



FAQs: Digital Asset Business Act 2018 (DABA or Act) and accompanying regulatory and supervisory framework

A. General

1. What legislation, rules and/or documents are relevant to Digital Asset Businesses (DAB)?

- i. Digital Asset Business Act 2018
<http://www.bermudalaws.bm/laws/Consolidated%20Laws/Digital%20Asset%20Business%20Act%202018.pdf>
- ii. Digital Asset Business Statement of Principles
<https://www.bma.bm/viewPDF/documents/2019-04-23-14-51-20-DAB-Statement-of-Principles-2018.pdf>
- iii. Digital Asset Code of Practice
<https://www.bma.bm/viewPDF/documents/2019-04-23-14-52-53-Digital-Asset-Business-Code-of-Practice-2018.pdf>
- iv. Digital Asset Custody Code of Practice
<https://www.bma.bm/viewPDF/documents/2019-05-20-16-07-35-Digital-Asset-Custody-Code-of-Practice-2018.pdf>
- v. Assessment and Licensing Committee (ALC) Digital Asset Business Application Process
<https://www.bma.bm/viewPDF/documents/2019-04-23-14-53-39-ALC-Information-Bulletin--DAB-Application-Process.pdf>
- vi. Digital Asset Business (Prudential Standards) (Annual Return) Rules 2018
[http://www.bermudalaws.bm/laws/Annual%20Laws/2018/Statutory%20Instruments/Digital%20Asset%20Business%20\(Prudential%20Standards\)%20\(Annual%20Return\)%20Rules%202018.pdf](http://www.bermudalaws.bm/laws/Annual%20Laws/2018/Statutory%20Instruments/Digital%20Asset%20Business%20(Prudential%20Standards)%20(Annual%20Return)%20Rules%202018.pdf)
- vii. Digital Asset Business (Client Disclosure) Rules 2018
[http://www.bermudalaws.bm/laws/Annual%20Laws/2018/Statutory%20Instruments/Digital%20Asset%20Business%20\(Client%20Disclosure\)%20Rules%202018.pdf](http://www.bermudalaws.bm/laws/Annual%20Laws/2018/Statutory%20Instruments/Digital%20Asset%20Business%20(Client%20Disclosure)%20Rules%202018.pdf)
- viii. Digital Asset Business (Cybersecurity) Rules 2018
[http://www.bermudalaws.bm/laws/Annual%20Laws/2018/Statutory%20Instruments/Digital%20Asset%20Business%20\(Cybersecurity\)%20Rules%202018.pdf](http://www.bermudalaws.bm/laws/Annual%20Laws/2018/Statutory%20Instruments/Digital%20Asset%20Business%20(Cybersecurity)%20Rules%202018.pdf)
- ix. Digital Asset Business Accounts Rules 2020
<http://www.bermudalaws.bm/laws/Consolidated%20Laws/Digital%20Asset%20Business%20Accounts%20Rules%202021.pdf>
- x. Proceeds of Crime (AML/ATF Financing) Regulations 2008
[http://www.bermudalaws.bm/laws/Consolidated%20Laws/Proceeds%20of%20Crime%20\(Anti-Money%20Laundering%20and%20Anti-Terrorist%20Financing\)%20Regulations%202008.pdf](http://www.bermudalaws.bm/laws/Consolidated%20Laws/Proceeds%20of%20Crime%20(Anti-Money%20Laundering%20and%20Anti-Terrorist%20Financing)%20Regulations%202008.pdf)

