



ANGUILLA

UTILITY TOKENS EXCHANGE ACT, 2020

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UTILITY TOKENS EXCHANGE ACT, 2020

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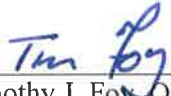
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I Assent


Timothy J. Foy, OBE
Governor

31 March 2020
Date

ANGUILLA

No. 10/2020

UTILITY TOKENS EXCHANGE ACT, 2020

[Gazette Date: 7th April, 2020] [Commencement: Assent under section 57 of the Constitution]

An Act to enable the establishment and operation of the utility token exchanges in or from Anguilla.

ENACTED by the Legislature of Anguilla

PART I

GENERAL PROVISIONS

Interpretation

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

“\$” or “dollars” means United States Dollars;

“auditor” means a person whom the Commission finds to be acceptable to act as an auditor of a licensee in accordance with the Commission’s “Guidelines on Acceptability of an Auditor”;

“Act” means this Act;

“advertisement” means every form of advertising, whether in a publication, by the display of notices, signs, labels or show-cards, by means of circulars or other documents, by an exhibition of pictures or photographic or cinematographic films, by way of sound broadcasting or television, by the distribution of recordings, by computer output, or in any other manner, and “advertising” shall be construed accordingly;

“blockchain” means a continuously growing list of decentralized distributed ledger records that are linked and secured using cryptography;

“charge” means any mortgage, hypothecation, assignment, pledge or lien on any utility token for securing money or money’s worth;

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

“company” means a body corporate, wheresoever incorporated, organized or constituted;

“distributed ledger” means a consensus of replicated, shared and synchronized digital data geographically spread across multiple sites, countries and institutions;

“document” means—

- (a) information recorded in any form; and
- (b) in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“issuer” means, in relation to a utility token, the person by whom the utility token has been or is to be issued;

“licensed” means licensed under this Act, and “licence” and “licensee” shall be construed accordingly;

“list” means the public listing of a utility token on a licensed utility token exchange for the purpose of pairing and trading of such utility token on or through the utility token exchange, and “listed” shall be construed accordingly;

“money” means a medium of exchange in the form of coins and banknotes designated as legal tender by any jurisdiction;

“pair” means the pairing of a listed utility token by a licensed utility token exchange with another listed utility token or money for the purpose of trading;

“person” means an individual, company, partnership, trust, fund, foundation and any other legal entity or organised or incorporated group of persons, and the personal or other legal representative of any person;

“platform” means any blockchain based distributed ledger platform, with or without smart contract (scripting) functionality, or such other platforms as may be prescribed;

“prescribed” means prescribed by regulations made by the Governor in Council on the recommendation of the Commission;

“regulations” means regulations made under this Act;

“smart contract” means a blockchain based computer protocol intended to facilitate, verify, or enforce the negotiation or performance of a contract without third parties;

“stable token” means a class of utility token designed to reduce price volatility through a mechanism linking such utility token to a reserve asset(s) and/or money;

“token” means any cryptographically secured digital representation of a set of rights, including smart contracts, provided on a digital platform issued or to be issued by an issuer;

“trade” means the exchange of a listed utility token with any other listed utility token or with money on a licensed utility token exchange by and amongst users of the licensed utility token exchange;

“trade value” means the value of a listed utility token against another listed utility token with which it has been paired, or against such money with which it has been paired, by a licensed utility token exchange;

“trading day” means any day that a licensed utility exchange is open for trading concluding at 11:59 pm Atlantic Standard Time;

“user” means any person that maintains an account with or uses the facilities of a licensed utility token exchange;

“utility token” means any token that—

- (a) does not, directly or indirectly, provide the holder thereof, individually or collectively with other holder, any of the following contractual or legal rights—
 - (i) ownership or equity interest in the issuer or in any person or pool of assets,
 - (ii) entitlement to a share of profits, losses, assets or liabilities of the issuer or any other person or pool of assets (other than, in the event of liquidation or dissolution of the issuer, to receive a portion of (but not in excess of) the original subscription price paid for the utility token in the initial utility token offering (“Limited Return Rights”)),
 - (iii) legal status as a creditor (other than with respect to Utility Token Features, or with respect to Limited Return Rights), or
 - (iv) entitlement to receive distributions of profits, revenues, assets or other distributions from the issuer or any other person or pool of assets other than with respect to Limited Return Rights; and
- (b) has or will have in the future, on launch of the issuer’s Utility Token Platform, one or more Utility Token Features;

“utility token exchange” means a digital market, exchange, place or facility which provides for bringing together users, on a regular basis, for the purpose of the pairing and trading of listed utility tokens against other listed utility tokens or money and sets rules for the execution of such transactions or for the negotiation or conclusion of such pairing and trading;

“Utility Token Features” means the contractual 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 developed and managed, or proposed in the issuer's white paper to be developed and managed, by the issuer;
- (b) use as the sole or preferred (by economic discount, preferred access, preferred use or otherwise) purchase, lease or rental price for the products and/or services provided or proposed to be provided by or in the Utility Token Platform developed and managed, or proposed in the issuer's white paper to be developed and managed, by the issuer; or
- (c) use as a means of voting on matters relating to the governance, management or operation of the Utility Token Platform developed and managed, or proposed in the issuer's white paper to be developed and managed, by the issuer;

"Utility Token Platform" means the digital platform in which a utility token may be utilised;

"white paper" means any one or more documents prepared by an issuer containing the information required by the Act or the regulations.

PART 2

UTILITY TOKEN EXCHANGES

Restriction on establishment of utility token exchanges

2. (1) No person shall establish or operate a utility token exchange from within Anguilla except under and in accordance with a utility token exchange licence granted by the Commission under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction—

- (a) in the case of an individual, to a fine of \$25,000 or to imprisonment for 2 years or to both;
- (b) in the case of any person other than an individual, to a fine of \$50,000; and

if the offence is a continuing offence, the person is liable to a further fine of \$1,000 for every day that the offence continues after conviction.

