

## Bermuda's FinTech Triangle: Blockchain, ICOs and Virtual Currencies

百慕大金融科技三大板块：区块链、首次代币发行和虚拟货币

On November 22nd 2017, Bermuda's Premier, the Hon. E. David Burt, JP, MP held a press conference regarding the potential impact of blockchain on Bermuda's economy. In summary, he said that the Island was going to look at blockchain opportunities as a new aspect of its overall economic plan, seeking to attract initial coin offering (ICO) and cryptocurrency businesses to Bermuda through the introduction of a sensible and credible regulatory framework.

### Bermuda's blockchain approach

From a financial standpoint, the starting point was this: broadly, two different categories of blockchain vehicles would be recognised:

- 1) Issuers who were conducting ICOs for crowdfunding purposes would be regulated by amendments to Bermuda's existing Companies Act and Limited Liabilities Companies Act legislation (the ICO Act).
- 2) Issuers of virtual currencies and those operating digital asset exchanges, as well as anyone providing services related to digital assets (e.g. those operating digital asset exchanges, e-wallets and similar structures), would be regulated via a brand new piece of legislation, the Digital Asset Business Act 2018, and by Bermuda's primary regulator, the Bermuda Monetary Authority (BMA).

2017年11月22日，百慕大总理爱德华·戴伯·伯特（太平绅士、国会议员）举行了有关区块链对百慕大经济潜在影响的记者招待会，主要表明百慕大将着眼于区块链领域的机遇，为整体经济规划注入新动力，并会建立合理可靠的监管体系吸引首次代币发行（下称“ICO”）和虚拟货币业务进驻百慕大。

### 百慕大的区块链监管方式

从金融的角度出发，首先可将区块链公司大致分为两类：

- 1) 通过ICO进行众筹的发行者，这类公司须遵守百慕大现行《公司法》及《有限责任公司法》的修正案（下称“ICO法案”）。
- 2) 虚拟货币的发行者及经营数字资产交易所及提供数字资产相关服务的公司（例如经营数字资产交易所、电子钱包和类似平台的实体），这类公司须遵守一项全新的法例（即2018年《数字资产业务法》）并受百慕大主要监管机构百慕大金融管理局（下称“BMA”）监管。

## The ICO legislation

The ICO Act was drafted primarily by the legal department of the Government's business development unit, in consultation with other Government stakeholders, the BMA, the Bermuda Business Development Agency, external consultants and various private sector representatives, including law firms and technology-based companies. This collective approach is the Bermuda standard: new laws, rules and regulations which will have an impact on the Island's economy are created through collaboration between the public and private sectors to ensure the best possible result is achieved.

The new ICO Act regulates offerings of "digital assets", which are meant to capture all of the various categories of digital coins and tokens (whether they be utility tokens, security tokens, equity tokens or otherwise) which are being issued as ICOs and via token sales. It excludes rewards programs and gaming platform-related tokens.

Under the new ICO Act, an ICO will be treated as a restricted business activity that will require the consent of the Minister of Finance prior to an offering being made to the public. A FinTech Advisory Committee will be appointed to assist the Minister with initial reviews of applications and to ensure that they meet certain minimum criteria set out in the offering document issued to the public in connection with the ICO. In most cases, this offering document will consist of the issuer's white paper.

A company (or LLC) wishing to launch an ICO can set up within the typical timeframe of 24 to 48 hours using Bermuda's usual incorporation procedures. However, it will not be able to commence its ICO offering without first obtaining the Minister's consent (which means that the applicant should file a copy of its draft white paper with the Ministry of Finance prior to the ICO).

The minimum criteria for the offering document include details about:

- the founders
- the implementation of the ICO
- the proposed target market
- the amount of money to be raised
- the digital assets rights
- the technology which will be used.

