



ANGUILLA

A BILL FOR
ANGUILLA UTILITY TOKEN OFFERING ACT, 2024

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ANGUILLA UTILITY TOKEN OFFERING ACT, 2024

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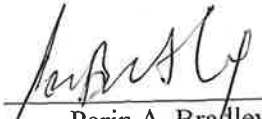
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I Assent



Perin A. Bradley
Governor (Acting)

24 Dec 2024
Date

ANGUILLA

No. 26/2024

ANGUILLA UTILITY TOKEN OFFERING ACT, 2024

An Act for the registration of issuers of utility token offerings in or from within Anguilla.

[Gazette Dated: 27th December, 2024] [Commencement: Assent under section 57 of the Constitution]

ENACTED by the Legislature of Anguilla

PART 1

PRELIMINARY

Interpretation

1. (1) In this Act, unless the context otherwise requires—

“auditor” means a person who is found by the Commission to be acceptable to audit an issuer;

“blockchain” means a continuously growing list of synchronized decentralised digital records in the form of a distributed ledger that are linked and secured using cryptography;

“Commission” means the Anguilla Financial Services Commission established under section 2 of the Financial Services Commission Act;

“company” means any legal entity, wherever incorporated, organized, constituted or otherwise established;

“constitutional documents” means in the case of a company, the certificate and articles of incorporation, by-laws, memorandum and articles of association or other instrument of incorporation and in respect of any other legal entity, the documents establishing or constituting such legal entity;

“Court” means the High Court;

- “custodian” means a person who contracts with an issuer or a utility token offering administrator to provide the service of storing subscription funds on behalf of the issuer;
- “distributed ledger” means a consensus of replicated, shared and synchronised digital data geographically spread across multiple sites, institutions or geographies;
- “dollar” or “\$” means a dollar in the currency of the United States of America;
- “financial year”, in relation to an issuer registered under this Act, means a period of not more than 12 months for which the audited financial statements of the issuer are prepared in accordance with this Act;
- “issuer” means a person undertaking a utility token offering;
- “officer” means a senior manager of a legal entity and includes any member of the board of directors of an entity, any managing director, chief executive officer, chief operating officer, deputy managing director, president, vice-president, secretary, treasurer, chief financial officer, financial controller, general manager, deputy general manager, corporate secretary, chief accountant, chief auditor, chief investment officer, chief compliance officer and chief risk officer of an entity or any other individual who performs functions for an entity similar to those normally performed by an individual occupying any such office;
- “person” includes an individual, company, partnership, trust, fund, and any other legal entity, and the personal or other legal representative of any person to whom the context can apply;
- “platform” means, for the purposes of this Act, any blockchain based platform or network, with or without smart contract (scripting) functionality, or such other platforms prescribed from time to time by regulations;
- “prescribed period” means any period commencing at the date of commencement of the utility token offering to the public and ending at the date of the general release to the public of the utility token platform materially having the functionality described in the white paper;
- “qualified company” means any legal entity incorporated, organized, constituted or otherwise established under the laws of Anguilla, or such other entity prescribed by regulations;
- “regulations” means regulations made under this Act;
- “share” means any share or other interest in any company incorporated, organized, constituted or otherwise established under the laws of Anguilla;
- “shareholder” means, for the purposes of this Act, the holder of any share or interest in a company;
- “significant shareholder”, means, with respect to an issuer, a person that—
- (a) beneficially owns, directly or indirectly, or exercises control or direction over voting shares of the issuer, or a combination of both, carrying ten percent or more of the votes attached to all voting shares of the issuer outstanding; or
 - (b) is able to affect materially the control of the issuer, whether alone or by acting in concert with another person;

“smart contract” means a blockchain based computer protocol intended to facilitate, verify, or enforce the negotiation or performance of a digital set of agreed upon terms, or contract;

“subscriber” means a person who subscribes for, purchases or otherwise obtains a utility token (or any part thereof) at a utility token offering, in consideration of subscription funds;

“subscription funds” means the price paid or value provided or to be paid or provided by a subscriber, in the medium of exchange stipulated by an issuer, in consideration for the subscription of a utility token at a utility token offering conducted by such issuer;

“token” means any cryptographically secured digital representation of a right or value provided on a platform;