(3) A person convicted of an offence under this section shall, following an assessment by the Commission, be liable to pay to the Commission any monies received or the monetary equivalent of any assets obtained, as a result of establishing or operating the utility token exchange without a licence.

Application for utility token exchange licence

3. (1) A person who wishes to operate a utility token exchange in or from Anguilla shall apply to the Commission for a utility token exchange licence in accordance with this section.

(2) An applicant for a utility token exchange licence shall be a company incorporated under the laws of Anguilla, unless otherwise permitted by the Commission.

(3) An application for a utility token exchange licence shall be made in the prescribed form and accompanied by the prescribed fee.

Grant of utility token exchange licence

4. (1) On receipt of an application for a utility token exchange licence, the Commission may grant a utility token exchange licence to the applicant if it is satisfied that—

- (a) it is appropriate to do so in the public interest, including for the proper regulation of markets in utility tokens; and
- (b) the applicant satisfies the conditions specified in subsection (2).

(2) The conditions to be satisfied by the applicant are that—

- (a) the applicant's activities will be limited to the operation of a utility token exchange, along with asset custody, currency exchange and other activities directly related to the operations and usage of a utility token exchange;
- (b) the applicant will provide and maintain, to the satisfaction of the Commission, adequate and properly equipped facilities and systems for the operation of a utility token exchange;
- (c) the rules and practices proposed to be followed by the applicant are sufficient to ensure that the operations conducted by means of its facilities and systems will be done in an orderly and fair manner;
- (d) the applicant has made such arrangements as the Commission considers satisfactory—
 - (i) for the safety and security of the utility tokens, currency and other digital assets that belong to users of the utility token exchange,
 - (ii) to ensure compliance with anti-money laundering and terrorist financing requirements applicable to users of the utility token exchange and to the exchange itself,
 - (iii) to ensure the safe and timely performance of transactions effected on the utility token exchange, and for the recording and publication of such transactions,
 - (iv) to conduct market surveillance with regard to transactions conducted on the utility token exchange,
 - (v) for the effective monitoring and enforcement of compliance with the rules of the exchange and the requirements in and under the Act, and
 - (vi) to investigate complaints in respect of transactions by any of its users.

(3) The holder of a utility token exchange licence shall pay an annual licence fee in such amount and at such time as may be prescribed.

Suspension and revocation of utility token exchange licence

5. (1) The Commission may suspend a utility token exchange licence granted under section 4, for such period as the Commission deems fit, if the holder of such licence—

- (a) for a period of time exceeding forty-eight (48) hours, ceases to operate the utility token exchange other than in accordance with subsections (4) and (5);
- (b) goes into receivership;
- (c) contravenes a provision of this Act;
- (d) is operating in a manner detrimental to the public interest;
- (e) fails to provide the Commission with information lawfully required;
- (f) fails to comply with a lawful direction of the Commission;
- (g) fails to pay its annual licence fee; or
- (h) fails to meet the conditions set out section 4(2).

(2) The Commission may revoke a utility token exchange licence granted under section 4 if the holder thereof—

- (a) is being wound up or compounds or compromises with its creditors;
- (b) fails to continue to comply with the conditions specified in section 4(2); or
- (c) requests the Commission to do so.

(3) Where—

- (a) the licence has been suspended under subsection (1);
- (b) the Commission issues a direction to the holder to remedy the particular breach;
and
- (c) the holder fails to comply with such direction referred to in paragraph (b);

the Commission may revoke the licence.

(4) The holder of a utility token exchange licence may temporarily cease to operate a utility token exchange where the holder has demonstrated that it necessary to address maintenance or operational issues.

(5) Where the holder of the utility token exchange wishes to temporarily cease to operate a utility token exchange pursuant to subsection (4), the holder shall post a notice in accordance with regulations.

Duties of holder of utility token exchange licence

6. (1) A holder of a utility token exchange licence shall ensure, so far as is reasonably practicable, an orderly and fair market in the listed utility tokens that are traded through its facilities.

(2) In performing its duties under subsection (1), the holder of a utility token exchange licence shall—

- (a) act in the interests of the users of the utility token exchange; and
- (b) ensure that such interests of the users prevail where they conflict with an interest of the holder of the utility token exchange licence.

(3) The holder of a utility token exchange licence shall ensure, so far as reasonably practicable, that users comply with its rules and this Act.

(4) The holder of a utility token exchange licence shall provide and maintain at all times to the satisfaction of the Commission—

- (a) adequate and properly equipped digital facilities and systems for the conduct and security of its operations;
- (b) competent personnel for the maintenance and security of the digital facilities and systems utilized in the conduct of its operations; and
- (c) automated or other systems with adequate capacity and facilities to meet emergencies and security arrangements.

Rules of utility token exchange

7. (1) Subject to the approval of the Commission, the holder of a utility token exchange licence shall make rules for the proper and efficient supervision, operation, management and control of the licensed utility token exchange.

(2) Without limiting the general effect of subsection (1), the holder of a utility token exchange licence shall make rules—

- (a) restricting the listings on the utility token exchange to utility tokens;
- (b) in relation to applications for initial listing and for continued listing;
- (c) governing any agreements to be entered into between the utility token exchange and other persons for listing utility tokens and enforcing those agreements;
- (d) governing the cancellation and withdrawal of the listing of utility tokens and the suspension of dealings in them;
- (e) governing trading procedures and practices;
- (f) specifying standards of conduct, including in relation to users trading through the facilities of the utility token exchange, for the listing or continued listing of utility tokens; and

- (g) regarding the penalties and other sanctions which the holder of the utility token exchange licence may impose for a breach of the rules of the utility token exchange.

Amendment to rules of utility token exchange

8. (1) A holder of a utility token exchange licence that wishes to make a material amendment to the rules made under section 7 shall submit a draft of the proposed amendment to the Commission for approval.

(2) The Commission shall, by notice in writing to the holder of the utility token exchange licence, approve such amendment or reject the whole or any specified part of such amendment and until the Commission approves it, the amendment shall not have force and effect.

