



**Anguilla Financial Services Commission**  
**Round 1 Consultation: Comments from and responses to industry**  
**Published 5 June 2023**

Section	Comment	Response
<b>S.1 Interpretation</b>		
"digital asset"	Add exclusion as (iii) "a utility token as defined in the Anguilla Utility Tokens Exchange Act."	This is noted. Definition amended to indicate Anguilla Utility Tokens Offering Act
	<p>The definition for digital assets includes (d) is intended to provide access to an application or service or product by means of distributed ledger technology</p> <p>While there is a definition for distributed ledger, there is no definition for distributed ledger technology. It is presumed that the intent is to define DLT.</p>	This is noted. New definition to be inserted as defined in the Anguilla Utility Token Offering Act.
<b>Suggested NEW definition</b>	<p>Insert "digital asset business definition" as defined by FATF:</p> <p>digital asset business' means activities carried on by any natural or legal person where such person, as a business, conducts one or more of the following activities or operations for or on behalf of another natural or legal person:</p> <ul style="list-style-type: none"> <li>i. exchange between digital assets and fiat currencies;</li> <li>ii. exchange between one or more forms of digital assets;</li> <li>iii. transfer of digital assets;</li> <li>iv. safekeeping and/or administration of digital assets or instruments enabling control over digital assets; and</li> <li>v. participation in and provision of financial services related to an issuer's offer and/or sale of a digital asset.</li> </ul> <p>But a person who engages in or performs any of the following activities shall not qualify or be treated as conducting digital asset business</p> <ul style="list-style-type: none"> <li>(a) providing ancillary infrastructure to allow another person to offer a service, such as cloud data storage provider or integrity service provider responsible for verifying the accuracy of signatures;</li> <li>(b) providing service as a software developer or provider of unhosted wallets whose function is only to develop or sell software or hardware;</li> <li>(c) solely creating or selling a software application or digital asset platform;</li> <li>(d) providing ancillary services or products to a digital asset network, including the provision of services like hardware wallet manufacturer or provider of unhosted wallets, to the extent that such services do not extend to engaging in or actively facilitating as a business any of those services for or on behalf of another person;</li> <li>(e) solely engaging in the operation of a digital asset network without engaging or facilitating any of the activities or operations of a person conducting digital asset business;</li> <li>(f) providing closed-loop items that are non-transferable, nonexchangeable, and which cannot be used for payment or investment purposes; and</li> <li>(g) accepting digital assets as payment for goods and services.</li> </ul>	This is noted. Definition to be included.
<b>Suggested NEW definition</b>	As the term "digital custody services" and "digital custodial wallet services" are included under paragraph 4(2), it may be beneficial to define these services, including determining whether these services are indeed distinct.	This is noted, Definition to be included.
"digital payment token"	To be deleted. A 'fiat asset' is simply money and unrelated to blockchain per se.	This is noted. Definition to be amended.

	<p>Section 1 sets out that “digital payment token” includes a digital asset and a fiat asset but does not include an excluded digital representation of value or a utility token as defined in the Anguilla Utility Tokens Exchange Act”</p> <p>Similarly, paragraph 4(2)(a) provides for a license in “issuing, selling or redeeming virtual coins, tokens or any other form of digital assets but does not include utility tokens”</p> <p>It is my opinion that the term ‘utility token’ should be clearly defined on its own line under interpretation, for example, “utility token takes the meaning prescribed to it in the Anguilla Utility Tokens Exchange Act”.</p>	This is noted. Defintion to be amended.
"money changing service"	money changing service’ does not relate to blockchain per se - and is regulated under the Money Services Business Act.	Money changing services and any subsequent references have been removed from the Bill
"payment service"	A "money changing service" is unrelated to blockchain per se	Money changing services and any subsequent references have been removed from the Bill
"payment system"	Reference to a paymnt system does not appear in any other part of this Act, save for this obscure definition. Unless there is a stated reason for including this definition, this definition should be deleted.	This has since been removed.
"voting share"	The threshold of 5% is inconsistent with international standards. See BVI Virtual Asset Service Providers Act 2022. The phrase ‘substantial shareholding’ is not referenced anywhere else in the Act. Also internal inconsistency with Section 24	This is noted and has since been amended to the industry standard of 20%.
<b>S. 3 - Carrying on digital asset business</b>		
3(1)(a)	Consequential amendment to Section 4(2) (as amended)	To remain. The activities listed in this section represent the subset of digital asset activities the FSC is allowing to be licensed at this time.
<b>S.4 - Licensing of digital asset business</b>		
4(1)&(2)	This definition is prohibitively wide and will effectively debar a variety of blockchain related enterprises - not falling under the FATF definition of VASPs - from domiciling in Anguilla. See instead definition of ‘digital asset business’ added in Section 1 (Definitions)	To remain. The activities listed in this section represent the subset of digital asset activities the FSC is allowing to be licensed at this time.
4(2)(a)	The term ‘virtual coin’ is included in this subparagraph; however, it does not appear to be defined anywhere in the Act.	This is noted. Definition to be included.
4(2)( e)	This subparagraph provides for “operating as a digital assets services vendor” as a digital asset business activity. The term “digital asset services vendor” does not appear anywhere else in the draft and should be defined, if appropriate.	This is noted. Definition to be included.
<b>S.5 - Application for licence</b>		
5	If not considered, it may allow for transparency and protection of consumers if the Commission publishes a register of regulated digital asset businesses.	This is noted. To include provision to allow the FSC to publish list of regulated service provider under this Bill.

