



**Anguilla Financial Services Commission**  
**Round 2 Consultation: Comments from and responses to industry**  
**Published 13 June 2023**

Section	Comment	Response
<b>S.1 Interpretation</b>		
"digital asset"	Amend paragraph (iii). "Utility token" now specifically defined in Section 1 (Interpretation)	This is noted. To be amended.
"digital asset business"	Amend virtual to digital in (iii), (iv), (v) and (vii)	This is noted. To be amended.
"digital custody wallet services"	No qualification required for custody/account at a regulated banking institution i.e no demonstrable need to limit to "safety deposit" facilities Amend virtual wallet to digital wallet	This is noted. To be amended.
"digital asset service provider"	Addition of exemption of general trust companies on same basis as exemption of regulated banking institutions Amend (e) participation in and provision of financial services related to an issuer's offer or (amend to an/or) sale of a virtual (amend to digital) asset.	To be reviewed further considering a policy decision is needed. This is noted. To be amended.
"digital asset services vendor"	The deleted section is too broad and would inadvertently capture persons who merely "advise" on the creation of blockchain projects - even though not related to digital asset management or investment	This is noted. To be amended.
<b>Suggested NEW section</b>	Definition of "digital asset exchange" ref in section 4(2)(c)  "digital asset exchange" means a digital market, exchange, place or facility which provides for bringing together users, on a regular basis, for the purpose of the pairing and trading of digital assets against other listed digital assets or money, ,and sets rules for the execution of such transactions or for the negotiation or conclusion of such pairing and trading;	This is noted. To be included.
"digital payment token"	Amend - "Utility token" now specifically defined in Section 1 (Interpretation)	This is noted. To be amended.
"special purpose depository services"	Delete - This is incongruous as creating software - as included in the definition of "special purpose depository services" in Section 1 (Interpretation) is specifically NOT subject to the FATF Recommendation X ref Section 4(2)(h)	This is noted. Paragraphs (a) and (b) will be removed; however given the possible risks exposures from service providers engaged in the services set out in (c) and (d), these paragraphs will remain.
"utility token"	"utility token" should be defined by reference to the AUTO Act - 1. To ensure consistency of definitions 2. Since the definition in this DABA makes reference to other terms (e.g. Utility Token Features) that are NOT defined in the DABA (but are defined in the AUTO Act) 3. The AUTO Act definition is currently being amended including updating of the definition of "utility token" 4. Future changes to AUTO Act or Utility Token Exchange Act will render various Acts with inconsistent definitions of same term	This is noted. To be amended.
"voting share"	2(c)(ii) - The % is to be changed to 20% as per FSC Comment in DABA First Round Consultation - Comments and Responses	This is noted. To be amended.
<b>S. 3 - Carrying on digital asset business</b>		
3(1)	Amend - For the purposes of this Act, a person carries on digital asset business in Anguilla if it is incorporated or formed in Anguilla and carries on any digital asset <b>business</b> activity set out under section 4(2) in or from within Anguilla.	This is noted. To be amended.
<b>S.4 - Licensing of digital asset business</b>		

