

Statutory Instruments of Anguilla: /2018

Gazette Dated: , 2018

ANGUILLA UTILITY TOKEN OFFERING ACT, 2018 (ACT NO. 4/2018)
**ANGUILLA UTILITY TOKEN OFFERING (APPLICATION PROCESS)
REGULATIONS, 2018**

Regulations made by the Governor on advice from the Commission under section 27 of the Anguilla Utility Token Offering Act, 2018 (Act No. 4/2018).

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Regulations made by the Governor on advice from the Commission under section 27 of the Anguilla Utility Token Offering Act, 2018 (Act No. 4/2018).

Interpretation

1. In these Regulations—

“Act” means the Anguilla Utility Token Offering Act;

“Commission” means the Anguilla Financial Services Commission established under section 2 of the Financial Services Commission Act, R.S.A. c. F28;

“custodian” means a person who contracts with an issuer and/or a utility token offering administrator to provide the service of storing subscription funds on behalf of the issuer;

“dollar” or “\$” means a dollar in the currency of the United States of America;

“initial utility token offering” means an initial offer to the public to subscribe for the purchase of utility tokens to be issued by an issuer made by the issuer to any person who is not connected to the issuer;

“issuer” means a person undertaking an initial or secondary utility token offering;

“secondary utility token offering” means an offer to the public to subscribe for the purchase of utility tokens to be issued by an issuer made by the issuer to any person who is not connected to the issuer subsequent to an initial utility token offering by such issuer, whether or not the initial utility token offering was made under the Act;

“subscriber” means a person who subscribes for, purchases or otherwise obtains a utility token (or any part thereof) at an initial or secondary utility token offering in consideration of the subscription price;

“subscription funds” and “subscription price” means the value provided or to be provided by a subscriber, in the medium of exchange stipulated by an issuer, in consideration for the subscription of a utility token at an initial or secondary utility token offering conducted by such issuer.;

~~“\$” means the currency of the United States of America.~~

Application for registration of an issuer

2. An application for registration of an issuer under section 6 of the Act shall be made in the forms as set out in Schedule 1 and Schedule 4 (where applicable).

Application for licensing of a utility token offering administrator

3. An application for the licensing of a utility token offering administrator under section [187](#) of the Act shall be made in the forms as set out in Schedule 2 and Schedule 4 (where applicable).

Fees

4. The payment of fees by applicants under section 2 above [is](#) as set out in Schedule 3.

Application for approval of issue or transfer of shares or other interests

5. A [person](#) who has been granted a licence to act as a utility token offering administrator under section [18](#) of the Act shall apply for an approval of any issue or transfer of shares or other interests in the form as set out in Schedule 5.

Application for approval of directors

6. A [person](#) who has been granted registration under section 6 [of the Act](#) or a licence under section [18](#) of the Act shall apply for approval of a director in the form as set out in Schedule 6.

Citation

7. These Regulations may be cited as the Anguilla Utility Token Offering (Application Process) Regulations, 2018

SCHEDULE 1

(Section 6)

APPLICATION TO BE REGISTERED AS AN ISSUER*Notes*

Complete all sections giving reasons for non-compliance, if any, and attaching supplementary information where appropriate.

Completed forms should be submitted to:

FINANCIAL SERVICES COMMISSION
THE VALLEY ANGUILLA
Tel: 1 264 497 5881
Fax: 1 264 497 5872

And be accompanied by the non-refundable Application Fee set out in Schedule 3

1. State the type of entity:

2. Name of the issuer:
(Please include certified copies of constitutional documents)

3. Address of the applicant's place of business in Anguilla.

4. Name and address of the person(s) (individual or otherwise) resident in Anguilla who is/are authorized to represent the applicant and to accept service of documents on its behalf.

5. Address of any place(s) of business that the applicant may have outside of Anguilla (f applicable):

6. Date the issuer commenced operations (if applicable):

7. Who are the directors of the issuer? Please give full names and addresses.

8. State the name, jurisdiction of incorporation and address of place of business of the utility token offering administrator appointed under section 15 of the Act.

9. Is the issuer or any affiliated company currently registered, licensed or authorized under any law or regulations relating to issuers, collective investment schemes/funds or securities in any country or jurisdiction or has the issuer or any affiliate been so registered, licensed, recognized or authorized in the past? (YES or NO):

If YES please supply full details:

10. Has the issuer, or any of its officers, managers or administrators been the subject of:

(i) A refusal of an application for registration, licensing or authorization with respect to an initial utility token offering, or operation as a registration manager or administrator with respect to an initial utility token offering, by any authority in any country or jurisdiction?
OR

(ii) Suspension, cancellation or revocation of such registration, licensing or authorization in any country or jurisdiction?

If YES, to either of these questions, provide full details including reasons.

11. State the address in Anguilla where the issuer's accounting records and financial statements (or copies thereof) will be kept.