- xi. BMA Guidance Notes for AML/ATF Regulated Financial Institutions on AML/ATF Financing 2016
<https://www.bma.bm/viewPDF/documents/2018-12-29-02-24-04-Guidance-Notes-for-AML-ATF-Regulated-Financial-Institutions-on-AML-and-ATF-2016-BMA-Notice-2016.pdf>
- xii. BMA Annex VIII Sector-Specific Guidance Notes for Digital Asset Business
<https://www.bma.bm/viewPDF/documents/2019-04-23-14-52-09-Annex-VIII-Sector-Specific-Guidance-Notes-for-Digital-Assets.pdf>
- xiii. International Sanctions Regulations 2013
<http://www.bermulaws.bm/laws/Consolidated%20Laws/International%20Sanctions%20Regulations%202013.pdf>
- xiv. Ministry of Legal Affairs – Financial Sanctions Implementation Unit Financial Sanctions Guidance – companies should take note of the Sanctions Reporting Requirements
<https://www.gov.bm/sites/default/files/Financial-Sanctions-Guidancev4.pdf>
- xv. Product Due Diligence Guidance
<https://cdn.bma.bm/documents/2021-05-07-05-39-25-PDD-Guidance-Note.pdf>
- xvi. Head Office Guidance
<https://cdn.bma.bm/documents/2021-04-16-04-08-50-Head-Office-Guidance.pdf>

2. Which types of DAB licences are available?

The classes available under section 12 (3) of the DABA are:

- Class F – Full licence
- Class M – Modified licence
- Class T – Testing licence

3. What differentiates the three types of DAB licences?

Regular environment – Class F licence

A Class F licence is a full licence to operate as a regulated DAB in Bermuda. This licence does not have an expiration date; however, it is subject to regular supervisory visits by the Bermuda Monetary Authority's (Authority or BMA) FinTech supervisory unit, Anti-Money Laundering unit and Cyber Risk unit. A full licensee must meet all of the minimum licensing criteria as detailed in the DABA and any additional conditions set forth by the Authority.

Sandbox environment – Class M and T licences

The Class T licence is a testing licence to evaluate a novel business model, a minimum viable product or service, or run a pilot in or from Bermuda. This licence has an initial duration period of three to 12 months, with the potential for extension, and is subject to certain restrictions imposed by the Authority. Prior to the T licence expiration, the licensee and the Authority typically meet to discuss the next steps in terms of licensing (i.e. the class of licence the licensee intends to seek next) or if it intends to wind down the operations.

The Class M licence is designed to allow entities to transition from testing a proof-of-concept under a T licence (or other testing environments) to become a Class F licensee. During the M licence period, the financial institution develops its compliance programme to ensure its effectiveness at scale. The licensee, therefore, should prepare a roadmap and submit key indicators to evaluate the growth of the business, its risk and its compliance with policies and procedures. This licence typically has a duration of 12 months and is subject to certain restrictions imposed by the Authority and supervisory visits from the Authority. Towards the cessation of the licence, the Authority and the DAB will discuss the next steps. This will include whether the DAB has demonstrated its ability to maintain an effective compliance programme and has met the minimum licensing criteria for a Class F licence.

4. What type of restrictions are imposed for the Class M Licence?

The best licence for your company is a function of different variables and business imperatives. The Authority cannot offer legal advice and recommends discussing appropriate options with your legal advisor.

In considering which licence is best suited for your company, particular attention must be paid to the ability to evaluate the risks of a specific activity properly. For novel activities with significant uncertainties, it is generally appropriate to leverage the T (test) licence to observe the evolution of risks in a controlled environment. For entities with a sound understanding of the risks associated with their intended activities but still scaling up operations and working to implement an effective compliance programme, an M (modified) licence may be appropriate. Whereas entities that have a fully developed business model, with known risks and a fully effective compliance programme, may seek an F (full) licence.

Below is a brief recap of the key features of the DAB licences:

	Sandbox environment		Regular environment
Licence class	Class T (test)	Class M (modified)	Class F (full)
Business model maturity	Testing and piloting a business model, a product or a service, which is still unproven generally or in a specific context	Scaling up a business model that has previously been tested and building a full compliance programme	Running a proven business model at scale with a fully developed compliance programme
Limitations on licence	Very limited scale, pre-set number or category of participants	Limited scale or volume of business	Usually none
Supervision	Limited reporting, important emphasis on disclosure of risks and limitations of a test to prospective customers	Monthly supervisory meeting and returns with predetermined key indicators	Yearly annual returns with on-site supervision
Minimum net assets	\$10,000	\$100,000	\$100,000+
Insurance requirements	No	Yes	Yes