“utility token” means any token that has or will have in the future, upon launch of a utility token platform, one or more utility token features but such utility token does not, directly or indirectly, provide the holder(s) thereof, individually or collectively with other holder(s), any of the following contractual or legal rights—

(a) ownership or equity interest in—

- (i) the issuer,
- (ii) in any company, or
- (iii) a pool of assets;

(b) entitlement to a share of any profits or assets, of—

- (i) the issuer;
- (ii) any other company; or
- (iii) a pool of assets;

other than in the event of liquidation or dissolution of the issuer, in which case the holder may receive a portion of, but not in excess of, the original subscription funds paid for the utility token in the utility token offering hereinafter referred to as “Limited Return Rights”;

(c) responsibility or liability for any claims, damages, losses, expenses, costs or liabilities whatsoever of—

- (i) the issuer, or
- (ii) any other company;

(d) legal status as a creditor, other than with respect to—

- (i) redemptive features equating to but not in excess of the original subscription price paid for the utility token in the utility token offering, or
- (ii) to Limited Return Rights;

- (e) entitlement to receive distributions of profits, revenues, assets or other distributions from—
 - (i) the issuer,
 - (ii) any other company, or
 - (iii) pool of assets;other than with respect to Limited Return Rights; and

“utility token features” means the right for a holder thereof to utilise a token to—

- (a) have access to, become a member of, or become a user of a utility token platform,
- (b) use as the sole or preferred (by economic discount, preferred access, preferred use or otherwise) medium for the acquisition of or use of products or services provided or proposed to be provided by, in or through a utility token platform, or
- (c) use as a means of voting on matters relating to the governance, management or operation of a utility token platform;

“utility token offering” means an offer to the public to subscribe for the purchase of utility tokens to be issued by an issuer and made by the issuer to any person who is not connected to the issuer;

“utility token offering administrator” means a person who, for valuable consideration, provides an issuer with any of the following services—

- (a) escrow related services in accordance with an escrow agreement filed with the Commission, including services related to the receipt, maintenance and release of subscription funds in connection with a utility token offering;
- (b) administration of the register of subscribers to a utility token offering; and
- (c) collection, review and record-keeping of customer due diligence conducted on subscribers to a utility token offering;

“utility token platform” means a platform in which a utility token may be utilised;

“white paper” means a document prepared by an issuer for the purpose of detailing a utility token offering and that contains the information required by this Act and as may be prescribed by regulations from time to time.

(2) For the purposes of this Act, a person is considered to be undertaking a utility token offering in or from within Anguilla if the person is—

- (a) resident in Anguilla;
- (b) incorporated, organized, constituted or otherwise established under the laws of Anguilla; or

- (c) representing to be undertaking a utility token offering in or from within Anguilla.

PART 2

ADMINISTRATION

Register of registered issuers

2. (1) The Commission shall keep a register of registered issuers which shall show the—
- (a) information required under section 20(1) with respect to each registered issuer;
 - (b) date of registration; and
 - (c) status of such registration if cancelled and the date thereof.

(2) The register required under subsection (1) shall be published on the Commission's website in such form as the Commission may determine and shall be open to public inspection.

Distributed Ledger Technology Advisory Committee

3. (1) There shall be a Committee called the Distributed Ledger Technology Advisory Committee which shall consist of not less than 3 persons appointed by the Commission from among members of the private sector, whether within or outside of Anguilla, who are known to the Commission to have adequate knowledge of and experience in the utility token offering industry.

(2) The Commission shall designate one of the persons appointed under subsection (1) as Chairman of the Distributed Ledger Technology Advisory Committee.

(3) A representative each of the Commission and the Government of Anguilla shall be entitled to attend meetings of the Distributed Ledger Technology Advisory Committee as observers.

- (4) The Distributed Ledger Technology Advisory Committee shall—
- (a) advise the Commission on any matter referred to it by the Commission relating to distributed ledger technology and utility token offerings;
 - (b) on its own motion report and make recommendations to the Commission on any matter relating to distributed ledger technology and utility token offerings as it sees fit;
 - (c) on a regular basis, but not less frequently than once every calendar year, make written recommendations to the Commission as to whether any amendments to this Act are needed; and
 - (d) have power to establish, subject to the approval of the Commission—
 - (i) its own working rules and procedures, and
 - (ii) as many sub-committees as it thinks necessary.