12. Specify name and office address of auditors and attach evidence of the auditor's acceptance of their appointment or their willingness to act.

13. Specify name and office address of legal counsel and attach evidence of their willingness to act.

14. Specify the uniform resource locator (URL) at which information required under the Act shall be posted and maintained.
15. Please provide a white paper which sets out at a minimum the information required under section 2 of the Anguilla Utility Token Offering (White Paper) Regulations, 2018
16. Please provide evidence of approval of the white paper by the directors of the issuer.
17. Please provide a legal opinion from a law firm acceptable to the Commission that the relevant token is a utility token in accordance with the Act.
18. Please provide a report from a technical expert acceptable to the Commission that the technical components of the white paper are reasonable and once completed will satisfactorily address their stated purposes in the white paper.
19. Please provide a statement of the financial, technical and human resources and administrative facilities available to the applicant or that will be available to the applicant for competent and efficient conduct of the intended project.
20. Please provide an executed escrow agreement(s) that is acceptable to the Commission among the utility token offering administrator, issuer and a custodian acceptable to the Commission that includes the provisions governing the receipt, maintenance and release of subscription funds, including security provisions sufficient to ensure that the funds cannot be accessed by the custodian, the utility token offering administrator, the issuer or any third party from the time the funds are received by the custodian to the time they are received from the custodian by the issuer or as a refund by subscribers.
22. Please provide written confirmation from the utility token offering administrator appointed under section 15 of the Act that the proceeds of the initial or secondary offering shall be released in accordance with the terms of the white paper and/or any further or other conditions imposed by the Commission and accepted by the issuer and utility token offering administrator.
23. Please provide written confirmation by the utility token offering administrator appointed under section 15 of the Act that the AML/CFT due diligence procedures applicable to the offering comply with the requirements of the Act and AML/CFT Regulations thereunder.
24. Please provide written confirmation from the utility token offering administrator that all AML/CFT due diligence information ~~and material~~ collected ~~to comply in accordance with the requirements of the Act~~

and the AML/CFT Regulations thereunder shall be accessible to ~~maintained by the administrator~~ in Anguilla.

25. Schedule 4 must be completed by each director and by each shareholder holding 10% or more of the net equity of the issuer or its material affiliates relating to the development, operation and management of the blockchain project. Application is accordingly hereby made for the registration of the issuer specified above and it is certified that all the particulars contained in the Application and in the documents accompanying it or otherwise furnished in the support hereof are true and correct and that any change to the information submitted will be communicated to the Commission forthwith.

This Application shall be submitted by a licensed Utility Token Offering Administrator, for and on behalf of the issuer specified above.

Dated thisday of 20.....

.....
Name of Applicant

By Director/Secretary or other duly authorized person

Signed

AUTHORISATION TO SEEK ADDITIONAL INFORMATION

I/We hereby authorize you to contact all relevant authorities and authorize said authorities to provide you with whatever information you may request.

Signed

SCHEDULE 2(Section [17](#))**APPLICATION TO BE LICENSED AS A UTILITY TOKEN OFFERING ADMINISTRATOR****Notes**

Complete all sections giving reasons for non-compliance, if any, and attaching supplementary [information](#) where appropriate.

Completed forms should be submitted to:

FINANCIAL SERVICES COMMISSION
THE VALLEY ANGUILLA
Tel: 1 264 497 5881
Fax: 1 264 497 5872

And be accompanied by the non-refundable Application Fee set out in Schedule 3.

1. Name of the Applicant:
2. Type of Licence: Utility Token Offering Administrator
3. Registered Office of the Applicant:
4. Business Address (if different):
5. Contact Person for this application along with Contact Details including telephone and fax numbers and email address:
6. Date of incorporation:
7. Place of incorporation:
(Utility Token Offering Administrator must be incorporated in Anguilla)

8. Company registration number:

9. Name and Statute under which the Applicant is formed:

10. State the date of the end of the financial year:

11. Name and address of the Applicant's auditor. State the contact person:

12. Name and address of the Applicant's legal counsel. State the contact person:

13. State the authorized share capital:

14. State the paid-up share capital:

15. State the method by which paid-up share capital was raised:

16. (If applicable) state the amount and nature of the loan capital:

17. State the name, addresses and number of shares held by each shareholder of Applicant:
(If nominees hold shares by a corporate secretary, entity or trust, state who holds the ultimate beneficial interest).

18. State all the directors of the Applicant [Note: the appointment of a ~~non-Anguillian~~ non Anguillian corporate director is not acceptable for an applicant for licensing].

19. Name and addresses of any Regulatory Authority to which the Applicant or other group companies report. (Note: The Commission may seek references from any Regulatory Authority or other agency).

21. Has the Applicant, in the last seven years, received an indication from any bank that an account has not been kept in a satisfactory manner? If so, explain the circumstances.