5(1)	<p>In alignment with other jurisdictions' standards, consider adding the below to application requirements:</p> <ul style="list-style-type: none"> <li>a. Governance framework and arrangements, including identity of shareholders with significant holdings</li> <li>b. Business Continuity and Recovery Plan</li> <li>c. Risk Assessment and Risk Management Policy</li> <li>d. Description of internal controls</li> <li>e. Other jurisdictions in which the business operates and regulating bodies</li> <li>f. Complaints handling procedures</li> <li>g. Systems and Security Arrangements</li> <li>h. Exchange Rules (for businesses operating as an exchange)</li> <li>i. Evidence that management are of good repute and have the relevant knowledge and sufficient experience</li> <li>j. Types of digital assets and/or services intended to provide</li> <li>k. Policy and procedures related to segregation and accounting of client assets and money</li> </ul> <p>Whether outlined in a schedule or included under Section 5, it may prove prudent to include these requirements upon application, where appropriate.</p>	This is noted. Will be set out in Regulations and Guidance.
5(1)(d)	Under this subparagraph it is set out that applications should be accompanied by "policies and procedures to be adopted by the applicant to meet the obligations of a financial institution under this Act and the Proceeds of Crime Act". In this Draft, it is not clear, at least to me, whether digital asset businesses are to be considered financial institutions (or rather financial business) for the purposes of AML/TF	The legislation will be specified as a "regulatory license" under Schedule 1 of the AML/CFT Regulations.
5(2)&(3)	Consequential amendment by reason of Section 4(2) (as amended) The classes of licenses may be set out in the Regulations to this Act	To remain. The activities listed in this section represent the subset of digital asset activities the FSC is allowing to be licensed at this time. The classes of licenses will remain in the Bill
5(4)	Change in numbering	To remain. The activities listed in this section represent the subset of digital asset activities the FSC is allowing to be licensed at this time.
5(5)	money changing' is unrelated to blockchain per se - and is regulated by the Money Services Business Act	Money changing services and any subsequent references have been removed from the Bill
5(6)	Consequential amendment (supra)	Money changing services and any subsequent references have been removed from the Bill
5(6)(a)	<p>"the applicant is a company, or is a company formed or incorporated outside Anguilla"</p> <p>Is this to mean that only companies formed outside of Anguilla can have the license classes set out or is it to mean that the applicant must be a company, whether formed within or outside of Anguilla? This paragraph may benefit from a cleaner draft of the provision.</p>	This is noted. The intent is to require that it be a company formed and incorporated within Anguilla. Will be redrafted to make clearer.
5(6)(c)	While Anguillian participation is to be encouraged, Anguilla does not yet have sufficient persons versed in blockchain to expect appointments as 'Executive Directors'	This paragraph has since been amended to replace Executive Director with Senior Officer
<b>S.6 - Variation or change of licence</b>		
6(1)(a)	Consequential amendment per Section 4(2) (as amended)	To remain. The activities listed in this section represent the subset of digital asset activities the FSC is allowing to be licensed at this time.