PART 3

REGISTRATION OF ISSUERS

Registration

4. (1) No person shall undertake a utility token offering in or from within Anguilla unless registered as an issuer specifically for the purpose of conducting that offering under this Act.

(2) Any person that contravenes subsection (1) commits an offence.

Application for registration

5. (1) A qualified company may apply to the Commission for registration as an issuer for the purpose of conducting a utility token offering.

(2) An application for registration under subsection (1) shall be—

(a) made in the form and contain the information as prescribed by regulations; and

(b) accompanied by—

(i) a statement setting out the nature and scope of the business to be carried on by the applicant, including the name of any other country or jurisdiction where the applicant is carrying on or intends to carry on business,

(ii) a statement of the financial, technical and human resources and administrative facilities available to the applicant for the competent and efficient conduct of its business or intended business,

(iii) a statement pertaining to the scope of the utility token offering,

(iv) a white paper containing such information as required by this Act and such other information as may be prescribed by regulations from time to time,

(v) the application fee of such amount as may be prescribed by regulation,

(vi) certified copies of the instruments by which the applicant is constituted under the laws of Anguilla as a qualified company, or such other proof as may be satisfactory to the Commission that the applicant is so lawfully constituted,

(vii) the notices required under section 23(1), and

(viii) such other documents or information as the Commission may reasonably require for the purpose of determining the application.

Power to grant registration

6. (1) The Commission, if satisfied that—

(a) the registration fee as prescribed by regulation has been paid; and

(b) the requirements of this Act have been complied with;

may grant a registration.

(2) Notwithstanding subsection (1), the Commission shall refuse to grant registration to any applicant if—

- (a) the applicant has a name which is undesirable or misleading; or
- (b) it determines that it is not in the public interest that such registration should be granted, including where any director, manager, officer, or significant shareholder of the issuer or any of its affiliates involved in the development, operation or management of the blockchain project is not a fit and proper person.

(3) Where the Commission, refuses to grant registration it shall provide brief written reasons for its refusal, which shall not be subject to appeal.

Registration procedure

7. Where the Commission grants registration of an issuer pursuant to section 6, it shall—

- (a) enter the name of the issuer in the register maintained by it under section 2; and
- (b) issue a certificate of registration to the issuer showing the date of registration.

Annual fee

8. (1) Every issuer that is registered under this Act shall pay the prescribed annual fee on or before 15th January of each year.

(2) The fee referred to in subsection (1) shall not be paid in the year in which the registration is granted.

Records, information and financial statements

9. (1) Every issuer that is registered under this Act shall—

- (a) for the duration of the prescribed period, maintain adequate accounting records and prepare financial statements in respect of each financial year in accordance with generally accepted accounting principles;
- (b) keep a copy of such accounting records and financial statements at the issuer's registered office in Anguilla, for a period of 5 years following the prescribed period; and
- (c) shall make such records and statements available to the Commission and any person authorised by the Commission during the period set out in subsection 1(b).

(2) The accounting records and financial statements required under subsection (1) shall be—

- (a) audited by an auditor acceptable to the Commission in accordance with generally accepted auditing standards;

- (b) accompanied by the report of the auditor referred to in subsection 2(a) which shall include a statement of the accounting principles under which the statements have been prepared and a statement of the auditing standards which have been applied in the audit of such statements; and
 - (c) filed with the Commission and provided to or made available for examination by all subscribers of the utility token offering of the issuer, before the expiry of 180 days after the issuer's financial year ends.
- (3) Where within the prescribed period, a material change occurs in the affairs of an issuer registered under this Act, the issuer shall, within 7 days of the material change —
- (a) publish such change on a specified website that is accessible to—
 - (i) subscribers of the utility token offering, and
 - (ii) any subsequent holders of the utility tokens, and
 - (iii) the Commission; and
 - (b) file with the Commission and with the utility token offering administrator, a notice authorised by a director or manager of the issuer that discloses the nature and substance of the change.
- (4) If the issuer is of the opinion that the publication required by subsection (3)(a) would be unduly detrimental to its interests, it may within 7 days of the material change cause the utility token offering administrator to give the Commission notice in writing of the nature and substance of the material change and the reasons why the issuer is of the opinion that the material change should not be published.
- (5) Where the Commission is in receipt of a notice under subsection (4), the Commission after considering any written representations filed by the issuer under subsection (4) may—
- (a) require publication of the material change in accordance with subsection (3)(a), if the Commission is of the opinion that the publication would not be unduly detrimental to the interests of the issuer; or
 - (b) permit non-publication of the material change by the issuer for a stated period of time.
- (6) A decision of the Commission under subsection (5) is final and shall not be subject to appeal.
- (7) Prior to the release of subscription funds, or any part thereof, to the issuer the issuer shall—
- (a) publish on a specified website that is accessible to subscribers of the utility token offering and any subsequent holders of the utility tokens and the Commission; and
 - (b) file with the Commission;
- notification that the required conditions for the release of subscription funds have been met.