22. Has the Applicant or any of its directors been the subject of a:

(a) Refusal of an application for registration, licensing or authorization by any authority in any country or jurisdiction?

(b) Suspension, cancellation or revocation of registration, licence, or authorization by any authority in any country or jurisdiction?

(c) Regulatory or enforcement action by any authority in any country or jurisdiction?

Provide full details including reasons for the answer to each question if the answer is “YES”

23. Has a judgment been rendered or any suit, action or proceedings pending against the Applicant or any director thereof, in civil proceedings in any court or tribunal in any country or jurisdiction which has been or is based in whole or in part on fraud, theft, deceit, misrepresentation, misappropriation or similar conduct?

24. Has any director of the Applicant been, or is being, charged, indicted or convicted in any country or jurisdiction for any offence in any criminal or civil proceedings in relation to fraud, theft, deceit, misrepresentation or misappropriation arising out of operating or dealing in any initial token offering, mutual funds, collective investment schemes/funds, securities, banking or insurance business or company management?

Provide full details if the answer is “YES.”

- 25. Has a director of the Applicant, in any country or jurisdiction been -
 - (a) Declared bankrupt or been a party to bankruptcy or insolvency?
 - (b) Subject to proceedings relating to winding-up, dissolution or creditors' arrangements?
 - (c) Subject to proceedings relating to receivership or creditors' compromise?

Provide full details if the answer to any of the above is YES.

26. Provide details of any matter that Applicant (or representative of Applicant completing this Schedule) believes may be relevant to the assessment of the fit and proper status of the Applicant or any of its directors.

27. All directors of the applicant must complete Schedule 4.

It is certified that all the particulars contained in the Application and in the documents accompanying it or otherwise furnished in the support hereof are true and correct and that any change to the information submitted will be communicated immediately to the Commission.

Dated thisday of 20.....

.....
Name of Applicant

By Director/Secretary or other duly authorized person

Signed

AUTHORISATION TO SEEK ADDITIONAL INFORMATION

I/We hereby authorize you to contact all relevant authorities and authorize said authorities to provide you with whatever information you may request.

Signed

SCHEDULE 3(Sections 5, 6, 17, 19)**FEE SCHEDULE**

Application fees		
(a)	<u>On</u> Application for Registration under section 5	US\$ 10,-000
(b)	<u>On</u> Application for a Licence under section <u>17</u>	US\$ <u>5,000</u> 52,500

Registration Fee - Issuer	
Fee payable <u>for</u> Registration of Issuer	US\$ 20,000 <u>where the proceeds to be raised in the offering are</u> less than or equal to US\$ 100 <u>million</u> US\$ 30,000 <u>where the proceeds to be raised in the offering are more than</u> <u>US\$ 100 million</u>

<u>Annual Fee – Issuer (other than for the year in which the registration is granted)</u>	<u>US\$10,000</u>
<u>Annual Fee – Utility Token Offering Administrator (other than for the year in which the licence is granted)</u>	<u>US\$23,000</u> 3,000

Date by which Annual Fee must be paid:

In accordance with sections 8 and 19(2) of the Act, the annual fee payable by each of an issuer and a utility token offering administrator respectively shall be paid on or before the 15th day of January of each year.

If the annual fee is paid after the 15th day of January, the Administrative Penalties Regulations, R.R.A. F28-2 will apply in relation to late payment penalties.

SCHEDULE 4(Section 5, 17)**INFORMATION IN SUPPORT OF AN APPLICATION TO REGISTER AN ISSUER OR FORA
LICENCE AS A UTILITY TOKEN OFFERING ADMINISTRATOR**

Details required from each (i) director of an Applicant company; (ii) shareholder holding 10% or more of the net equity of the Applicant or its material affiliates relating to the development, operation and management of the blockchain project, and (iii) such other person(s) as the Commission may require.

1. Full name:
2. Former name (if different from name given above):
3. Date and place of birth:
4. Nationality (if naturalized attach a copy of the naturalization certificate, and state former nationality):
5. Full home address at present time:
6. List home addresses in full for previous five years where different from that given above, and give the related dates:
7. Marital status. If married give full name of spouse including maiden name of wife.
8. Passport particulars (enclose copies of relevant pages).
9. Please provide a detailed curriculum vitae giving full details of your profession or occupation over the past ten (10) years; include the names and addresses of all employers and the nature of your employment give all relevant dates and state briefly the reasons for changes:

10. Give a list of all companies in which you have held or hold an interest of 25% or more during the past ten years. Give brief particulars of the nature of the business of all such companies:

11. Give details of academic and professional qualifications and date(s) obtained:

12. Have you ever been employed in, or had an interest in, in any country, -

(a) A financial services activity -

OR

(b) A gambling activity -

(State YES or NO).