Fixing of trading and position limits

9. (1) The Governor in Council may, on the recommendation of the Commission, prescribe limits or conditions on—

- (a) the amount or type of trading which may be done on a utility exchange; or
- (b) trading positions which may be held by a user.

(2) Under subsection (1), the Governor in Council, may—

- (a) fix different trading or position limits for different types of transactions; or
- (b) exempt specified transactions.

(3) Without limiting the general effect of subsection (1), the Governor in Council may, on the recommendation of the Commission, make regulations to prohibit a person from—

- (a) directly or indirectly entering into transactions of a specified class during a prescribed period or in excess of a prescribed amount; or
- (b) directly or indirectly holding or controlling trading positions of a specified class or in excess of a prescribed position limit.

Power of Commission to issue directive to utility token exchange

10. (1) Where the Commission is satisfied that—

- (a) it is necessary for the protection of users;
- (b) it is necessary for the proper regulation of a licensed utility token exchange; or
- (c) it is in the public interest;

the Commission may issue a directive to the holder of a utility token exchange licence.

(2) A directive issued under subsection (1) may relate to any matter including—

- (a) trading on or through the facilities of the utility token exchange generally or with respect to the trading of a particular utility token; or

- (b) the manner in which the licensed utility token exchange carries on any aspect of its operations; and

the holder of the utility token exchange licence shall comply with such directive.

Power of Commission to require amendment to rules

11. Where the Commission considers it to be—

- (a) necessary for the protection of users; or
- (b) in the public interest;

it may by notice in writing require the holder of a utility token exchange licence to make, to amend or to repeal any rule, subject to such conditions as it considers appropriate, and such notice may include the time period within which such new rule, amendment or repeal shall have effect.

Utility token exchange holder to assist Commission

12. (1) The holder of a utility token exchange licence shall provide such assistance to the Commission as the Commission reasonably requires for the performance of its functions, including the furnishing of returns and providing information in respect of dealings in listed utility tokens.

(2) The holder of a utility token exchange licence shall be open and cooperative in its dealings with the Commission and shall disclose to the Commission anything relating to the holder of the utility token exchange licence and its operations of which the Commission would reasonably expect notice.

Closure of utility token exchange in emergency

13. (1) The Commission may, after consulting the holder of a utility token exchange licence when this is reasonably practicable, direct it to cease operating the licensed utility token exchange for a period not exceeding 5 trading days.

(2) The Commission may give the direction under subsection (1) if it is of the opinion that the orderly trading of utility tokens on the exchange or the conduct of related services is being, or is likely to be, prevented or substantially disrupted or prejudiced because of—

- (a) an emergency or natural disaster; or
- (b) an economic or financial crisis;

in Anguilla or elsewhere, that affects or may affect the proper operation of the utility token exchange.

(3) The Commission may, after consulting with the Governor in Council, extend the direction for further periods, not exceeding 10 trading days,

Restriction on use of titles relating to exchanges or markets

14. (1) No person other than a holder of a utility token exchange licence may take or use the title or description “utility token exchange”, “utility token market” or any other word or phrase which in the opinion of the Commission closely resembles these titles or descriptions such that a

reader may be deceived or confused as to the licensed status of the entity expressly or impliedly referred to.

(2) For the avoidance of doubt subsection (1) shall not prevent a person from using any of the aforementioned terms or descriptions in connection with an application to the Commission for a licence, including application for the formation of a company in the expectation of the grant of a licence under this Act.

(3) A person who contravenes subsection (1) commits an offence.

PART 3

AUDITS OF UTILITY TOKEN EXCHANGE

Auditor to be appointed

15. (1) Within one month after becoming licensed under this Act, the holder of a utility token exchange licence shall appoint an auditor.

(2) No person shall be qualified for appointment as an auditor under subsection (1) unless he is an accountant.

(3) An auditor shall not be eligible for appointment under subsection (1) if he is—

- (a) a director;
- (b) officer;
- (c) employee;
- (d) partner; or
- (e) shareholder;

of the holder of a utility token exchange licence.

(4) An auditor appointed under this section shall be approved by the Commission before the auditor is appointed under this section.

(5) The holder of a utility token exchange licence shall, within 7 days of appointing the auditor, notify the Commission in writing of the name and address of the auditor.

(6) The holder of a utility token exchange license shall, within 7 days of the removal or resignation of an auditor, notify the Commission in writing.

Audited accounts to be filed with Commission

16. (1) Unless the Commission extends the period, the holder of a utility token exchange licence shall submit to the Commission, within 90 days after the end of each financial year beginning with the year in which it commences to carry on business, audited accounts prepared in accordance with international accounting standards, containing such additional information as may be prescribed.

(2) The holder of a utility token exchange licence who contravenes subsection (1) commits an offence.

Auditor reports to Commission

17. If, during the performance of his duties, an auditor becomes aware of any matter which in his opinion adversely affects to a material extent the overall financial position of the holder of the utility token exchange licence, he shall as soon as is practicable, and in any event within 7 days, report the matter in writing to the Commission and to the holder of the utility token exchange licence.

Power of Commission to appoint auditor

18. (1) Where—

(a) the Commission is satisfied that a holder of a utility token exchange licence has failed to file an auditor's report under section 16; or

(b) the Commission has received a report under section 17;

it may appoint an independent auditor.

(2) The appointment of an auditor under subsection (1) will be at the expense of the holder of the utility token exchange licence.

(3) An independent auditor appointed under this section shall in accordance with the directions of the Commission, examine, audit and report—

(a) generally or in relation to any specific matter, on the assets, operations, books, accounts and records of the holder of the utility token exchange licence; and

(b) on the utility tokens, currency or other digital assets held for any other person by or on behalf of the holder of the utility token exchange licence, as directed by the Commission, by the due date specified by the Commission.

PART 4

DISCLOSURE REQUIREMENTS FOR LISTED UTILITY TOKENS

Informational requirements of listed utility tokens

19. (1) No licensed utility token exchange shall list a utility token unless the information required by this Part is made accessible to all users on or through such exchange.