(8) The issuer shall—

- (a) publish on a specified website at reasonable intervals during the prescribed period, but no less than once each calendar quarter; and
- (b) file with the Commission and the utility token offering administrator on or before the date of publication specified in paragraph (a);

information detailing the current financial and operational status of the issuer, including the progress and development of the utility token platform and any plans to deviate in any material aspect from the utility token platform described in the white paper.

(9) The information published by the issuer under subsection (8)(a), shall be maintained on such website for the period of no less than 1 year following the prescribed period and such specified website shall be accessible—

- (a) to subscribers of the utility token offering;
- (b) any subsequent holders of the utility tokens; and
- (c) the Commission.

(10) Every registered issuer shall maintain with the utility token offering administrator, a list of all subscribers for the period specified in subsection (1) (b) in such form as shall be prescribed by regulations.

Duty to publish and file a white paper

10. (1) No registered issuer shall make a utility token offering unless, prior to initiating the offering, it has—

- (a) published a white paper signed by the board of directors or managers approving the contents of the white paper or authorising its publication; and
- (b) filed a copy thereof such signed white paper with the Commission.

(2) The white paper shall be published by posting and maintaining a copy of the white paper on a specified website that is accessible to potential subscribers for the prescribed period and for a period of no less than 1 year following the prescribed period.

(3) Every white paper published pursuant to subsection (1) shall—

- (a) provide full and accurate disclosure of all such information that potential subscribers to the utility token offering reasonably would require and expect to find for the purpose of making an informed decision to subscribe;
- (b) contain a summary statement of subscribers' rights as provided for in section 11; and
- (c) be accompanied by financial statements for the issuer at the time of preparation of the white paper, and the auditor's report thereon if the issuer has completed a financial year in operation;

(d) contain and be accompanied by such other information as may be prescribed by regulations.

(4) If all or any part of the white paper is not in the English language, the Commission may require that an English translation of the white paper or that part of the white paper, verified in a manner satisfactory to the Commission, be filed along with the white paper.

(5) Where in a white paper any of the disclosure required under subsection (3)(a) ceases to be materially accurate, prior to the completion of the utility token offering, the registered issuer shall promptly—

- (a) provide a copy of the amended white paper to the Commission; and
- (b) publish an amendment to the white paper giving accurate disclosure.

Subscribers' rights of action against an issuer

11. (1) If a registered issuer publishes a white paper or any amendment to it, that contains a material misrepresentation relating to any of the disclosure required under section 10(3), a person who subscribed for utility tokens pursuant to such white paper or amendment thereto is deemed to have relied upon the misrepresentation and shall have the rights provided in subsection (2).

(2) A person referred to in subsection (1) may elect to exercise a right of action against the issuer—

- (a) for the rescission of the subscription; or
- (b) for damages.

(3) For the purposes of this section, “misrepresentation” means—

- (a) an untrue or misleading statement of any of the disclosure required under sections 10(3) and 10(5); or
- (b) an omission to disclose any of such disclosure.

(4) An issuer shall not be liable under this section if such issuer proves that the subscriber subscribed for the utility tokens offered by the white paper or amendment thereto with knowledge of the misrepresentation.

(5) The right of action against an issuer for rescission of subscription or for damages conferred by subsection (2) shall be the sole right of recourse the claimant may have at law, whether or not, but for this provision, a plaintiff would otherwise have had a right of recourse, in law or in equity, against any issuer or parent, subsidiary or affiliate of the issuer, or any principal, director, manager, council member, officer, shareholder, partner, member, advisor, representative, servant, employee or agent of the issuer.

