



BERMUDA MONETARY AUTHORITY

STATEMENT OF PRINCIPLES

DIGITAL ASSET ISSUANCE ACT 2020

23 JUNE 2020

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I. INTRODUCTION

1. This Statement of Principles (Principles) is made pursuant to section 7 of the *Digital Asset Issuance Act 2020* (the Act) which requires the Bermuda Monetary Authority (the Authority) to publish in such manner as it thinks fit, Principles in accordance with which it is acting or proposing to act:
 - a. in interpreting the minimum criteria specified in Schedule 1 to the Act and the grounds for revocation specified in section 31;
 - b. in exercising its power to grant, revoke or restrict an authorisation;
 - c. in exercising its power to obtain information and reports, and to require production of documents; and
 - d. in exercising other enforcement powers.
2. The Principles are of general application and seek to take into account the diversity of businesses that may seek to undertake a Digital Asset Issuance (DAI) under the Act and the prospect of institutional and market changes. Consequently, the Principles may likely need to be revised and further developed over time. If the Authority makes a material change to the Principles, the Authority will publish a revised version. The Principles should be read in conjunction with any Guidance Notes which are issued.
3. This document is also to be read in conjunction with the *Statement of Principles & Guidance on the Exercise of Enforcement Powers* (Enforcement Guide). The Enforcement Guide sets out the principles in accordance with which the Authority acts or proposes to act in exercising its power to use formal powers to compel compliance or to penalise non-compliance with statutory or regulatory requirements.

II. EXPLANATION FOR THE PRINCIPLES

4. The Principles, along with the Enforcement Guide, are relevant to the Authority's decisions on whether to authorise a DAI and whether to revoke or restrict an authorisation. The Authority's interpretation of the minimum criteria for authorisation in Schedule 1 and the grounds for revocation in section 31 of the Act, together with these Principles underlying the exercise of its powers, encapsulate the main standards the Authority considers when conducting its supervision of DAIs. The functions of DAI supervision include monitoring the ongoing compliance of the issuer of a DAI with these standards, and verifying compliance with the

obligations imposed under the Act, the policies and procedures of the issuer and compliance with external obligations.

5. If there are concerns with regard to the role of the local representative, or with the issuance itself, the Authority will consider what steps should be taken to address the issue and, where appropriate, it will seek remedial action by persuasion and encouragement. Where persuasion and encouragement fail, the Authority may consider stronger measures to ensure compliance. If the Authority considers that its powers should be exercised in the public interest, it may utilise the various powers provided in the Act, including the imposition of restrictions on an authorisation and, ultimately, revocation of an authorisation.
6. The Principles include references to various policy and guidance papers issued by the Authority. Copies of the relevant material are available on the Authority's website (www.bma.bm).
7. Section III of the Principles considers the interpretation of each of the authorisation criteria under Schedule 1 to the Act. Section IV sets out the considerations relevant to the Authority's exercise of its discretion to grant an authorisation. Section V sets out the principles underlying the exercise of the Authority's power to obtain information and reports and to require the production of documents.
8. The Enforcement Guide sets out the interpretation of the various grounds for the initiation of an enforcement action. An assessment will be made on a case-by-case basis but will also take into account the potential impact of a particular action. The Authority's assessment will include consideration of whether using alternative tools is more appropriate, taking into account the overall circumstances of the DAI itself, the conduct under review and the wider context.
9. It is likely that the Authority would exercise its powers to restrict or revoke an authorisation in the context of the enforcement process. The Authority may also exercise its discretion to utilise such powers in a supervisory context (e.g. to impose additional reporting requirements, or where an issuer ceases operations, or conducts a limited scope issuance). These powers might also be used to protect the interests of the public, in connection with an external threat unconnected with the DAI, in accordance with section 10(7) of the Act.

