

BERMUDA'S FINTECH DEVELOPMENTS

The Bermuda Government, supported by the Bermuda Monetary Authority (BMA) and other private and public stakeholders, have introduced several legislative initiatives in the Fintech space. Through the introduction of a strong licensing and supervisory regime and innovative Fintech initiatives, Bermuda is seeking to ensure that it is recognised as the leading offshore jurisdiction for Fintech entrepreneurs.

The Companies and Limited Liability Company (Initial Coin Offering) Amendment Act 2018 (the "ICO Act")

The now operative ICO Act regulates public offerings to purchase or acquire "digital assets" made by Bermuda companies or LLCs. Digital assets are broadly defined to include all digital coins and tokens (utility, securitized, equity, etc.); however rewards programs and digital representations of value within gaming-platforms are specifically excluded. The ICO Act targets public crowd funding. It does not seek to regulate private sales or pure virtual currency issuances (see DABA below).

An ICO is a restricted business activity, and before an offering can be made to the public, a company or LLC will require the consent of the Minister of Finance. In considering applications, and in all matters relating to the Fintech industry or its development, the Minister will be aided by the Fintech Advisory Committee (a body of senior industry professionals well versed in Fintech). The application must include comprehensive information on the applicants, the project and its organization and scope, the issuance and nature of the digital assets, the transferability and functionality of the digital assets and audit and compliance details.

Once ministerial consent has been granted, the company or LLC can file its offering document (unless the digital assets are listed on an appointed stock or digital asset exchange) with the Registrar of Companies. The ICO Act prescribes certain minimum requirements (comparable to the prospectus contents for a public offering under the Companies Act 1981) these include, amongst others, providing details about: the promoter, the proposed business, the description of the project and projected timelines, the amount of money to be raised, the rights and restrictions on the digital assets and the general ICO risk warning statement. The ICO Act also imposes penalties for untrue statements in an ICO offering document.

Digital Asset Business Act 2018 ("DABA")

While ICO funding activities are regulated by the ICO Act, DABA will regulate "digital asset business" in or from Bermuda, which includes payment service providers, digital asset or currency exchanges, the provision of custodial wallet services and operating as a digital asset services provider. DABA became operative on 10 September 2018.

Licensing under DABA is under the purview of the BMA which distinguishes two types of digital asset business license: a full licence to provide any or all of the digital asset business activities (Class F) or the "sandbox" licence for a defined period under the supervision of the BMA (Class M).

In order for the BMA to grant a licence certain minimum criteria for licensing must be complied with. These requirements include having controllers and officers who are fit and proper persons, prudent compliance with AML/ATF regulations and maintaining minimum net assets, as well as having adequate accounting and record keeping systems, insurance policies and corporate governance commensurate to each specific licensed undertaking. On 17 September 2018 the BMA published an information bulletin outlining the required documentation for digital asset business license applications.

DABA also requires that licensed entities maintain a head office in Bermuda from which the digital asset business will be directed and managed, and that they appoint an approved representative who is, amongst other things, subject to a statutory obligation to notify the BMA of certain events (such as the likely insolvency of the licensed undertaking).

In addition to the various civil penalties for contraventions of DABA, the BMA has considerable disciplinary and enforcement powers.

Fintech Immigration Policy

Following on the heels of the ICO Act and DABA the Bermuda government has implemented a new immigration policy. The Fintech Business Work Permit allows a new Bermuda Fintech company to receive immediate approval of five work permits within the first six months of obtaining the first Fintech Business Work Permit. Under this new policy, Fintech companies requiring more than five work permits within the first 6 months of operation will be required to present to the Minister of Immigration their plans for hiring, training, and developing Bermudians in entry level or trainee positions, as well as engaging local service providers to support their business.

Banking Amendments

Despite earnest efforts to nurture Fintech in Bermuda, a continuing stumbling block has been the reluctance of local banks to on-board and provide traditional banking services to businesses engaged in the cryptocurrency and digital asset spaces. This risk aversion by the established banking sector is by no means unique to jurisdiction. Bermuda, however, is working toward a solution. In August 2018 the Banks and Deposit Companies Amendment Act 2018 was passed by the legislature paving the way for a new restricted banking license to encourage banks to provide banking services to Bermuda based Fintech companies.

Next steps

As a jurisdiction, the “Bermuda Standard” is lauded for adopting a prudential, collaborative and responsive approach to industry, in particular (re)insurance and trusts, and Fintech is no exception. If actions speak louder than words, with the pace of the comprehensive legal, regulatory and policy implementation over the past several months, and with further developments in the pipeline including a regulatory framework for virtual currency exchanges and creation of a blockchain based Electronic Identification Ledger (E-ID) and land title registry system, Bermuda can be heard loud and clear.

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