(2) A holder of a utility token exchange licence who contravenes subsection (1) commits an offence and shall be liable on summary conviction to a fine of \$10,000 with respect to each utility token listed in contravention of subsection (1).

(3) Where a holder of a utility token exchange licence is in contravention of subsection (1) the Commission may direct that the holder immediately delist the relevant utility token.

(4) Where a holder fails to comply with a direction given under subsection (3) the holder commits an offence and shall be liable to a further fine of \$1,000 for every day that the offence continues after conviction.

(5) A holder of the utility token exchange licence does not commit an offence under subsection (2) if it demonstrates that it had in place reasonable systems and controls to ensure compliance with subsection (1) and the holder demonstrates that it reasonably believed that the information required by this Part was made accessible to all users.

(6) On application by the holder of the utility token exchange licence, the Commission may exempt the listing of a utility token from some or all of the requirements of this Part.

Listing of utility tokens

20. (1) A licensed utility token exchange shall not list a utility token unless at the time of the listing—

- (a) the Utility Token Platform linked to such utility token is open and accessible to holders of the utility token;
- (b) the issuer of the utility token is registered under the Anguilla Utility Token Offering Act, 2018 (Act No. 4/2018) to offer the utility token; or
- (c) the Commission has issued written acceptance of the filing of a white paper with respect to the utility token containing the particulars required under the Anguilla Utility Token Offering Act, 2018 (Act No. 4/2018), providing always that if the issuer of such utility token is no longer operational, involved in or in control of such utility token, any person holding an interest in such utility token may make the filing with the Commission and the licensed utility token exchange.

(2) In the event of a listing pursuant to subsections (1)(b) and (c), the licensed utility exchange shall, prior to such listing, establish a link to the specific website page containing the relevant white paper, which shall be and remain available and accessible to all users of the exchange.

(3) The Governor in Council, on the recommendation of the Commission, may prescribe further or other requirements for the listing of utility tokens on a licensed utility token exchange.

(4) A holder of a utility token exchange licence who contravenes this section commits an offence and shall be liable on summary conviction to a fine of \$10,000 with respect to each category of utility token listed in contravention of this section.

Token information

21. (1) A licensed utility token exchange shall make available or accessible to users information, hereinafter referred to as “token information”, about the supply and distribution of utility tokens listed on the exchange as follows—

- (a) the maximum (if any) and total supply of the listed tokens and any applicable inflation rate;

- (b) the distribution of the total supply of the listed tokens amongst individually distinguishable blockchain addresses or accounts;
- (c) the volume of listed tokens traded over each 24 hour period, during the previous 3 months;
- (d) the nominal market capitalization, as denoted in \$, of the listed tokens; and
- (e) the price variation of the listed tokens, as measured in \$, over each 24 hour period, during the previous 3 months.

(2) The token information contained in subsections (1)(a), (b) and (c) shall be sourced from the underlying blockchain and the token information specified in subsections (1)(d) and (e) shall be sourced from the aggregated information provided by no less than 7 publicly available trading platforms approved by the Commission or such other number or source as may be approved by the Commission.

(3) No licensed utility exchange shall bear any responsibility or liability to any user with regard to the accuracy or completeness of the token information as long as it was provided in accordance with this section.

(4) The Governor in Council, on the recommendation of the Commission, may prescribe additional information to be included in the token information.

(5) The holder of a utility token exchange licence who contravenes this section commits an offence and shall be liable on summary conviction to a fine of \$25,000.

PART 5

SHORT SELLING, INSIDER DEALING AND OTHER MARKET ABUSES

Insiders

22. (1) For the purposes of this Part, an individual has inside information as an insider if—

- (a) the individual came into possession of inside information as or from an inside source as set out in subsection (2); and
- (b) the individual who is in possession of the inside information knows it is inside information.

(2) For the purposes of subsection (1), an individual has inside information as or from an inside source if—

- (a) the individual obtains such inside information as a result of—
 - (i) being a director, officer, employee or shareholder of an issuer of a listed utility token,
 - (ii) having access to the information by virtue of that individual's employment, office or profession related to an issuer of a listed utility token, or such other person as may be prescribed; or

- (b) the direct or indirect source of the individual's inside information is a person referred to in paragraph (a).

Inside information

23. (1) For the purposes of this Part, "inside information" means information which—

- (a) relates to a particular listed utility token and not to utility tokens generally;
- (b) is specific or precise;
- (c) is not publicly available; and
- (d) if it were publicly available would be likely to have a significant effect on the trading or market price of the listed utility token.

(2) Listed utility tokens are "price-affected utility tokens" if the inside information would, if made public, be likely to have a significant effect on the trading or market price of the listed utility tokens.

Information "made public"

24. For the purposes of section 23, insider information is made publicly available if—

- (a) it is published in accordance with the rules of a licensed utility token exchange for the purpose of informing users of the exchange;
- (b) it is contained in records which, by virtue of any enactment, are open to inspection by the public and can be readily accessed by those likely to deal in the listed utility tokens to which the information relates; or
- (c) it is derived from information which has been made public by publication by or on behalf of the issuer of the listed utility token or by another person.

Offence of insider dealing

25. (1) With respect to a listed utility token, a person who has inside information as an insider commits the offence of insider dealing if that person—

- (a) trades in listed price-affected utility tokens;
- (b) encourages another person to trade in the listed price-affected utility tokens, knowing or having reasonable cause to believe that trading would take place as a result of such encouragement; or
- (c) discloses the inside information related to price-affected utility tokens, other than in the proper performance of the functions of that individual's employment, office or profession, to another person, knowing or having reasonable cause to believe that trading would take place as a result of such disclosure.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of \$50,000 or to imprisonment for up to 3 years or to both.

(3) In addition to the penalty in subsection (2), the court may make an order imposing on the convicted person a duty to pay to the Commission, an amount not exceeding 100% of the amount of any profit realized or loss avoided by the convicted person as a result of the insider dealing.