Limitation of action and amount recoverable

12. (1) Notwithstanding any provision of law to the contrary, proceedings pursuant to section 11(2) may not be commenced after—

(a) 180 days from the day that the claimant first had knowledge of the misrepresentation; or

(b) one year from the date of the subscription that gave rise to the cause of action;

whichever is earlier.

(2) Proceedings may be commenced after the limitation periods prescribed in subsection (1) have expired, if a claimant can demonstrate to the satisfaction of the court that it is in the interests of justice for the limitation period to be extended.

(3) In any action under section 11(2), the amount recoverable shall not exceed the subscription funds of the claimant for which the utility tokens were subscribed, along with any fees or other charges paid by the claimant with respect to such subscription.

Arbitration and subscribers' rights

13. (1) An issuer may elect to stipulate that any disputes arising out of or related to a subscription to the utility token offering shall be restricted to resolution by arbitration.

(2) In the event of such election pursuant to subsection (1), and subject to section 11(5), any subscriber wishing to exercise any right of recourse, including the right to invoke sections 11 and 12 of this Act, shall be limited to resolving such claims by such arbitration.

Fit and proper persons

14. (1) When considering whether a person is “fit and proper” for the purposes of this Part, the Commission shall take into account the following—

(a) the person’s financial status or solvency;

(b) the person’s education or other qualifications or experience, having regard to the nature of the functions that he performs or will perform;

(c) the person’s ability to carry on the activity for which he is responsible competently, honestly and fairly; and

(d) the reputation, character, reliability and financial integrity of—

(i) the individual himself, or

(ii) the company and any director, significant shareholder, chief executive officer and any other officer of the company, where the person is a company;

(e) whether the person has satisfactorily completed any examination requirements prescribed by the Commission; and

(f) any other matter that the Commission may consider relevant.

(2) Without limiting the generality of subsection (1), the Commission may, in considering whether a person is a fit and proper person, take into account—

- (a) any decision made in respect of the person by the Commission, any other domestic regulatory authority or foreign regulatory authority;
- (b) any information that is in the possession of the Commission, whether provided by the person or not, relating to—
 - (i) the person,
 - (ii) any other person who is or is to be employed by or associated with the person for the purposes of the regulated activity for which the registration is granted or the application is made,
 - (iii) any other person who will be acting for or on behalf of the person in relation to the regulated activity, and
 - (iv) where the person is a company in a group of companies—
 - (A) any other companies in the same group of companies, or
 - (B) any significant shareholder, director or officer of any other company in the group of companies,
 - (C) whether the person has established effective internal control procedures and risk management systems to ensure compliance with all applicable regulatory requirements, and
 - (D) the state of affairs of any other business that the person carries, or has previously carried on.

Meaning of “affiliates”

15. (1) For the purposes of sections 6 and 11 a person is an affiliate of or affiliated with another person if their relationship falls into one of the following categories—

- (a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; or
- (b) if two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.

(2) For the purposes of subsection (1)(a) a body corporate is controlled by a person if any shares or members' interest of the body corporate carrying voting rights sufficient to elect a majority of the directors or managers of the body corporate are held directly or indirectly, except by way of security only, by or on behalf of that person.

PART 4

UTILITY TOKEN OFFERING ADMINISTRATOR

Appointment of administrator

16. Every issuer shall appoint a utility token offering administrator and shall maintain permanently at a designated principal office in Anguilla, or some other location approved by the Commission, full and proper records of the utility token offering as prescribed by this Act or by regulations.

Licensing

17. No person shall carry on or hold himself out as carrying on business in or from within Anguilla as a utility token offering administrator unless that person is licensed for the purpose under this Act.

Application for a licence as a utility token offering administrator

18. (1) A person who wishes to carry on business as a utility token offering administrator may make an application for a licence to the Commission to carry on business in or from within Anguilla as a utility token offering administrator.

(2) An application shall be accompanied by—

- (a) the application fee of such amount as may be prescribed by regulation;
- (b) a statement of the financial and human resources and administrative facilities available to the applicant for the competent and efficient conduct of its business; and
- (c) such other documents or information as the Commission may reasonably require for the purpose of considering the application.