13. In relation to the proposed operation are you acting wholly or partly as a nominee or agent for, or trustee of another person, persons or organizations? (State YES or NO):

If YES, give the name and address of the person, or persons, or organizations and the precise nature of your relationship and/or the arrangement:

14. Give the full details of your financial interest in the proposed operation, and the percentage ownership that this will represent:

15. Have you or your spouse ever been declared bankrupt or been the subject of a bankruptcy petition, or ever received a judgment against you in a civil court? (State YES or NO):

If YES give full details:

16. Has any company or firm of which you or your spouse was a shareholder, partner or director been the subject of a winding up petition? (State YES or NO):

17. Have you ever applied for a financial services licence in any other jurisdiction? (State YES or NO).

If YES state type of licence, name of company, location and period held and where granted:

18. Have you ever been the subject of an investigation in relation to a financial institution or a gambling or lottery business or been refused a financial services licence or had an interest in any entity that has been refused a licence or been subject to an adverse finding of suitability? (State YES or NO):

If YES to either of the above, state where, when and for what reason:

19. Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder, manager, officer or comptroller, anywhere, had its authorization revoked? If so give particulars.

20. Have you ever appeared before any licensing agency or similar authority for any reason whatsoever, for example as a witness? (State YES or NO):

If YES provide details:

21. Have you as an individual, member of a partnership, or owner, director or officer of a corporation, ever been a party to a lawsuit in relation to corporate, commercial or criminal matters as either a plaintiff, or defendant? (State YES or NO):

If YES give details below: (List all cases without exception, including bankruptcies):

Plaintiff/Defendant:

Court and Case Number: Location:

Result:

22. (i) Have you ever been convicted of any criminal offence in any country (excluding traffic offences);
or
- (ii) Have you ever been arrested, detained, charged, indicted or summoned to answer for any criminal offence (excluding traffic offences) including of which the result is still pending:

If you have answered YES to either (i) or (ii) please give details. (List all cases without exception):

Date of Arrest or Detention:

Age:

Charge:

Location:

Result:

23. Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder, manager, officer, or comptroller, anywhere, been compulsorily wound up or made any compromise or arrangement with its creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims, either while you were associated with it or within one year after you ceased to be associated with it? If so, give particulars.

24. Will you participate actively in the management or operation of the proposed operation? (State YES or NO):

If YES give full details:

25. Has your interest in the proposed operation been assigned, pledged or hypothecated to any person, persons, firms, partnerships or companies; or have you entered into any agreement, whereby your interest is to be assigned or pledged or sold either wholly or in part? (State YES or NO):
26. Have you made any arrangements for persons, firms or companies to advance money, or other equity, to you to assist in financing your investment in the proposed operation? (State YES or NO):
27. Do your assets exceed your liabilities, including contingent liabilities, and are they likely to remain so for the foreseeable future? (State YES or NO):
28. If Application is for licensing of a Utility Token Offering Administrator, explain how you intend to finance your investment in the proposed operation, if applicable:

- 29. Give the names, addresses and telephone numbers of three referees. Referees should not be relatives. They should be told that the Commission might wish to contact them.

It is certified that all the particulars contained in this information declaration and in the documents accompanying it or otherwise furnished in the support hereof are true and correct.

Dated thisday of 20.....

.....
Name

By Director/Secretary or other duly authorized person

Signed

AUTHORISATION TO SEEK ADDITIONAL INFORMATION

I/We hereby authorize you to contact all relevant authorities and authorize said authorities to provide you with whatever information you may request.

Signed

SCHEDULE 5

(Section 27)

APPLICATION FOR APPROVAL OF ISSUE OR TRANSFER OF SHARES OR OTHER INTERESTS WITH RESPECT TO LICENSED UTILITY TOKEN OFFERING ADMINISTRATOR

Financial Services Commission
The Valley
Anguilla

Dear Sir

Re: Name of company

We apply herewith for your approval of the issue/transfer/ other dispositions* of shares/ other interests* in the above-mentioned company.

Name and address of allottee or transferee of shares or other interests*

If the interests being issued, transferred or otherwise disposed of are not shares, please give a description thereof*

Number of shares and/or percentage of total interests to which application relates

We attach Schedule 4 of these Regulations (Information in support of an Application) duly completed by any new allottee or transferee.

Dated thisday of 20.....

Yours faithfully

* Complete and/or delete as appropriate.

SCHEDULE 6

(Section 27)

APPLICATION FOR APPROVAL OF DIRECTORS

Financial Services Commission
The Valley
Anguilla

Dear Sir,

Re:

We apply herewith for approval for the appointment of

_____ * as a director of this licensed institution

We attach herewith Schedule 4 (Information in support of an Application) of these Regulations duly completed with respect to the aforementioned person(s).

Dated thisday of 20.....

Yours faithfully

* *Completed and /or delete as appropriate*