Head office requirements	Local incorporation only	Proportional expectations as the licensee grow in scale and complexity	Yes
Duration	Three to 12 months with the potential to extend	12-24 months with the potential to extend	No predetermined duration
Application filing cost	Reduced to \$1,000	\$2,266	\$2,266
Licence cost (annual for F or the predetermined period for M and T)	Reduced to \$1,000	Regular fee structure applies	Regular fee structure applies

5. What type of restrictions are imposed for the Class M and Class T Licences?

The restrictions vary in nature depending on the type of business activities being conducted by the DAB. Restrictions can include:

- i. Number of customers on-boarded
- ii. Volume of transactions (\$) or (#) (daily, monthly or other period)
- iii. Nature of assets to be traded
- iv. Amount of capital to be traded
- v. Any other restrictions deemed appropriate by the Authority

6. Which business activities require a DAB licence?

The following business activities are considered DAB as referenced in the DABA section (2) (2):

- a. Issuing, selling or redeeming virtual coins, tokens or any other form of digital asset
- b. Operating as a payment service provider business utilising digital assets, which include the provision of services for the transfer of funds
- c. Operating as an digital asset exchange
 - ca. Carrying on digital asset trust services
- d. Providing custodial wallet services
 - da. Operating as a digital asset derivative exchange provider
- e. Operating as a digital asset services vendor

7. How can I apply for an exemption or a modification to a specific requirement under the legislation?

The DABA provides powers to the Authority to exempt or modify a requirement under section 8 of the Act. An applicant or licensee may apply for an exemption or modification in writing to the Authority while specifying details of the request along with the supporting rationale. The Authority will review the requests on a case-by-case basis and provide a decision in writing to its own discretion.

As an example, for entities seeking to offer multiple products within a specific category, it is possible to apply to modify the requirement under section 22 of the Act that requires the filing of a material change of business notification prior to the introduction of each product. The rationale for such request should include the risk evaluation at both the product and entity level along with the specification upon which the product category is defined.

8. What turnaround times should I expect to receive a response to my enquiry, request or application?

The Authority strives to be responsive; our service guidelines are as follows:

General response to the email	Two business days
Application completeness check	Three business days
Preliminary review of applications	10 business days
Decision on the application once final	20 business days
Non-urgent request during supervision	Three business days
Urgent request during supervision	One business day
No objection request to a material change to the business (e.g., introducing a new product or service, merger and acquisition, etc.)	30 calendar days

Note that these are guidelines and that due to the varying nature of requests and applications, delays may occur. In general, if the Authority cannot respond within the above time frame, you can expect a notice to that effect along with a better estimate of a response time.

9. How can I stay informed about the latest legislative and regulatory developments in relation to the Digital Assets sector in Bermuda?

Please subscribe to our e-alerts using this [link](#).

10. Whom can I contact within the Authority for additional information?

General enquiries that relate to DABs can be directed to Fintech@bma.bm.

Licensed entities should contact their lead supervisor, and applicants should refer to their assigned case manager.

B. Application for licence or authorisation

11. I am looking to issue digital assets in or from Bermuda. Do I need to apply for a DAB licence or a Digital Asset Issuance authorisation with the BMA?

Generally, issuers looking to issue digital assets as a means to raise capital for a venture or a project need to seek authorisation from the BMA under the Digital Asset Issuance Act 2020 (DAIA). Conversely, issuers that intend to issue digital assets with characteristics of a business (e.g., continuously with the intention to capture a profit) need to seek a DAB licence from the BMA. For example, stablecoin issuers will likely fall under the DABA, while issuers of utility tokens seeking to use the proceeds to build a platform or project will fall under the DAIA.

12. Do I need to have a local substance in Bermuda to attain a DAB licence?

Yes. Please review the Head Office requirements in the DABA and the accompanying information provided in the Digital Asset Business Head Office Guidance.

Note that the T (test) licence only requires local incorporation without meeting other head office requirements.

