

提示简报

Bermuda Amends Licensing Regime for Digital Assets Businesses

百慕大修订数字资产业务的发牌制度

The Digital Asset Business Amendment Act 2019 (“DABA Amendment Act”), which became operative on 8 October, amends the existing legislation governing digital assets businesses in Bermuda, including expanding the scope of the licensing regime to include digital assets derivatives, digital asset benchmark administrators and digital asset trust service providers. The DABA Amendment Act is intended to ensure that Bermuda remains a leading jurisdiction in the regulation of digital assets and provides a framework for the regulation of financial products for which the underlying interests are digital assets.

The amendments to the Digital Asset Business Act 2018 (“DABA”) were passed by the Bermuda Parliament on 2 October. The DABA Amendment Act makes provision for the enhancement of oversight by the Bermuda Monetary Authority (BMA) of digital asset service providers and brings the following into scope of those requiring a licence from the BMA to conduct digital assets activities in Bermuda:

- Digital asset derivative exchange providers, meaning persons operating a digital asset derivative exchange and that provide the services of (a) creating, selling or otherwise entering into digital asset derivatives contracts and/or (b) clearing and settlement of digital asset derivatives. Digital asset derivatives include options, swaps, futures, contracts for differences or any other instrument based on a digital asset underlying interest.
- Digital asset benchmark administrators, meaning persons that have control over the provision of a digital asset benchmark, which is defined as “any rate, index or figure, made available to the public or published that is

《2019年数字资产业务修正案》（Digital Asset Business Amendment Act 2019，下称“DABA 修正案”）于 10 月 8 日生效，该修正案对百慕大现行的数字资产业务规管法例进行了修订，包括将发牌制度的范围扩大到涵盖数字资产衍生品、数字资产基准管理人和数字资产信托服务提供商。DABA 修正案旨在确保百慕大在数字资产监管方面保持领先地位，并为相关权益属数字资产的金融产品提供了监管框架。

10 月 2 日，百慕大议会通过了《2018 年数字资产业务法》（Digital Asset Business Act 2018，下称“DABA”）的修正案。DABA 修正案为了加强百慕大金融管理局（BMA）对数字资产服务提供商的监管，规定下列人士也需获得 BMA 发牌，方可于百慕大开展数字资产活动：

- 数字资产衍生品交易所提供商，指经营数字资产衍生品交易所，且提供 (a) 创建、出售或以其他方式订立数字资产衍生品合约及/或 (b) 数字资产衍生品的结算和交收等服务的人士。数字资产衍生品包括期权、掉期、期货、差价合约或基于数字资产相关权益的任何其他工具。
- 数字资产基准管理人，指对数字资产基准的设立拥有控制权的人士，数字资产基准的定义是“周期性或定期地通过套用公式或基于一项或多项相关资产的价值或价格（包括估计价格、实际或估计利率或

periodically or regularly determined by the application of a formula to, or on the basis of, the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates or other values, or surveys, and by reference to which the amount payable under a digital asset or the value of a digital asset is determined”.

- Digital asset trust services providers, meaning persons who carry on the business of acting as a fiduciary, agent or trustee on behalf of another person for the purpose of administration and management of a digital asset.

In addition, the DABA Amendment Act overhauled the concept of “electronic exchanges” and introduced instead two forms of exchanges: *digital asset exchanges* and *digital asset derivative exchanges*.

Digital Asset Exchanges

The notion of an “electronic” exchange has now been refined to become a “digital asset exchange” meaning “a centralized or decentralized electronic marketplace used for digital asset issuances, distributions, conversions and trades, including primary and secondary distributions, with or without payment”.

Digital Asset Derivative Exchanges

The “digital asset derivative exchange” is a new concept, a marketplace used for digital asset derivative issuances, distributions and trades, with or without payment.

The Bermuda Government has made these changes because (a) the definition of an “electronic exchange” was in need of refinement and (b) it recognised that popular crypto derivatives such as Bitcoin futures required specific regulation by the DABA.

The definition of a “market maker” was also refined as a “person conducting the business of trading in digital assets including (a) quoting buy and sell prices in furtherance of profit or gain on the bid offer spread; (b) fulfilling orders initiated by clients or in response to clients’ requests to trade; or (c) hedging positions arising from the fulfilment of tasks under points (a) and (b)”.

Companies already conducting digital asset activities that

其他价值) 或调查而确定, 并予以公开或发布的任何比率、指数或数字, 借以确定数字资产项下的应付款额或数字资产的价值”。

- 数字资产信托服务提供商, 指从事为数字资产的行政和管理目的而代表他人担任受信任人、代理人或受托人的业务的人士。

此外, DABA 修正案全面修订了“电子交易所”的概念, 转而引入两种形式的交易所: *数字资产交易所*和*数字资产衍生品交易所*。

数字资产交易所

“电子”交易所的概念现已完善成为“数字资产交易所”, 指“用于数字资产发行、分配、转换和交易(包括初次及二次分配, 无论支付与否)的集中式或分散式电子市场”。

数字资产衍生品交易所

“数字资产衍生品交易所”是一个新概念, 指用于数字资产衍生品发行、分配和交易(无论支付与否)的市场。

百慕大政府作出该等修订的原因是: (a) “电子交易所”的定义需要完善, 及 (b) 政府意识到, 比特币期货等广受欢迎的加密衍生品需要 DABA 作出有针对性的规管。

“做市商”的定义也被修订为“从事下列数字资产交易业务的人士: (a) 报出买卖价格, 透过买卖差价实现利润或收益; (b) 履行客户发起的订单或应客户的交易要求履行订单; 或 (c) 因执行 (a) 和 (b) 项的任务而产生的对冲头寸”。

先前已开展数字资产活动的公司现被纳入 DABA 修正案的

are now within scope of the DABA Amendment Act have two months to make an application to the Bermuda Monetary Authority for digital assets business licence.

规管范围内，须于两个月内向百慕大金融管理局申领数字资产营业执照。

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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