III. SCHEDULE 1: MINIMUM CRITERIA FOR AUTHORISATION

Introduction

10. Before an undertaking may be granted an authorisation to conduct a DAI, the Authority has to be satisfied that all the criteria in Schedule 1 to the Act are, or are capable of, being fulfilled by the applicant. Once authorised, issuers are subject to the Authority's continuing supervision and regulation, which includes the criteria for authorisation. Authorised undertakings are required to submit information about their business at intervals determined by the Authority in accordance with the Act and any related regulations, rules, guidance notes or codes. Where an authorised undertaking fails to meet a criterion, the Authority can and may take action in accordance with the powers vested under the Act and as detailed in the Principles and the Enforcement Guide.
11. The Act sets out the framework for the minimum criteria to be met and complied with by authorised undertakings. These criteria are interpreted and applied in the context of the particular circumstances of an individual DAI, and developments in the sector generally. In addition to reviewing the periodic, annual and other reporting data received from an issuer, the Authority's supervision involves detailed supervisory discussions with the authorised undertaking's senior management. The Authority shall determine the frequency of those discussions based on the nature, scale, complexity and inherent risks involved with the DAI. Meetings may take place either at the Authority's offices or at the authorised undertaking's premises.
12. In addition, compliance visits may be made to the registered or principal office of the authorised undertaking to add to the Authority's understanding of the undertaking's management structures, operations, policies and controls and to assist the Authority in satisfying itself that each DAI continues to be conducted prudently and in accordance with all relevant criteria.
13. Where an authorised undertaking becomes aware of breaches or potential breaches, it is expected that the undertaking will alert the Authority forthwith so that any necessary remedial action can be agreed upon promptly. Similarly, the authorised undertaking must alert the Authority to any proposed material change in its business. This will allow the Authority to assess whether the changes impact the authorised undertaking's ability to fulfil the minimum criteria.
14. The below section sets out the Authority's interpretation of the statutory authorisation criteria.

Schedule 1 Paragraph 1: "...controller or officer...shall be a fit and proper person..."

15. This paragraph provides that every person who is, or is to be, a controller or an officer (as defined under section 3 of the Act (officers are defined as including persons appointed as directors, secretaries or senior executives) of an authorised undertaking is to be a fit and proper person to perform their functions, including, when appropriate, those functions related to the DAI. The Authority takes a cumulative approach in assessing whether a person is fit and proper.
16. With regard to an individual who is, or is to be, a controller or officer, the relevant considerations include whether the person has relevant experience, sufficient skills, knowledge, and soundness of judgment to undertake and fulfil his or her particular duties and responsibilities. The standards required of persons in these positions will vary considerably, depending on the precise position held by the person concerned. Thus, a person could be fit and proper for one position, but not be fit and proper for a position involving different responsibilities and duties.
17. The diligence with which the person is fulfilling, or is likely to fulfil, those duties and responsibilities are also considered so that the Authority can assess whether the person does or will devote sufficient time and attention to them.
18. The Authority's view is that the standards need to be high in the case of persons with primary responsibility for the conduct of an authorised undertaking's DAI affairs, taking into account the nature, scale and complexity of an issuance as well as that of the authorised undertaking's overall business.
19. In assessing whether a person has the relevant competence, soundness of judgment and diligence, the Authority considers whether the person has had previous experience with similar responsibilities, the record in fulfilling them and, where appropriate, whether the person has suitable qualifications and training. As to soundness of judgment, the Authority looks to the person's previous conduct and decision taking.
20. The probity of the person concerned is very important. It is essential that a person who is responsible for the conduct of a DAI is of high integrity. In contrast to the fitness elements of this criterion, which reflects an individual judgment relating to the particular position that the person holds or is to hold, the judgment of probity reflects much more of a common standard, applicable irrespective of the particular position held.