13. What are the requirements for the senior representative?

Licensees must appoint a senior representative who:

- Must be knowledgeable in DABs and related Bermuda laws and regulations
- Has a legislated duty to report certain events to the Authority including non-compliance with a condition, involvement in a criminal proceeding, material change to the business or a cyber-reporting event (see the full list in section 20 (3) of the DABA)
- Cannot cease to act without giving 30 days' notice in writing to the Authority
- Maintains an office in Bermuda (this requirement is waived for the T (test) licence)

14. Is there an international standard we can reference to ensure we achieve the best practice baseline of cyber risk and cybersecurity controls?

While there is no internationally recognised best-practice standard for digital asset cyber risk and cybersecurity controls, the Authority uses the National Institute of Standards and Technology (NIST) cybersecurity standard as a high-level baseline of generic IT security controls.

15. As part of our activities, we will control our customer's digital assets or private keys. Are there specific requirements applicable to such an activity?

Yes, any entity having partial or full protective care or guardianship of its customers' digital assets or private keys must ensure compliance with the [Digital Asset Custody Code of Practice](#).

16. How much net assets or capital do I need to hold as a DAB?

DABs are responsible for filing their own minimum net assets evaluation during the application stage. The evaluation should be based upon the risks borne by the company. For example, operational, credit and market risks should be modelled and mitigated, and residual risks should be subject to net assets or other safeguards.

Nonetheless, per the DABA, net assets should not be lower than:

- \$100,000 for Class M and F licensees
- \$10,000 for Class T licensees

The Authority may request additional capital depending on the licensee's operations' nature, scale, and complexity.

17. Can I arrange for a meeting with the Authority before filling out a formal application?

While it is not a requirement to meet with the Authority prior to making an application, such meetings are highly encouraged to provide us with a preview of the proposed business model. The Authority is also prepared to provide guidance where needed. Concurrently, the Authority encourages engagement with competent persons in the legal profession who understand relevant Bermuda laws.

18. I am unsure if I require a DAB licence. Can I still meet with the Authority?

Yes. Please contact the Authority to book a meeting with the FinTech unit by email at FinTech@bma.bm, or through our FinTech office hours link [here](#).

C. Supervision and ongoing obligations of licensees

19. Can I extend a T or M licence beyond its initial deadline?

The BMA reviews each T or M licensee on a case-by-case basis. The Authority will require the DAB to build a business case, indicating:

- Why an extension is required
- Additional key indicators to measure progression and compliance
- A timeline containing the length of the extension required (as well as key milestones to achieve)

20. I received a request for documents or information from the Authority; how much time do I have to respond?

Generally, the Authority will provide a deadline to file such information. When a deadline has not been specified, the response should be provided as soon as practicable. When in doubt, contact your lead supervisor.

21. As a new licensee, what can I expect from the supervision team?

Soon after receiving your licence, the supervisory lead assigned to your company will reach out to schedule an on-boarding call. The following topics will likely be addressed:

- Key contacts at the BMA and within your organisation
- Key areas the BMA will monitor during supervision
- Review of the conditions on your licence
- Review of any documentation that your organisation is required to submit to the BMA and the relevant events that must be reported to the Authority on a continuing basis

22. As a DAB licensee what documents do I need to file with the BMA?

In general, and subject to specific conditions on your licence, the following documents must be filed:

Document	Frequency	Requirement
Cybersecurity report	Annually – four months after the end of its financial year	Section 3 of the <i>Digital Asset Business (Cybersecurity) Rules 2018</i>
Annual return	Annually – four months after the end of its financial year	Section 3 of the <i>Digital Asset Business (Prudential Standards) (Annual Return) Rules 2018</i>
Audited financial statements	Annually – four months after the end of its financial year	Section 31 of the <i>DABA</i>
Financial accounts	Annually – four months after the end of its financial year	Section 31 of the <i>Digital Asset Business Act 2018 and the Digital Asset Business Account Rules 2021</i>
Certificate of Compliance	Annually – four months after the end of its financial year	Section 66 of the <i>DABA</i>

D. AML/ATF requirements

23. Which documents are required as a part of the AML/ATF submission?

i. AML/ATF Policies and Procedures

A copy of the company's AML/ATF policies and procedures that comprehensively demonstrates how the company applies each individual regulatory and/or legislative requirement to comply with the Proceeds of Crime (AML/ATF Financing) Regulations 2008.