Power to grant licences to utility token offering administrators

19. (1) The Commission may, in its discretion, grant or refuse to grant a licence under this section to any applicant under section 18(1).

(2) The Commission shall not grant a licence unless it is satisfied that the applicant—

- (a) is a fit and proper person to be engaged in the business proposed;
- (b) has or has available to him adequate knowledge, expertise, resources and facilities necessary for the nature and scope of the business proposed; and
- (c) has appointed an auditor satisfying such conditions as may be prescribed by the Commission.

(3) Notwithstanding subsections (1) and (2), the Commission shall refuse to grant a licence to an applicant if it determines that it is not in the public interest that a licence should be granted to such applicant.

(4) Where the Commission refuses to grant a licence to an applicant, it shall provide brief reasons for its decision, which shall not be subject to appeal.

Licensing procedure for utility token offering administrators

20. (1) Where the Commission grants a licence to a person who applies for a licence as a utility token offering administrator under section 20 it shall—

- (a) enter the particulars of the applicant in the register maintained by it for the purpose under section 2; and
- (b) issue a licence to the applicant showing the date on which the licence is granted.

(2) A person licensed as a utility token offering administrator shall pay the prescribed annual fee on or before 15th January each year, other than for the year in which a licence is granted in which case the fee is paid when the licence is issued.

Maintenance of paid up capital

21. (1) A company licenced as a utility token offering administrator must maintain a paid-up share capital in the amount prescribed in the regulations.

(2) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000 for the contravention.

(3) Where an offence under this section is committed by a company, any director or officer of the company who knowingly authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction to a fine of \$10,000 for the contravention.

PART 5

GENERAL

Notices to accompany applications

22. (1) In addition to any other requirement under this Act, every application for registration as an issuer under section 5 shall be accompanied by a notice of the—

- (a) address of the applicant's place of business and its address for service in Anguilla;
- (b) name and address of a person resident in Anguilla who is authorised to represent the applicant and to accept service on its behalf; and
- (c) address of any place of business that the applicant has outside Anguilla.

(2) If the information required pursuant to subsection (1) changes, the applicant shall file with the Commission particulars of the change within 21 days after the change occurs.

Form and conditions of certificate of registration

23. (1) Registration granted under section 6 may be subject to such terms, conditions, restrictions or limitations as the Commission sees fit and shall be specified on the certificate issued by the Commission.

(2) A certificate of registration shall be—

- (a) in such form as may be directed by the Commission; and
- (b) admitted in all courts as prima facie evidence of the facts stated therein.

Power to grant exemptions

24. (1) Where the Commission is satisfied that to do so would not be prejudicial to the public interest, it may direct that all or any of the provisions of this Act or the regulations shall—

- (a) not apply; or
- (b) apply subject to such modifications as it may specify in the direction;

to any person or any class of persons.

(2) A direction under this section may be—

- (a) subject to any conditions as the Commission may see fit to specify therein; and
- (b) revoked at any time at the discretion of the Commission.

(3) At the request of an issuer registered under this Act, the Commission may extend, from time to time, any period within which the issuer is, in accordance with the provisions of this Act, obliged to furnish any document or information.

Exemption from certain enactments

25. (1) No issuer registered under this Act shall, with respect to any matter arising out of or related to a utility token offering, be subject to the provisions of the following Acts, as amended, modified or replaced from time to time—

- (a) the Licensing of Businesses Act;
- (b) the Stamp Act;
- (c) the Securities Act;
- (d) the Mutual Funds Act;
- (e) the Money Services Business Act;
- (f) the Payment System Act;
- (g) the Trust Companies and Offshore Banking Act; and
- (h) such other laws as may be prescribed by regulations.

(2) Notwithstanding any statutory provision or rule of law to the contrary—

- (a) an issuer that is a registered issuer under this Act; and
- (b) a subscriber of utility tokens at any utility token offering of any such registered issuer;

are in all respects exempt from stamp duties and other levies and taxes, save as set forth in this Act.