6(1)(b)	Consequential amendment - See comments (supra) on 'money changing'	Money changing services and any subsequent references have been removed from the Bill
6(1)(c)	Consequential amendment - See comments (supra) on 'money changing'	Money changing services and any subsequent references have been removed from the Bill
<b>S.10 - Lapsing, surrender, revocation or suspension of licence</b>		
10(2)(k)	While Anguillian participation is to be encouraged, Anguilla does not yet have sufficient persons versed in blockchain to expect appointments as 'Executive Directors'	This paragraph has since been amended to replace Executive Director with Senior Officer
<b>Suggested NEW section</b>	Add NEW Section 57. This exclusion is reflects a similar exclusion in Section 3 of the Company Management Act and is justified on the basis that Trust Companies and Offshore Banks are regulated at a higher standard (incl. high capitalization requirements) - and change subsequent numbering.  "Application 57.  This Act does not apply to a person licensed or registered under the - (a) Anguilla Utility Token Offering Act; (b) Anguilla Utility Token Exchange Act; or (c) Trust Companies and Offshore Banking Act."	Comment accepted. To include new section but removing reference to Trust Companies and Offshore Banking Act.
<b>S.11 - Exempt digital asset business</b>		
11(3)	The term "exempt digital service business" is used as opposed to "exempt digital asset business"; consistency required. Additionally, 11(3) can be written in a clearer manner.	This section has been removed.
<b>S.17 - Place of business or registered office of licensee</b>		
17	Consider adding specific requirements for a Compliance Officer and consider having a requirement for such compliance officer to be present in Anguilla. This would allow for closer relations and ideally better access in the event of an incident. Similarly, consider requiring an MLRO for licensees in the money-changing business.	As this legislation will be listed as a financial services enactment, the provisions under the FSC Act will apply. The same applies under the AML/CFT Regulations where this legislation will be specified as a "regulatory license".
<b>S. 18 - Obligation of licensee to notify Commission of certain events</b>		
18(2)	Consider adding the obligation for immediate notification to the Commission, in as far as is possible, of certain events that may be urgent in nature.	This is covered in Guidelines for licensees of the Commission
<b>Part 4</b>		
	Consider adding within the Act a requirement for digital asset businesses to ensure segregation of client assets and money and to ensure the accounting and proper records of the same.	This is noted. Will be addressed in Regulations.
	While it is mentioned as a part of the application for license in section 5, it is suggested that a clear obligation to ensure compliance with the Proceeds of Crime Act and the Anti-money Laundering and Terrorist Financing Regulations and any other regulation related to the AML/TF regime as prescribed.	This will be addressed in the AML/CFT Regulations

<b>Suggested NEW section</b>	An expressed obligation for licensees to maintain and keep records is advisable.	This is addressed in the AML/CFT Regulations in which licensees under this Bill will be considered regulated entity/service provider.
	An expressed requirement, not specific to digital token services, but rather a general provision for disclosure of information to clients may prove beneficial in this sector. There is a high level of information asymmetry in the digital asset sector, making it important to set disclosure requirements (whether in the Act or Conduct regulations)	This is noted. Section 22(1)(f) of the Bill will be removed and inserted as a general disclosure requirement for all aspects of digital asset business.
<b>Part 5</b>		
	Consider adding a provision under this Part or under Section 5 on Application of Licensees to allow for review on-site inspections as a part of the application process.	Amendment made to the section to take into account the provisions for compliance visits under the FSC Act.
<b>S.57 - Regulations</b>		
	Added in lieu of Section 5(2) and (3) (as deleted) 57(2) Insert: (o) Classes of licenses	To remain. The activities listed in this section represent the subset of digital asset activities the FSC is allowing to be licensed at this time. The classes of licenses will remain in the Bill
<b>Consequential Amendments</b>		
	If digital asset businesses are to be defined as regulated business or financial business for the purposes of AML/TF, this should be made clear in the Draft Digital Assets Business Act, Proceeds of Crime Act, Anti-money Laundering and Terrorist Financing Regulations.	This will be addressed in the AML/CFT Regulations
	The Anti-money Laundering and Terrorist Financing Regulations 2020 Amendment speaks to "virtual assets" and sets out certain virtual asset activities; these will need to be amended to align with that of the Draft Digital Asset Business Act.	This will be addressed in the AML/CFT Regulations