Most of the criteria are industry standard, but the aim is to ensure they are imposed on issuers via statute

## ICO 法例

ICO法案主要由政府商业发展部门的法律部与其他政府利益相关方、BMA、百慕大商业发展署、外界顾问及包括法律与科技公司在内的不同私营行业代表协商后起草。多方参与的方式是百慕大的惯例：公私领域合作制订会影响百慕大经济的新法律、规则及法规，以确保取得最佳效果。

新的ICO法案规管“数字资产”的发行。数字资产指的是通过ICO及代币销售发行的各类数字货币和代币（不论是实用型、证券型、股权型或是其他类型），但不包括奖励计划代币及游戏平台代币。

根据新的ICO法案，ICO将被视为一种受限制的商业活动，在向公众发行前须取得财政部长的批准。另外，将会设立金融科技咨询委员会协助财政部长对申请作初步审核，确保申请达到向公众发出的ICO相关文件所列示的若干最低标准。发行文件通常包括发行者的白皮书。

计划进行ICO的公司（或有限责任公司）通常可按百慕大的常规公司注册程序在24至48小时内成立，惟须事先获得财政部长的批准（即ICO进行前申请人须向财政部提交白皮书草案）。

发行文件包括有关以下事项的最低标准：

- 创始人
- ICO的实施方案
- 计划目标市场
- 集资金额
- 数字资产附带的权利
- 采用的技术

上述大部份属行业标准，旨在以法规的形式规定发行商符合上述标准。

根据反洗钱/反恐怖主义融资的规定，发行者亦须收集、核实及保存客户身份资料。

ICO法案条文与百慕大法律中有关首次公开招股的条文大致相若，包括要求向公司注册处（下称“注册处”）提交ICO的发行文件及将ICO发行文件的更新持续在注册处备案。ICO法案亦要求发行者提供一般风险声明（例如说明发行计划失败的后果及对潜在投资者的影响）。提供不真实声明的发行者会受到处罚。

百慕大各界都致力于吸引一流企业，坚持重质不重量，在寻求吸引ICO发行者方面亦无二致，不合格的发行者只能另寻他处。

and regulations.

The issuer will also be required to collect, verify and maintain customer identity information from an AML/ATF perspective.

The provisions of the ICO Act are largely similar to the provisions of Bermuda law which relate to initial public offerings, including requirements to file the ICO offering document with the Registrar of Companies (Registrar) and to file updates of the offering document with the Registrar on an ongoing basis. The ICO Act requires issuers to include a general risk statement (e.g. what happens if the project fails and what is the impact on proposed investors) and imposes penalties for untrue statements.

Bermuda works hard in all its industry sectors to attract the best business to the Island and it has always gone for quality over quantity. In seeking to attract ICO issuers, it is committed to the same approach. Those issuers who do not make the cut will have to choose another jurisdiction.

## The Digital Asset Business Act

The Digital Asset Business Act 2018 (DABA) is a unique piece of legislation, and the Bermuda Government, the BMA and their advisors looked carefully at the recommendations set out by the Financial Action Task Force (FATF) in this space. Through the DABA, Bermuda is seeking to balance its desire to embrace the new technology with the need to ensure that its pristine international finance reputation is protected. As Bermuda's Minister of National Security, Wayne Caines, stated at an event in February 2018: "The biggest challenge is reputation. Bermuda has only one thing it trades on and that is its reputation." Again, the Island wants to ensure that the business it attracts in this space consists only of high quality participants.

When drafting the DABA it was recognized that virtual currencies and digital asset or currency exchanges were largely unregulated across the globe, and therefore looked to FATF's emphasis on employing a risk-based approach in considering AMF/ATF risk, especially the need for regulatory supervision over public disclosure requirements, fraud prevention, price manipulation and ensuring the integrity of an issuer's owners.

In order to create an effective risk-based approach and regulatory regime, the DABA does not regulate companies which conduct ICOs as a funding mechanism for their own business — that comes within the scope of the ICO Act as set out above. The

## 数字资产业务法

2018年《数字资产业务法》（下称“DABA”）是一项独有的法例，立法过程中百慕大政府、BMA及彼等各自的顾问均仔细研究了金融行动特别工作组（下称“FATF”）的有关建议。百慕大既憧憬引入新科技，又需要维护其作为国际金融平台的良好声誉，因此希望通过颁布DABA使两者兼顾。百慕大国家安全部长Wayne Caines于2018年2月的一次活动上指出“声誉是最大的挑战。百慕大全靠声誉立足市场。”一如既往，百慕大希望该领域吸引的全是高水准的参与者。

立法者在起草DABA的过程中，意识到全球大多数虚拟货币及数字资产或货币交易都缺乏监管，因此希望金融行动特别工作组在衡量反洗钱/反恐怖主义融资风险时着重使用以风险为本的方法，尤其是要求监管公开披露、防范诈骗、价格操纵及确保发行者的拥有人循规蹈矩。