(4) No contract shall be void or unenforceable by reason only of an offence under this section.

Short selling

26. (1) Except as may be prescribed, no person shall trade a listed utility token which that person does not own or control.

(2) For the purposes of subsection (1), a person who trades a listed utility token includes a person who—

- (a) purports to trade a listed utility token;
- (b) offers to trade a listed utility token; or
- (c) holds himself out as entitled to trade a listed utility token.

(3) A person owns or controls a listed utility token under subsection (1) if that person or his agent legally owns or is legally entitled to control the listed utility token.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction—

- (a) in the case of an individual, to a fine of \$25,000 or to imprisonment for 3 years or both;
- (b) in the case of a company, to a fine of \$50,000.

False trading

27. (1) A person commits an offence if that person, in Anguilla or elsewhere, creates a false or misleading appearance—

- (a) of active trading in; or
- (b) in the price of;

a listed utility token.

(2) For the avoidance of doubt, a false or misleading appearance may be created for the purposes of subsection (1) —

- (a) of active trading in a listed utility token, if that person carries out, directly or indirectly, a trade that does not involve a change in the beneficial ownership or control of the token; or
- (b) in the price of a listed utility token, if that person offers to:

- (i) buy the token at a price that is substantially the same as the price at which that person has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to sell the same or substantially the same number of such token; or
- (ii) sell the token at a price that is substantially the same as the price at which that person has made or proposes to make, or knows that an associate of his has made or proposes to make, an offer to buy the same or substantially the same, number of such token.

Trade rigging

28. A person commits an offence if that person maintains, increases, reduces, or causes fluctuations in, the trading value of a listed utility token by fictitious transactions or devices.

Market manipulation

29. A person commits an offence if that person enters into or carries out, whether in Anguilla or elsewhere, either directly or indirectly, a transaction in a listed utility token that by itself or in conjunction with another transaction—

- (a) gives, or is likely to give, false or misleading signals about the supply of, demand for, or price of, the listed utility token or a related derivative;
- (b) secures, or is likely to secure, the price of the listed utility token or a related derivative at an abnormal or artificial level; or
- (c) has the purpose of creating unfair trading conditions;

unless the person establishes that the transaction or behaviour was carried out for legitimate reasons, and conforms with an accepted market practice as previously agreed by the Commission.

Use of deceptive statements as inducements

30. A person commits an offence if that person—

- (a) knowingly induces or attempts to induce a user to trade in a listed utility token or acts or attempts to act to increase, lower or stabilise the trading value of a listed utility token—
 - (i) by making or publishing a statement, promise or forecast that the person knows or ought to know is misleading, false or deceptive; or
 - (ii) by a concealing or omitting a material fact; or
- (b) disseminates information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a listed utility token, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading; or
- (c) voices an opinion about a listed token (or its issuer) and later profits from the impact of the opinion on the price of the token or a related derivative without

having simultaneously disclosed the conflict of interest to the public in an effective way.

Application to individuals

31. Sections 25 to 30 shall also apply to the individuals who participated in the decision to carry out the activities on behalf of a convicted person who is not an individual.

Penalties for offences under sections 27 to 31

32. A person who commits an offence under sections 27, 28, 29 or 30 is liable on summary conviction—

- (a) in the case of an individual, to a fine of \$50,000 or to imprisonment for up to 3 years or both; and
- (b) in the case of a company, to a fine of \$100,000.

Liability to pay damages

33. (1) A person who is convicted of an offence under sections 27, 28, 29 or 30 shall also be liable to an action for damages in respect of any loss incurred in accordance with subsection (2).

(2) A person who has sustained pecuniary loss as a result of having traded or refrained from trading a listed utility token as a result of an act or omission in contravention of sections 27, 28, 29 or 30 may bring an action for damages in respect of the loss.

PART 6

SELF-REGULATORY ORGANISATIONS

Regulations for self-regulatory organizations

34. The Governor in Council may, on the recommendation of the Commission, make regulations for the establishment and conditions of operation of a self-regulatory organization or organizations and for the promulgation of rules for the conduct and oversight of the operations of any person licensed under this Act.

PART 7

CUSTODY OF USER ASSETS

Custody of user assets

35. (1) The Governor in Council may, on the recommendation of the Commission, make regulations for the segregation and safekeeping of users' utility tokens, currencies or other digital assets held or controlled by a licensed utility token exchange.

(2) Without limiting the general effect of subsection (1), regulations may—

- (a) make provision for the opening and keeping of user accounts, including provision for the circumstances in which utility tokens, currencies or other digital assets may be paid into such accounts and the circumstances in which and the persons to whom the assets held in the accounts may be paid out;

- (b) require the keeping of accounts and records in respect of users, utility tokens, currency or other digital assets;
- (c) require such accounts and records to be examined by an auditor; and
- (d) require the auditor to report to the Commission on whether in his opinion the provisions of the relevant regulations have been complied with.

(3) A holder of a utility token exchange licence that holds or controls, utility tokens, currency or other digital assets shall—

- (a) hold and account for the utility tokens, currency or other digital assets in the manner required by this Act or as prescribed; and
- (b) not dispose of, assign or lend the utility tokens, currency or other digital assets or deposit them as security for loans or advances except as may be permitted by this Act or as prescribed.

(4) Utility tokens, currency or other digital assets held by a holder of a utility token exchange licence for or on behalf of a user shall not be—

- (a) liable for payment of the debts of the holder of the utility token exchange licence or as security for such debts; or
- (b) liable to be paid or taken in execution under the order or process of any court against the holder of the utility token exchange licence.

(5) A payment made in contravention of subsection (4) is void from the outset, and the person to whom the utility tokens, currencies or other digital assets is paid or committed does not obtain any title or right to them.

PART 8

TRANSFER OF LISTED UTILITY TOKENS

Transfer of listed utility tokens

36. Notwithstanding the provisions of any other law in Anguilla, a written instrument on paper is not necessary to evidence or transfer the title, possession, control, ownership or other rights in or to listed utility tokens.