Offences and penalties

26. (1) Any director, manager or officer of a registered issuer or licensed utility token administrator who—

- (a) wilfully makes a misrepresentation in any document required to be filed, furnished or delivered under this Act or the regulations, or in any white paper issued in respect of a registered issuer;
- (b) wilfully makes any statement or gives any information required for the purposes of this Act or the regulations that he knows to be materially false or misleading; or
- (c) knowingly fails to disclose any fact or information required to be disclosed for the purposes of this Act or the regulations;

commits an offence under this Act and is liable on summary conviction to a fine of not less than \$10,000 and not more than \$25,000 with respect to each offence or to imprisonment for a period of not more than 3 months.

(2) Any person who commits an offence under this Act or the regulations for which no penalty is provided is liable on summary conviction—

- (a) in the case of a legal entity, to a fine of not more than \$50,000 with respect to each offence; and
- (b) in the case of an individual to a fine of not more than \$5,000 with respect to each offence.

(3) A prosecution for an offence under this Act may be commenced within 3 years from the date of the commission of the offence but not thereafter.

Cancellation of registration or license

27. (1) The Commission may, in its discretion, cancel the registration of any registered issuer that breaches any provision of this Act, and thereafter the issuer must not issue, repurchase or trade in any of its utility tokens, save to the extent as otherwise determined by the Commission in its discretion.

(2) The Commission may, in its discretion, cancel the licence of any utility token offering administrator that breaches any provision of this Act, and thereafter the administrator must not carry on, or hold itself out as carrying on, business in or from within Anguilla as a utility token offering administrator, save to the extent as otherwise determined by the Commission in its discretion.

- (3) The Commission shall publish on a website, maintained by the Commission, a list of—
- (a) the issuers whose registration; and
 - (b) utility token offering administrators whose licences;
- have been cancelled.

Regulations

28. The Governor may, after receipt of advice from the Commission, make regulations—
- (a) prescribing fees payable under this Act;
 - (b) designating arrangements which are not utility token offerings;
 - (c) authorising the Commission to require that any document, statement, report, certificate, release, agreement, or other information that is reasonably necessary to enable the Commission to ascertain compliance with this Act, be filed with, furnished or delivered to it;
 - (d) defining, for the purposes of this Act, terms or expressions used in this Act that are not defined in this Act;
 - (e) excluding any person or class of persons, whether by geographical location or otherwise, from being eligible to subscribe to any utility token offering by a registered issuer;
 - (f) relating to the—
 - (i) appointment and removal of directors, managers and officers of an issuer and of a utility token offering administrator,
 - (ii) powers and duties of an issuer, a utility token offering administrator, managers, auditors, escrow agents, custodians and any other provider of services to an issuer or a utility token offering administrator,
 - (iii) preparation of periodical reports,
 - (iv) rights of subscribers, and
 - (v) contents of constitutional documents, in respect of a registered issuer;
 - (g) relating to the matters which should be contained in a white paper of a registered issuer;
 - (h) prescribing classes of subscribers of utility token offerings and consequential regulations relating to disclosure or other obligations with respect to such different classes of subscribers; and
 - (i) generally for the better administration of this Act and for carrying the intent and purpose of its provisions into effect.

- (j) prescribing any matter required to be or which may be prescribed under this Act.

Imposition of levy

29. (1) There shall be imposed a levy on any registered issuer that undertakes a utility token offering pursuant to this Act.

(2) The levy imposed pursuant to subsection (1) shall be payable at such rate and time and in such form and manner as may be prescribed in regulations made by the Governor from time to time and be related to the aggregate value of the subscriptions in the utility token offering as measured in dollars.

(3) Any issuer that evades or attempts to evade the levy payable in accordance with this Act is guilty of an offence and shall be liable upon summary conviction to a fine of 100% of the levy sought to be evaded.

(4) Where an offence committed by an issuer, pursuant to subsection (3), is proved to have been committed with the authorisation, consent, connivance, acquiescence or participation of any director or officer of the issuer, such individual shall be guilty of an offence and liable upon summary conviction to a fine of not less than \$10,000 and not more than \$100,000 with respect to each offence or to imprisonment for a period of not more than 3 months.

(5) A prosecution for an offence under subsection (3) or subsection (4) shall be commenced within 18 months from the date of the contravention but not afterwards.

(6) The Governor may, after receipt of advice from the Commission, make regulations with respect to prescribing any matter required to be or which may be prescribed under this section.

Repeal

30. The Anguilla Utility Token Offering Act, R.S.A. c. A82 is hereby repealed.

Savings of Regulations

31. (1) The Regulations made under the repealed Act referred to in section 30 are hereby saved.