为建立有效的以风险为本的方法及管理制度，DABA针对虚拟货币及数字资产或货币交易平台，而不监管通过ICO集资自用的公司，这类公司属上述ICO法案的规管范畴。

DABA的发牌制度分为两类：正式虚拟货币执照（F类）及沙盒执照（M类）。后者允许初创公司在一段时间（可延长）内测试其新产品或服务，并须遵守不时修订的规定，且受BMA的全面监管，目的在于为百慕大引入创新公司的同时保护客户的利益。

DABA的其他一般要求包括确保拥有人及管理者的具备合适和恰当的资格、有充分的公司管治措施及审慎的经营态度。此外，亦有关于保障客户的条款，包括公开披露规则

DABA is concerned with virtual currencies and digital asset or currency exchanges.

The DABA licensing regime consists of two classes: a full virtual currency licence (Class F) and a sandbox licence (Class M). The latter is designed to allow for novelty start-ups looking to test new products or services for a defined period of time (which can be extended), with modified requirements — all under the supervision of the BMA. The intention is to attract innovation to the Island while ensuring customer protection.

Other general requirements of the DABA include matters which one would expect: ensuring the owners and management are fit and proper; that there is sufficient corporate governance in place; and that the business is conducted in a prudent manner. There are also provisions relating to consumer protection: public disclosure rules (for instance, whether the issuer has cyber theft insurance) as well as requirements for certain minimum cyber security measures (e.g. policies relating to hot and cold wallets and generally what provision is made for the protection of customer assets).

Much of the DABA is based on the Island's extremely robust existing legislative framework in the insurance, funds and trust sectors. There are, for instance, requirements for certain risk management and compliance functions, and for an internal audit. In line with the Bermuda Insurance Act 1978, there is a physical presence requirement and a requirement to appoint a representative who has certain statutory duties to report matters to the BMA (e.g. whether there is a likelihood that the issuer may become insolvent).

Finally, the DABA grants the BMA a number of enforcement powers (e.g. a power to obtain information/reports or require the issuer to remove certain members of management) and also imposes various penalties for breach or non-compliance.

In short, the BMA believes that the DABA will be the leading global standard relating to virtual currency regulation, due in no small part to the sources from which it was derived — the OECD, the G20, FATF.

## Conclusion

Bermuda is the world's leading offshore jurisdiction and wishes to remain so. It is also a business friendly and innovative jurisdiction, one which recognizes the risks within the general cryptocurrency space.

Companies in this space — particularly token issuers — are not shy of reasonable and credible regulation.

(例如发行者是否有购买网络盗窃险)及若干最低网络安全措施的规定(例如有关热钱包(hot wallet)及冷钱包(cold wallet)的政策及保护客户资产的一般规定)。

DABA主要基于百慕大现有保险、基金及信托行业强有力的法律体系而订立,包括有关若干风险管理及合规职能的规定及内部审核的规定。与百慕大1978年《保险法》一样,DABA有留居规定,亦要求委任有法定职责的代表向BMA申报相关事项(例如发行者是否有可能资不抵债)。

最后,DABA赋予BMA若干执法权力,例如获取资讯/报告或要求发行者罢免管理层成员的权力,亦可对违反和不遵守法规的行为进行处罚。

总而言之,BMA认为DABA将成为虚拟货币规管方面的全球领先标准,很大程度上是因为其吸纳了经济合作及发展组织、二十国集团及FATF的建议。

## 结论

百慕大是世界领先的离岸司法管辖区,并致力保持既有的优越地位,也是便于营商和创新的司法管辖区,了解整个加密货币领域的风险。

该领域的公司(尤其是代币发行公司)会遵从合理可信的规管。百慕大在恪守审慎健全的国际标准的同时亦不断推

With the new legislation and associated regulations being introduced, Bermuda is showing ingenuity, while it continues to adhere to prudentially sound international standards.

In the blockchain arena, Bermuda is leading the way and forging a unique and exciting “Bermuda Standard” which it hopes will become the global standard for ICOs, digital assets and virtual currencies.

出具有创新性的法例和相关法规。

在区块链领域，百慕大开创先河，建立了独特而令人期待的“百慕大标准”，有望成为首次代币发行、数字资产和虚拟货币的全球标准。

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

本文并非法律意见，其内容亦非详尽无遗，只可作为概览及一般参考资料。感谢您的垂阅!

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