21. Specifically, the Authority takes into account the person's reputation and character. It considers, inter alia, whether the person has a criminal record, convictions for fraud or other dishonesty, which would be particularly relevant. The Authority also gives particular weight to whether the person has contravened any provision of law, including legislation covering the trust, banking, insurance, investment and digital asset sectors or other legislation designed to protect members of the public against financial loss, due to dishonesty, incompetence or malpractice.
22. In addition, it considers whether the person has been involved in any business practices appearing to the Authority to be deceitful, oppressive or improper, or which would otherwise discredit his or her method of conducting business. In addition to compliance with statutory provisions, the Authority also considers a person's record of compliance with various non-statutory codes in so far as they may be relevant to the minimum criteria for authorisation and to the public interest.
23. The Authority also takes into consideration whether the person has been censured or disqualified by professional or regulatory bodies, e.g. Institute of Chartered Secretaries and Administrators; Institute of Directors; Society of Trust and Estate Practitioners; Bermuda Bar Association; Chartered Professional Accountants of Bermuda; Bermuda Stock Exchange; CFA Institute; or corresponding bodies in other jurisdictions. Those who have been censured or disqualified are unlikely to be acceptable.
24. While any evidence of relevant past misconduct needs to be taken into consideration and protecting the public is a priority, the Authority recognises that the passage of time, and a person's subsequent conduct, are factors which may be relevant in assessing whether the person is now fit and proper for a particular position.
25. Once an undertaking is authorised, the Authority continues to consider the performance of the person in exercising his or her duties. Imprudence in the conduct of an undertaking's DAI, or actions which have threatened (without necessarily having damaged) the public interest will reflect adversely on the competence and soundness of judgment of those responsible. Similarly, failure by an undertaking to conduct its DAI with integrity and professional skills will reflect adversely on the probity, competence and/or soundness of judgment of those responsible. This applies whether the matters of concern have arisen from the way the persons responsible have acted or from their failure to act in an appropriate manner. The Authority takes a cumulative approach in assessing the significance of such actions or omissions – that is, it may determine that a person does not fulfil the criterion on

the basis of several instances of such conduct which, if taken individually, may not lead to that conclusion.

Shareholder Controllers

26. Shareholder controllers, as defined by sections 3(4) and 3(5) of the Act, may hold a wide variety of positions relating to a DAI, and the application of the fit and proper criterion takes account of this. The key consideration is the likely or actual impact on the interests of digital asset acquirers (those who have acquired digital assets, not the ones seeking or being solicited to do so) of a particular person holding the particular position as shareholder controller. This is viewed in the context of the circumstances of the individual case, and of the particular position held. The general presumption is that the greater the influence on the DAI, the higher the threshold will be for the shareholder controller to fulfil the criterion. Thus, for example, higher standards will generally be required of a shareholder controller owning 20 percent or more of the shares of an undertaking, when compared with a shareholder controller owning five percent.
27. In reviewing the application of the criterion to shareholder controllers or persons proposing to become such controllers, the Authority considers two main factors.
28. First, it considers what influence the person has, or is likely to have, on the conduct of the affairs of the authorised undertaking. If the person does, or is likely to, exercise a close control over the business, the Authority would look for evidence that he or she has the probity and soundness of judgment and relevant knowledge and skills for running a DAI. On the other hand, if the shareholder does not, or is not likely to, influence the directors and management of the authorised undertaking on the detailed conduct of the DAI, it would not be necessary to require such a level of relevant knowledge and experience.
29. The second consideration is whether the financial position, reputation or conduct of the shareholder controller or prospective shareholder controller has damaged or is likely to damage the authorised undertaking through ‘contagion’ which undermines confidence in that DAI. For example, if a holding company, or a major shareholder, were to suffer financial problems it could damage the confidence of digital asset acquirers in the stability or financial integrity of the DAI. Generally, the higher the shareholding, the greater the risk of ‘contagion’ if the shareholder encounters financial difficulties. The risk of contagion is not, however, confined to financial weakness. Publicity about illegal or unethical conduct by a holding company or another member of the group may also damage confidence in the DAI. Authorised undertakings are expected to notify the Authority immediately if they

become aware of material concerns regarding the suitability of a shareholder controller.