<p><b>General Comment</b></p>	<p>Our strong recommendation is to not attempt to determine a classification exercise in this Act - but leave to be properly considered and defined in the Regulations, when the appropriate time and attention can be given to this diverse and complex field of activities. However, if the Commission is adamant in including in this Act, some circumspection must be adopted, lest the Act have the unintended effect of decimating the nascent blockchain space in Anguilla, including technological developments incl. developers in the Anguilla Special Economic Zone. Even with the suggested amendments, given the limited time allowed for review, it is likely that this Act will require urgent amendment once the unintended effects are more carefully considered by the blockchain industry. Whilst such, historically slow, amendment process is ongoing, blockchain developers and advisors will be forced to stop work and/or exit Anguilla.</p>	<p>DABA has been drafted to not only adhere to FATF Standards but also takes into consideration best practices from cases studies in this sector. The legislation was reviewed against that of other jurisdictions that have greater exposure in relation to digital asset business. It is impossible, however, to foretell every implication of any new enactment. In light of this, the AFSC remains committed to partnering with all stakeholder and is open to further discussion</p>
<p>4(2)(a)</p>	<p>This is incongruous as the mere “issuing” of tokens - even if distributed for free (e.g. a governance token) - would be captured by this “activity” - even though such activity clearly does not fall within the FATF Recommendation.</p>	<p>To remain. Any exemptions in relation to the issuing of digital assets can be captured in regulations.</p>
<p>4(2)(c)</p>	<p>Amend - Operating as a <b>digital asset</b> exchange but does not include a <b>digital asset</b> exchange for utility tokens;</p>	<p>This is noted. To be amended.</p>
<p>4(2)(g)</p>	<p>Delete - This is both (a) ambiguous and overly broad and (b) does not mirror the FATF Recommendations relating to digital assets. The replacement verbiage IS consistent with FATF Recommendations AND creates the basis for Section 13 &amp; 15.</p> <p>Substitute with: Participation in and provision of financial services related to an issuer’s offer or sale of newly issued digital assets</p>	<p>This is noted. To be amended.</p>
<p>4(2)(h)</p>	<p>Delete - This is incongruous as creating software - which is included in the definition of “special purpose depository services” in Section 1 (Interpretation) - is specifically NOT subject to the FATF Recommendation</p>	<p>This is noted. As mentioned in the comment above, paragraphs (a) and (b) will be removed and (c) and (d) will remain in the definition.</p>
<p><b>S.5 Application for licence</b></p>		
<p>5(2)(d) &amp; (e)</p>	<p>To be amended in light of comment to delete 4(2)(h)</p>	<p>To remain. See comment above.</p>
<p><b>S.13 - Prospectus for the issue or sale of digital asset</b></p>		
<p>13(1)</p>	<p>A licensee shall not participate in or <b>(replace or with and)</b> provide financial services related to the issue or offer for sale of a newly issued digital asset without –</p>	<p>This is noted. To be amended.</p>
<p>13</p>	<p>(a) amendment made for consistency with FATF Recommendation’s conjunctive definition (b) In the absence of the amendment to Section 4(2)(g) proposed - Section 13 has no basis for licensing, as not previously included as an ‘activity’ under Section 4(2) (c) In any event, IF the Commission wishes to deal with digital assets in this Act, it will need to specifically exclude the Eastern Caribbean Securities Act from application to ‘digital assets’ - otherwise there is the incongruous situation of Digital Asset Offerings being regulated by two separate pieces of legislation AND two separate regulatory bodies. See suggested new Section 54 below.</p>	<p>This is noted. As mentioned in the comment above, paragraphs (a) and (b) will be removed and (c) and (d) will remain in the definition.</p>
<p><b>S.49 - Regulations</b></p>		
<p>49(2)</p>	<p>Insert: (o) Classes of licenses Reinserted to give options for further specific classes of Licences</p>	<p>This is noted. To be amended.</p>
<p><b>S.53 - Application</b></p>		
<p></p>	<p>Insert: (c) Banking Act; (d) Trust Company and Offshore Banking Act or (e) Special Economic Zones Act</p>	<p>To be reviewed further considering a policy decision is needed.</p>

<b>Suggested NEW Section</b>	Insert section 54. Exemption from Enactments (a) to avoid double regulation and (b) also to maintain financial services centre encouragement of international business (Stamp Act)  No digital asset business shall be subject to the provisions of the - (a) the Trades, Businesses, Occupations and Professions Licensing Act; (b) the Stamp Act; (c) the Securities Act; (d) the Mutual Funds Act; (e) the Money Services Business Act; (f) the Payment System Act; (g) such other laws as may be prescribed by regulations.	To be reviewed further considering a policy decision is needed.  To be reviewed further considering a policy decision is needed.
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