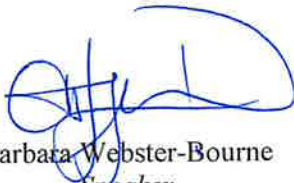
(2) Notwithstanding the repeal of the Anguilla Utility Token Offering Act 2018, unless the contrary intention appears, the repeal of the said Act shall not—

- (a) affect the previous operation of any enactment so repealed or anything duly done under the repealed Act; or
- (b) affect any right, privilege, obligation or liability acquired accrued or incurred under the repealed Act; or
- (c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed Act; or
- (d) affect any investigation, legal proceedings commenced in any court under the repealed Act or
- (e) affect any remedy sought under the repealed Act in respect of any right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceedings, or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the Anguilla Utility Token Offering Act, R.S.A. c. A82 had not been repealed.

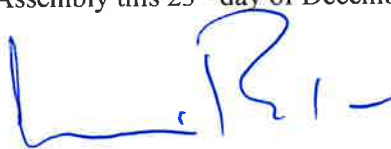
Citation

32. This Act may be cited as the Anguilla Utility Token Offering Act, 2024.



Barbara Webster-Bourne
Speaker

Passed by the House of Assembly this 23rd day of December, 2024



Lenox J. Proctor
Clerk of the House of Assembly

OBJECTS AND REASONS
(The objects and reasons do not form part of the Bill)
EXPLANATORY NOTES

1. The Bill for consideration is the ANGUILLA UTILITY TOKEN OFFERING Bill.
2. The purpose of the Bill is to provide for the disclosure obligations, registration, governance, operation and management of utility token offerings in or from within Anguilla.
3. Part 1 of the Bill provides for preliminary matters.
4. Provision is made in Part 2 of the Bill (*Clauses 2-3*) for the establishment of a register of qualifying issuers of utility token offerings and for the information to be entered into such register. By virtue of Clause 3, a Distributed Ledger Technology Advisory Committee is established for the purposes of advising the Commission on matters related to utility token offerings and distributed ledger technology in general.
5. Part 3 of the Bill sets out the prohibition of any issuer undertaking a utility token offering in or from within Anguilla unless registered under the Bill (Clause 4). Clause 5 (in conjunction with the relevant regulations) sets out in detail the required material necessary in an application for registration under the Act. The Commission if satisfied with the submitted material may grant registration to a successful applicant. Clause 9 sets out the records, information and financial statements that a registered issuer is required to disclose and maintain under the Bill as well as such issuer's obligation to inform the Commission and its subscribers of any material changes in the affairs of the issuer. Clause 10 sets out the obligation of an issuer to publish a prospectus in the form of a "white paper" and sets out the details required of such "white paper". Clauses 11 and 12 provides statutory protections for subscribers including rights of rescission and damages for any misrepresentations by a registered issuer. Clause 13 provides for arbitration of subscriber claims; which arbitration tribunals may be selected on the basis of technological knowledge.
6. Part 4 of the Bill provides for the appointment by an issuer, and the licensing by the Commission, of a utility token offering administrator to provide required services that can include escrow services, including the receipt, maintenance and release of subscription funds in connection with an initial or secondary utility token offering, administration of the register of subscribers to an initial or secondary utility token offering and collection, review and record-keeping of customer due diligence conducted on subscribers to an initial or secondary utility token offering.

7. Part 5 of the Bill deals with general provisions. Clauses 22 through 31 detail the information to be provided by registered issuers, conditions of registration and the Commission powers to grant exemptions. Clause 25 exempts registered issuers from the provisions of specified legislation to avoid any issues of overlapping regulation. Clause 26 provides for statutory offences under the Bill relating to non-disclosure and misrepresentation. Clause 27 deals with the Commission's powers to cancel registration or licence. Clause 28 sets out the power of the Governor to implement regulations for the administration of the Bill.
 8. Clause 29 of Part 5 imposes a levy on registered issuers payable to the Comptroller of Inland Revenue. The levy shall be calculated based on the aggregate value of subscriptions received by a registered issuer. The rate of the levy shall be prescribed by regulations. Subsections (4), (5) and (6) of Clause 29 provides for the enforcement of the levy.
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