30. In the case of a controller who ‘directs’ or ‘instructs’ a shareholder controller, similar considerations apply to those relevant in assessing the fulfilment of the shareholder controller’s criterion. In other words, the standards that an indirect controller needs to satisfy are likely to be, at a minimum, the standards also required of the person who is indirectly controlled.
31. Where a person is a controller by virtue of ‘directing’ or ‘instructing’ the board of an authorised undertaking, the standards required are high. The controller has to have the probity and relevant knowledge, experience, skills and diligence to proceed with a DAI. The qualities required are those which are also appropriate for the board of directors or partners of an authorised undertaking.

Schedule 1 Paragraph 2: "...conduct its digital asset issuance in a prudent manner."

32. Schedule 1, Paragraph 2, sub-paragraph 1 of the Act makes it clear that there is a general requirement for authorised undertakings to conduct their DAI in a prudent manner. It is the overall responsibility of the board, partners and senior management of an institution to ensure that there is effective control over the entire issuance and that it is conducted prudently. Board members, partners and senior management must understand the underlying risks of the DAI and be committed to a robust control environment. It should be noted that the prudent criterion is applicable solely to the DAI and associated obligations but not as it relates to the general or intended business activities of the undertaking.
33. Sub-paragraphs 2 to 4 set out a number of specific requirements, each of which must be fulfilled before an authorised undertaking may be regarded as conducting its business in a prudent manner.
34. Sub-paragraph 5 makes it clear that the specific requirements outlined in sub-paragraphs 2 to 4 are not exhaustive. Accordingly, the Authority takes into account a range of other considerations in assessing whether an authorised undertaking’s DAI is prudently run. These include, for example, the undertaking’s management and corporate governance arrangements (such as, in the case of a company, the composition of the board of directors and the arrangements for the board’s overall control and direction of the undertaking); the DAI strategy and objectives; planning arrangements; policies on accounting; conduct; and recruitment arrangements and training to ensure that the undertaking has adequate numbers of experienced and skilled staff in order to carry out its DAI in a prudent manner.

35. Particularly close attention is also paid to the arrangements in place for preventing and detecting criminal activities, and for ensuring compliance with the undertaking's legal obligations in preventing money laundering and terrorist financing.
36. Failure by the undertaking to comply with applicable laws in foreign jurisdictions, in which the digital asset is available, if applicable, may also affect the Authority's assessment of prudent conduct.
37. An undertaking should have policies and procedures to enable it to comply with international sanctions in force in Bermuda.
38. An undertaking should take into account the nature, scale and complexity of its DAI and should consider the availability and cost of insurance protection to determine the type and extent of coverage appropriate for that issuance. Relevant types of insurance may include the following: errors and omissions/professional indemnity; directors' and officers' liabilities; fidelity and forgery; loss of property; computer crime; computer damage; business interruption; office contents. The Authority, taking into account the evolving nature and capacity of the insurance market for the digital asset sector, will review the adequacy of cover in place, having regard to the scale, composition and complexity of the business.

Schedule 1 Paragraph 2 subparagraph (3) and (4): "adequate accounting ...records and systems..."

39. The Authority does not regard an undertaking's records and systems as adequate unless they can enable its DAI to be prudently managed and the undertaking is able to comply with the duties imposed on it by or under the Act. Further, the records and systems must be such that the undertaking is able to fulfil the various other elements of the prudent conduct criterion and to identify threats to the public interest. They should also be sufficient to enable the undertaking to comply with the notification and reporting requirements under the Act and the Digital Asset Issuance Rules 2020. Thus, delays in providing information or inaccuracies in the information provided, will call into question the fulfilment of the requirement of paragraph 2, sub-paragraphs (3) and (4). The systems for financial records should be sufficient to enable the undertaking to maintain its books and records with satisfactory back-up in place.
40. The nature and scope of the particular records and systems which an undertaking should maintain should be commensurate with its needs and particular circumstances, so that its business can be conducted without endangering its digital

asset acquirers. In determining whether an undertaking's records and systems are adequate, the Authority considers the nature, scale and complexity of its business.