The following documents may assist with this:

- Proceeds of Crime (AML/ATF Financing) Regulations 2008
- BMA Guidance Notes for AML/ATF Regulated Financial Institutions on AML/ATF Financing 2016
- BMA Annex VIII Sector-Specific Guidance Notes for DAB

ii. Sanctions Policies and Procedures

A copy of the company's sanctions policies and procedures comprehensively demonstrates how the company will apply the regulatory and/or legislative requirements to comply with the International Sanctions Regulations 2013.

The following documents may assist with this:

- International Sanctions Regulations 2013
- Ministry of Legal Affairs – Financial Sanctions Implementation Unit Financial Sanctions Guidance, the company should take note of the Sanctions Reporting Requirement

iii. Business Money Laundering (ML)/Terrorist Financing (TF) Risk Assessment

A copy of the business ML/TF risk assessment demonstrates the company's assessment of its ML/TF risks against the four pillars of ML/TF risks (Customer, Geographic, Delivery Channel and Products/Services). The business ML/TF risk assessment should include

- Identification of the company's inherent risks of ML/TF and sanctions against the four pillars
- Assessment of the results of the National Risk Assessment and its impact on the company
- Mitigation measures in place
- Subsequent residual risk

The following document may assist the company with this:

- BMA Guidance Notes for AML/ATF Regulated Financial Institutions on AML/ATF Financing 2016 (Section 2.13 – 2.84)

iv. Customer ML/TF Risk Assessment

You must include a copy of the customer ML/TF risk assessment for new and ongoing business relationships. The customer ML/TF risk assessment should adequately assess the four pillars of ML/TF risks (Customer, Geographic, Delivery Channel and Products/Services) in order to determine the customer's risk-rating of high, medium or low, determining the level of customer due diligence required.

In addition to the customer ML/TF risk assessment, the company must provide the Authority with a written methodology for applying and monitoring the customer's risk rating for new and existing customers.

24. Are there any special requirements for AML/ATF outsourced functions?

Yes. For AML/ATF and sanctions functions that are outsourced, as required by the Proceeds of Crime (AML/ATF) Regulations 2008, the company must provide the following to the Authority:

- The identity of the company(s) the AML/ATF functions have been outsourced to
- A description of what AML/ATF functions have been outsourced
- A copy of the service level agreements in place detailing the outsourced functions
- Information and/or evidence documenting how the company monitors and manages the outsourced functions and retains ultimate responsibility for the AML/ATF compliance function

- A copy of the outsourced company's AML/ATF and sanctions policies and procedures and/or information to demonstrate that the outsourced party has in place AML/ATF systems, controls and procedures compliant with Bermuda's AML/ATF requirements

25. What are the requirements for the Compliance Officer and Money Laundering Reporting Officer (MLRO)?

A. Compliance Officer

The applicant must appoint a Compliance Officer, who must be at the managerial level, and who must have the Authority to:

- Oversee the establishment, maintenance and effectiveness of the Regulated Financial Institution's (RFI) AML/ATF policies, procedures and controls
- Monitor compliance with the relevant acts, regulations and guidance
- Access all necessary records in a timely manner
- Provide the Authority with information to demonstrate the compliance officer's training and/or experience to show that they are adequately trained to carry out the role

B. MLRO

The applicant must appoint an MLRO with the Authority to:

- Receive suspicious activity disclosures from the RFI's employees
- Access all necessary records in a timely manner
- Make final determinations on whether disclosures should be reported to the Financial Intelligence Agency (FIA)
- Where appropriate, make external reports to the FIA
- Provide the Authority with information to demonstrate the MLRO's training and/or experience to show they are adequately trained to carry out the role

The MLRO is not required to be a member of the senior management. The compliance officer and MLRO may be the same individual.

26. How do I file Suspicious Activity Reports (SAR) in Bermuda?

The MLRO must file a SAR with the FIA electronically via the GoAML system, which is available at <https://www.fia.bm/>. The company and MLRO are required to register with the FIA in order to file an external SAR.