the lower of the amounts calculated under paragraphs (i) and (ii) where—		
		(i) equals \$450,000; and		
		(ii) equals the higher of \$100,000 and 0.00075 multiplied by the client receipts.		

”.

## **DIGITAL ASSET BUSINESS AMENDMENT BILL 2023**

### **EXPLANATORY MEMORANDUM**

This Bill seeks to amend the Digital Asset Business Act 2018 (the “Act”) to provide for a new class of digital asset business, to enhance oversight by the Bermuda Monetary Authority of digital asset service providers and for purposes connected with and incidental to those matters.

Clause 1 provides the title of the Bill.

Clause 2 amends section 2 of the Act by inserting definitions of “digital asset lending transaction”, “digital asset repurchase transaction” and “digital asset lending or digital asset repurchase transactions service provider”, and by inserting definitions with respect to the activities of “digital asset lending” and “digital asset repurchase transactions service provider”. This clause also refines the definition of “cyber reporting event” to provide further clarity with respect to such events.

Clause 3 repeals section 4(5) of the Act as the intention is that this matter will henceforth be set forth in an Exemption Order.

Clause 4 amends section 7(1)(d) of the Act to provide that rules will be made in relation to cyber risk, instead of cybersecurity.

Clause 5 amends section 10 of the Act to include the new digital asset business activities of digital asset lending or digital asset repurchase transactions service provider, as activities for which the Authority may grant a licence to an undertaking under the Act.

Clause 6 amends section 11 of the Act as the intention is that exemptions and exclusions will henceforth be embedded in an Exemption Order.

Clause 7 amends section 13 of the Act to clarify that the supervisory powers exercised by the Authority include power to impose and vary conditions on the grant of a licence.

Clause 8 amends section 15(2)(b) of the Act to set forth the requirement for the Authority to publish certain information on its website.

Clause 9 amends section 20 of the Act to impose an obligation on senior representatives of a licensed undertaking which has been exempted from licensing requirements under the Investment Business Act 2003 due to carrying on investment business in an ancillary manner to its digital asset business, to submit a report to the Authority where the licensed undertaking ceases to carry on such business in an ancillary manner.

Clause 10 amends section 71 of the Act to impose the obligation for a Class T licensee to maintain client transaction records at its principal place of business, as the head office requirement does not apply to such licensees.

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Clause 11 and the Schedule effect consequential amendments to the Fourth Schedule to the Bermuda Monetary Authority Act 1969 under the heading “Digital Asset Business Act 2018” to introduce new fee payments in respect of the new licensing class.

Clause 12 provides for commencement.