Schedule 1 Paragraph 3 "Integrity and skill"

41. This paragraph is concerned with the manner in which the DAI of the undertaking is conducted and is distinct from the question of whether its controllers and officers are fit and proper persons. The DAI must be conducted ethically and honestly, and the staff employed by the undertaking must have the skills and knowledge appropriate for the nature, scale and complexity of the undertaking's issuance.
42. The integrity element of the criterion requires the undertaking to observe high ethical standards in conducting its DAI. Criminal offences or other breaches of statute will obviously call into question the fulfilment of this criterion. Particularly relevant are contraventions of any provision made by or under enactments, whether in Bermuda or elsewhere, designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice. In assessing the fulfilment of this criterion, the Authority will pay particular attention to the undertaking's knowledge of the relevant law where it intends to proceed with its DAI.
43. The Authority expects that integrity be demonstrated through the avoidance of misrepresentation by the undertaking or, if applicable, by its agents. In particular, undertakings should:
 - a. ensure that they avoid misrepresentation on their social media platforms;
 - b. correct in a timely manner unintentional errors;
 - c. disclose issuer-paid research;
 - d. present up-to-date information; and
 - e. distinguish between facts and opinions in its communications.
44. The Authority also expects that the undertaking or, if applicable, its agents deal fairly with customers by avoiding selective disclosure, preserving confidentiality and avoiding, disclosing or managing conflicts of interests including those that relate to trading activities of the undertaking, its employees or its agents and the employees of its agents.
45. The Authority would expect an undertaking to have the number of employees sufficient to carry out the range and scale of its DAI. The Authority, in determining

- whether an undertaking has sufficient personnel, will take into account the human resources that the undertaking may draw upon through other arrangements, e.g. outsourcing, secondments or other similar arrangements, as well as the methods of recruitment to ensure that the undertaking employs an adequate number of persons who are fit and proper to perform the duties for which they are employed.
46. Staff must be provided with on-the-job training on the undertaking's internal policies, procedures and internal controls. When appropriate, the undertaking should ensure that adequate training, specific to the roles and responsibilities staff members perform, is provided.
47. An authorised undertaking shall establish procedures to ensure the adequate supervision of staff in their dealings with digital asset acquirers. Appropriate records relating to the training, experience and qualifications of staff shall be maintained.

Schedule 1 Paragraph 4 "Corporate governance"

48. This paragraph provides that the undertaking shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, scale, complexity and risk profile of the DAI.
49. In the case of an undertaking which is a company or partnership, the DAI should be effectively directed by such number of individuals as the Authority considers appropriate given the nature, scale, complexity and risk profile of the issuance. The Authority recognises that standards of good corporate governance may differ between undertakings according to the size and complexity of their respective businesses.
50. In the case of an undertaking which is a company, the directors should include such number (if any) of non-executive directors as the Authority considers appropriate. The number will depend on the circumstances of the undertaking and the nature, size, complexity and risk profile of the DAI.
51. The Authority considers that non-executive directors can play a valuable role in bringing an outsider's independent perspective to the running of the business and to ensure proper challenge to the executive directors and other management. The Authority sees non-executive directors as having, in particular, an important role as members of an undertaking's audit committee or in performing the role which such a committee would otherwise perform.

Schedule 1 Paragraph 5 “Consolidated supervision”

52. The Authority may agree to take on a wider supervisory role regarding an authorised undertaking and its related institutions, particularly when the related institutions may have implications for the undertaking and where it would be appropriate to do so. Under such an arrangement, the undertaking and its related institutions are expected to fully cooperate with and provide all requested information to the Authority.