PART 9

INVESTIGATIONS

Interpretation

37. For the purpose of this section “information” means records, property, assets or things that may reasonably relate to an investigation.

Appointment of investigator

38. (1) The Commission may appoint a person to conduct an investigation, hereinafter referred to as the “investigator”, when the Commission considers this to be expedient for the administration of this Act.

(2) The Commission shall specify the purpose and scope of the investigation to be carried out by the investigator.

Powers of investigator

39. (1) The investigator may, with respect to the person who is the subject of the investigation, investigate, inquire into, inspect and examine—

- (a) the affairs of that person;
- (b) any records, negotiations, transactions, investigations, investments, loans, borrowings and payments to, by, on behalf of, in relation to or connected with that person;
- (c) any property, assets or things owned, acquired or disposed of in whole or in part by that person or by a person acting on behalf of or as agent for that person;
- (d) the assets at any time held by, the liabilities, debts, undertakings and obligations at any time existing and the financial or other conditions at any time prevailing in respect of that person; and
- (e) the relationship that may at any time exist or have existed between that person and any other person by reason of—
 - (i) investments made,
 - (ii) commissions promised, secured or paid,
 - (iii) interests held or acquired,
 - (iv) the lending or borrowing of money, securities or other property,
 - (v) the transfer, negotiation or holding of utility tokens,
 - (vi) interlocking directorates,
 - (vii) common control,
 - (viii) undue influence or control, or
 - (ix) any other relationship.

Request by Notice

40. (1) When the investigator has reasonable and probable grounds to believe that a person is in possession or control of information that may reasonably relate to an investigation, the investigator shall issue a notice in writing requiring that person to deliver to the Commission or to

make available for inspection by the investigator, the information specified in the notice that is in his possession or control.

(2) The notice may require the information to be—

- (a) authenticated in the manner that the investigator may require;
- (b) provided in the form as the investigator may require; and
- (c) provided within a specified time.

(3) The Commission may extend the time specified in the notice where, in its opinion, the circumstances so warrant.

(4) Where copies of documents are delivered, the investigator may require that the original documents be made available for inspection.

(5) Failure to comply with a requirement under subsection (2) is a failure to comply with the notice.

(6) Where information is produced under this section—

- (a) the investigator may make copies of all or part of the information requested in subsection (1); and
- (b) where a person claims a lien on a document, the production is without prejudice to the lien.

(7) A notice under this section does not require a person to produce or to give access to items subject to legal professional privilege.

Production Orders

41. (1) When the investigator has reasonable and probable grounds to believe that a person is in possession or control of information that may reasonably relate to an investigation, and either—

- (a) a notice under section 40 has not been complied with; or
- (b) there are reasonable grounds for suspecting that a notice under section 40 will not be complied with;

the investigator shall apply to a Judge for an order to produce the information, requested under section 40.

(2) Where the Judge is satisfied that it is necessary and in the public interest, the Judge may make an order that the person who appears to be in possession or control of the information, within a specified period—

- (a) give the investigator access to it; or
- (b) hand it to the investigator.

(3) The period to be specified in the order is 7 days, unless it appears to the Judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) An order under this section—

- (a) does not require a person to produce or to give access to items subject to legal professional privilege; and
- (b) has effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise.

Search and seizure

42. (1) Where—

- (a) the investigator has reasonable and probable grounds to believe that there may be information that may reasonably relate to an investigation held in business premises or in a building, receptacle or place, other than a room or place being used as a residence; and
- (b) a person fails to comply with—
 - (i) a notice by the investigator for the production of information under section 40,
 - (ii) an order by the Judge for the production of information under section 41;

the investigator may apply to the court for an order referred to in subsection (3).

(2) On being satisfied—

- (a) by information on oath given by the investigator of the grounds referred to in subsection (1)(a);
- (b) that the ability to give effect to the request might be seriously prejudiced unless an investigator could secure immediate access to the information; and
- (c) that there is no lawful excuse for the failure of a person to comply with a notice or order under sections 40 and 41;

the court may make an order under subsection (3).

(3) The court may make an order authorising the investigator to—

- (a) to enter into the business premises, building, receptacle or place at a reasonable time, for the purpose of carrying out an inspection, examination or analysis of records, property, assets or things that may reasonably relate to the investigation;
- (b) on entry under paragraph (a) to require the production of the records, property, assets or things for inspection, examination or analysis; and

- (c) to remove the records, property, assets or things referred to in paragraph (a) for the purpose of further inspection, examination or analysis.

(4) Notwithstanding sections 40, and 41, where the Judge is satisfied—

- (a) that a request under section 40 or an order under section 41 would not be appropriate because—
 - (i) it is not practicable to communicate with any person entitled or authorised to produce the information, or
 - (ii) it is not practicable to communicate with any person entitled or authorised to grant access to the information or entitled or authorised to grant entry to the premises on which the information is situated, and
 - (iii) the ability to give effect to the request might be prejudiced unless the investigator could secure immediate access to the information

the Judge may, upon application by the investigator, issue a warrant in the first instance.

(5) Where an investigator intends to remove records, property, assets or things pursuant to subsection (2)(c) he shall produce an order from the Judge pursuant to subsection (3)(c) authorising the removal of same.

(6) An application for an order under this section shall be made in the manner as may be prescribed and, unless the court otherwise directs, may be—

- (a) made without notice; and
- (b) heard *ex parte* in camera.

(7) The investigator shall, as soon as is practicable, return any records, property, assets or things produced under this section to the person who produced them, unless the court otherwise directs.

(8) On an inspection, examination or analysis under this section, an investigator may—

- (a) mark the records, property, assets or things for identification; or
- (b) use or alter the records, property, assets or things to the extent reasonably necessary to facilitate the inspection, examination or analysis;

and does not incur any liability for doing so.

Legal professional privilege

43. (1) Where information is seized by the investigator under section 42 the Judge shall review the information to determine whether the information is subject to legal professional privilege.

(2) Where and to the extent that the Judge is satisfied that the information seized is not subject to legal professional privilege; the Judge shall authorise the investigator to furnish the information, or any part of the information, to the Commission pursuant to section 44.

Transmission of information

44. The investigator shall give a report of his findings to the Commission including supporting evidence, such as documents, transcripts of interviews or material found.

Obligation of secrecy

45. (1) Before, during, and after his investigation, the investigator shall treat the following information as confidential unless the Commission has agreed in writing that the information may be disclosed—

- (a) the fact that an investigation is being conducted;
- (b) the name of any witness examined or sought to be examined during the investigation;
- (c) any evidence gathered and conclusions drawn; and
- (d) any other information relating to his duties as an investigator.

(2) The investigator shall make an oath or affirmation of secrecy before the Governor.

Costs of investigation

46. The Commission may direct that a person convicted of an offence under this Act pay the costs, or such part of the costs as it may specify, of an investigation conducted under this Part.

Obstruction of justice

47. (1) No person shall—

- (a) refuse to give any information or produce any record or thing; or
- (b) destroy, conceal or withhold, or attempt to destroy, conceal or withhold, any information, record or thing, reasonably required for a hearing, review, investigation, examination or inspection under this Act.

(2) A person who contravenes subsection (1) commits an offence when the person knows or ought to know that a hearing, review, investigation, examination or inspection under the Act is being conducted.

PART 10

MISCELLANEOUS

Information relating to transactions

48. (1) In addition to any other power of the Commission to gather information from a holder of a utility token exchange licence, under this or any other Act, the Commission or a person authorised in writing by the Commission for the purpose of this section may require a holder of a utility token exchange licence to disclose to the Commission or the authorized person the information referred to in subsection (2).

(2) The information that may be required under subsection (1) is—

- (a) the name, address and telephone number of the person from, to or through whom listed utility tokens were traded on a licensed utility token exchange, or other particulars within the possession of the holder of a utility token exchange licence that are capable of establishing or verifying the identity of the person; and
 - (b) the quantity of listed utility tokens traded by one or more persons on the licensed utility token exchange within a specified period.
- (3) A holder of a utility token exchange licence commits an offence if the holder—
- (a) without reasonable excuse fails to disclose to the Commission or the authorised person information required to be disclosed under this section which is in his possession or under his control; or
 - (b) furnishes to the Commission or the authorised person in purported compliance with the requirement to disclosure information which that person knows or ought to know is false or misleading.

Offences and penalties

49. A person who contravenes any provision of this Act, where the provision creates an offence but does not provide a penalty, is liable on summary conviction—

- (a) in the case of an individual, to a fine of \$10,000; or
- (b) in the case of a company, to a fine of \$25,000.

Exemption from certain enactments

50. (1) No person listed in subsection (2) to the extent that they are engaged in activities for, with, or on behalf of a holder of the utility token exchange licence shall be subject to the provisions of the following enactments—

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

(2) The following persons as it relates to their activities for and on behalf, and in accordance with the licence, of a licensed utility token exchange, are exempt from the provisions of enactments referred to in subsection (1)—

- (a) a holder of a utility token exchange licence, licensed utility token listed or in the process of being listed on a licensed utility token exchange, or
- (b) any officer, director, manager or employee of a company which is the holder of a utility token exchange, licensed utility token exchange, token listed or in the process of being listed on a licensed utility token exchange.

(3) Notwithstanding any enactment or law to the contrary, a user shall be exempt from stamp duty and similar taxes that would otherwise be imposed with respect to the purchase, sale or transfer of listed utility tokens, currencies or other digital assets.

Regulations

51. (1) The Governor in Council may make regulations, on the recommendation of the Commission, for or with respect to—

- (a) applications for utility token exchange licences, the issue of such licences and incidental matters;
- (b) the display of utility token exchange licences and the issue of such duplicate licences;
- (c) the record keeping and due diligence requirements of a holder of a utility token exchange licence;
- (d) the safety and security of the utility tokens, currency and other digital assets as appear to the Governor in Council appropriate for the protection of persons trading listed utility tokens and for ensuring that competition is not unduly restricted;
- (e) the making of annual or other regular returns to the Commission by the holder of a utility token exchange licence;
- (f) the conditions subject to which utility tokens may be listed and the circumstances in which dealings in listed utility tokens may be suspended or halted;
- (g) insider dealing and market manipulation;
- (h) the particulars to be recorded to accounts to be kept for the purposes of this Act, including profit and loss accounts and balance sheets;
- (i) the information to be included in any auditors' report required to be filed under this Act;
- (j) the remuneration of auditors appointed, and the costs of any audit carried out, under this Act;

- (k) the form and content of advertisements and marketing relating to the operations of a utility token exchange licence;
- (l) the authorisation and regulation of any self-regulatory organisations;
- (m) the procedures for recording and transferring title, possession, control, ownership or other rights of or to listed utility tokens;
- (n) the regulation of the procedures referred to in paragraph (m) and the persons responsible for or involved in their operation;
- (o) the fees, charges or levies to be paid in respect of matters arising under or provided for in this Act;
- (p) the creating of offences in accordance with subsection (2);
- (q) such matters required under this Act to be prescribed;
- (r) the better carrying out of the purposes and provisions of this Act;
- (s) any supplementary, incidental and transitional provisions as appear to the Governor in Council to be necessary or expedient.

(2) The regulations may provide that a contravention of any specified provision shall be an offence and may provide for financial penalties of—

- (a) in the case of an individual, a maximum amount of \$10,000; and
- (b) in the case of a company, a maximum amount of \$25,000;

and if the offence is a continuing offence, the individual or company is liable to a further fine of \$500 for every day that the offence continues after conviction.

Imposition of levy

52. (1) There shall be imposed a levy on each holder of a utility token exchange licence.

(2) The levy payable pursuant to subsection (1) shall be payable quarterly, on such bases and at such rate or rates as may be prescribed.