IV. PRINCIPLES RELATING TO THE GRANTING OF AUTHORISATION

53. To grant an authorisation under the Act, the Authority needs to be satisfied that all the minimum authorisation criteria in Schedule 1 are met. In order to be so satisfied, the applicant and any other relevant parties must first have provided all the appropriate information requested by the Authority in connection with the application. Even where it is satisfied that the criteria are or can be met, the Authority retains a residual discretion not to grant an authorisation – notably, if it sees reason to doubt that the criteria will be met on a continuing basis or if it considers that, for any reason, there might be significant threats to the public interest or the interests of digital asset acquirers.

54. The Authority also considers, in exercising its discretion, whether it is likely that it will receive adequate information from the undertaking and relevant, connected parties to enable it to monitor the fulfilment of the criteria and to identify potential threats to the undertaking’s digital asset acquirers.

V. POWERS TO OBTAIN INFORMATION AND REPORTS

55. The Authority’s supervisory arrangements for authorised undertakings comprise three principal elements. First, the Authority conducts certain off-site analysis and reviews, based on data received from undertakings (including the information stored in the authorised undertaking’s data audit node). This is supplemented by a programme of discussions, during which the Authority interviews senior management on a wide range of relevant issues, including recent and current performance, material compliance and control issues, and business development and strategy questions. Finally, as it pertains to authorised undertakings to conduct DAI, the Authority may conduct on-site reviews during which it would assess an authorised undertaking’s ongoing compliance with aspects of the authorisation criteria and, in particular, with paragraph 2 subparagraph 2 of Schedule 1 to the Act. These compliance reviews are intended to provide insight into the effectiveness of the internal controls in place and the ability of management to identify, monitor and manage key risks arising from the undertaking’s DAI.

56. Supervision involves the receipt and analysis of a variety of regular and ad hoc information from undertakings. The Authority's standard reporting arrangements are kept under review and amended from time to time in light of developments.
57. Section 62 of the Act provides formal powers of the Authority by notice in writing to require from an undertaking such information as it may reasonably require for the performance of the Authority's functions under the Act. The section also provides for the Authority to require an undertaking to make available a report by its auditor (or by an accountant or other person with relevant professional skill) on any aspect of or any matter about which the Authority has required or could require the DAI to provide. In the case of reports commissioned under section 62(1) (b), the Authority has agreed that they will wherever possible be commissioned from an undertaking's own external auditors. However, in certain circumstances, another professional firm may be used. This would be the case, for example, where a report called for particular technical skills (e.g. to perform an independent smart contract audit) or when the Authority has had previous concerns about the quality or completeness of work conducted by the external auditor.
58. The Authority has also agreed that, as a general rule, it will limit the extent to which it will have recourse to professional reports of this nature. Instead, the Authority's general policy is to use its own staff to assess directly through the on-site work, described above, the adequacy of an undertaking's systems and controls. Nonetheless, where particularly specialised work is required or other special considerations arise, the Authority may commission a professional report under section 62.
59. Section 63 of the Act provides statutory powers for the Authority by written notice to require an undertaking to produce relevant documents or information. This power can also be used to obtain relevant documents in the possession of other persons and also to require information or documents from entities related to an undertaking. Section 64 of the Act provides the Authority with specific powers to enter the business premises of persons on whom notice under sections 62 or 63 have been served for the purpose of obtaining relevant information or documents. The Authority makes routine use of section 62 and section 63 powers when conducting its on-site review visits to authorised undertakings, in order to deal with any client confidentiality issues that might arise.
60. Much of the information required by the Authority for its supervision of authorised undertakings is provided pursuant to the Authority's statutory powers in the Act to require relevant information and documents. In addition, the Act stipulates certain matters as being subject to specific statutory reporting requirements – notably, the

requirement for an authorised undertaking to submit a certificate of compliance, signed by an officer certifying that the undertaking has complied with the minimum criteria to the best of their knowledge (as provided for in section 70 of the Act).