(3) Within 21 days of the completion of each calendar quarter, the holder of a utility token exchange licence shall transmit, convey or deliver to the Commission such levy, payable in dollars, or if permitted by the Commission, in the form of one or more of the mediums of exchange utilized by the holder of the utility token exchange licence.

(4) A holder of a utility token exchange licence that wilfully evades or attempts to evade the levy payable in accordance with this Act is guilty of an offence and shall be liable on summary conviction to a fine of 100% of the levy sought to be evaded.

(5) Where an offence committed by a licensee under subsection (4) is proven to have been committed with the authorisation, consent, connivance, acquiescence or participation of any director, officer or senior manager of the licensee, the individual shall be guilty of the same

offence and liable on summary conviction to a fine of not less than \$10,000 and not more than \$100,000 with respect to each offence.

(6) A prosecution for an offence under subsection (4) or subsection (5) shall be commenced no later than 18 months from the date of the contravention.

(7) The Governor in Council may, on the advice of the Commission, make regulations for any matter that may be prescribed under this section.


Citation

53. This Act may be cited as the Utility Tokens Exchange Act, 2020.



Terry T.C. Harrigan
Speaker

Passed by the House of Assembly this day of , 2020



Lenox J. Proctor
Clerk of the House of Assembly

OBJECTS AND REASONS

(The objects and reasons do not form part of the Act)

The purpose of the Act is to provide for the disclosure obligations, registration, governance, operation and management of utility token exchanges operating in or from within Anguilla. A utility token exchange is a digital market, exchange, place or facility that provides for the bringing together of users for the purpose of allowing the trading of utility tokens for other utility tokens or money.

Clause 1 provides for the interpretation of key terms used in the Act.

Clause 2 prohibits the operation of a utility token exchange from within Anguilla, unless licensed by the Financial Services Commission (“Commission”).

Clauses 3-5 also set out the procedure for the application and grant of a licence for the operation of a utility token exchange, along with provisions for the suspension or revocation of such licence by the Commission.

Clause 6 sets out the overarching duties of the holder of a utility token exchange licence (“Licensee”).

Clauses 7- 8 provide for, subject to the approval of the Commission, the making of rules by the Licensee for the proper operation and management of the licensed utility token exchange and the amendment of such rules (with the approval of the Commission).

Clause 9 allows for the Governor in Council (on the recommendation of the Commission) to prescribe rules affecting trading on the licensed utility token exchange.

Clause 10 allows for the Commission to issue directives affecting trading on the licensed utility token exchange.

Clauses 11 – 13 stipulate the obligation of Licensees to assist the Commission in the carrying out of its duties and prescribe powers to the Commission to require a change of the Licensee rules for operating the utility token exchange and emergency powers to close the utility token exchange in prescribed circumstances (including natural disasters and economic crisis).

Clause 15 prohibits the use of words such as “utility token exchange” unless utilized by a Licensee.

Clauses 15 – 18 provide for the appointment of auditors of a Licensee and the filing of audited accounts with the Commission.

Clauses 19 - 21 relate to the disclosure requirements of the Licensee with respect to utility tokens listed on a licensed utility token exchange and the penalties for failure to make such disclosures. Clause 19 also makes provision for the Commission to exempt disclosure (in part or in full) with respect specified utility tokens.

Clauses 22 – 33 deal in general with the prevention of market abuses through a licensed utility token exchange. **Clauses 22-25** define and prohibit “insider dealing”. **Clause 26** defines and prohibits “short selling”, **Clause 27** defines and prohibits “false trading”, **Clause 28** defines and prohibits “trade rigging”, **Clause 29** defines and prohibits “market manipulation” and **Clause 30** defines and prohibits the “use of deceptive statements as inducements”. **Clauses 31 – 33** extend the application of the foregoing prohibitions to individuals participating in the prohibited acts and provides for the criminal penalties and recovery of damages against persons carrying out the prohibited acts.

Clause 34 provides for the making of regulations by the Governor in Council for the establishment of self-regulatory organizations by Licensees.

Clause 35 provides for the safe custody of utility tokens held by a Licensee on behalf of its users, in accordance with the Act or such other regulations prescribed by the Governor in Council from time to time. **Clause 35(4) and (5)** also stipulates that utility tokens held by a licence on behalf of its users shall be protected from debts of, or claims against, the Licensee and that any execution against such tokens, in that respect, shall be deemed void from the outset.

Clause 36 waives any requirement of any written instrument (if any) to effect a transfer of utility tokens listed on a licensed utility token exchange.

Clauses 37 – 47 detail the Commission’s powers of investigation of any Licensee, including the appointment of an investigator, the powers of such investigator, the effect of request for information by the investigator and the power of the investigator to apply to the Court for an order against a Licensee for the production of information or search and seizure. **Clause 43** permits the Court to determine whether any information seized is subject to legal professional privilege and for the exclusion of such information from delivery by the investigator to the Commission. **Clause 46** permits the Commission to recover the costs of an investigation from any person convicted on an offence under the Act, as a result of such investigation. **Clause 47** creates the offence of obstruction of justice with regard to the failure of any person to produce material, or conceal or destroy material, requested by the Commission during the course of an investigation.

Clauses 48 empowers the Commission to request information from a Licensee with regard to any user of the licensed utility token exchange.

Clause 49 provides the general penalties for any offence for which a penalty has not been provided elsewhere in the Act.

Clause 50 exempts any Licensee from the provisions of certain other enactments in Anguilla, and such other enactments as may be prescribed by the Governor in Council.

Clause 51 provides for the making of regulations by the Governor in Council, in relation to matters affecting Licensees, licensed utility token exchanges and users of a licensed utility token exchange.

Clause 52 provides for the imposition of a levy, payable on a quarterly basis to the Commission in USD or such other medium as may be approved by the Commission. The rates of such Levy shall be as provided for in regulations issued from time to time. **Clause 52** creates an offence for any Licensee who seeks to willfully evade the levy and

an offence for such persons who participate in such act. **Clause 52(7)** provides for the making of regulations by the Governor in Council with respect to the levy.