

Statutory Instruments of Anguilla: 88/2020

Gazette Dated: 12th October, 2020

UTILITY TOKENS EXCHANGE ACT, 2020 (ACT NO. /2018)

**UTILITY TOKENS EXCHANGE (APPLICATION PROCESS)
REGULATIONS, 2020**

Regulations made by the Governor on advice from the Commission under section 40 of the Utility Tokens Exchange Act, 2020 (Act No. /2020).

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**UTILITY TOKENS EXCHANGE ACT, 2020 (ACT NO. 4/2020)
UTILITY TOKENS EXCHANGE (APPLICATION PROCESS)
REGULATIONS, 2020**

Regulations made by the Governor on advice from the Commission under section 40 of the Utility Tokens Exchange Act, 2020 (Act No.10/2020).

Interpretation

1. In these Regulations—

“\$” means the currency of the United States of America.

“Act” means the Utility Tokens Exchange Act 2020;

“Commission” means the Anguilla Financial Services Commission established under section 2 of the Financial Services Commission Act, R.S.A. c. F28;

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

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

Application for grant of utility token exchange licence

2. An application for grant of a utility token exchange licence under section 4 of the Act shall be made to the Commission in the forms set out in Schedule 1 and Schedule 2 (where applicable).

Fees

3. The applicants referred to in section 2 shall pay the fees set out in Schedule 3.

Application for approval of issue or transfer of shares or other interests

4. (1) Where a person who has been granted a utility token exchange licence under section 4 of the Act wishes to issue or transfer any shares or other interests, he shall make an application to the Commission in the form set out in Schedule 4.

(2) A share or interest shall not be issued or transferred unless the Commission approves the application referred to in subsection (1).

Application for approval of directors

5. (1) Where a person who has been granted a utility token exchange licence under section 4 of the Act wishes to appoint a person as a director or manager of holder of a utility token exchange licence he shall make an application to the Commission in the form set out in Schedule 5.

(2) A person shall not be appointed as a director or manager of the holder of a utility token exchange licence unless the Commission approves the application referred to in subsection (1).

Citation

6. These Regulations may be cited as the Utility Tokens Exchange (Application Process) Regulations, 2020.

SCHEDULE 1

(Section 2)

APPLICATION FOR UTILITY TOKEN EXCHANGE LICENCE*Notes*

Complete all sections giving reasons for non-compliance, if any, and attaching supplementary information where appropriate.

Completed forms should be submitted to:

FINANCIAL SERVICES COMMISSION
THE VALLEY ANGUILLA
Tel: 1 264 497 5881
Email: info@afsc.ai

And be accompanied by the non-refundable Application Fee set out in Schedule 2

1. Name of the Applicant:
(Please include certified copies of constitutional documents)

2. Type of Licence:
3. Type of Entity:

4. Registered Office of the Applicant:

5. Business Address (if different):

6. Contact Person for this application along with Contact Details including telephone and fax numbers and email address:

7. Address of any place(s) of business that the applicant may have outside of Anguilla (if applicable):

8. Date of incorporation/establishment:

9. Place of incorporation:
(Applicant must be incorporated in Anguilla unless Commission approves otherwise)

10. Entity registration number:

11. Name and Statute under which the Applicant is incorporated/established:

12. Who are the directors of the issuer? Please give full names and addresses.

13. State the name, addresses and number of shares held by each shareholder of Applicant:
[If nominees hold shares by a corporate secretary, entity or trust, state who holds the ultimate beneficial interest]

14. State the authorized share capital:

15. State the paid-up share capital:

16. State the method by which paid-up share capital was raised:

17. (If applicable) state the amount and nature of the loan capital:

18. Date the issuer commenced operations (if applicable):

19. Is the Applicant or any affiliated company currently registered, licensed or authorized under any law or regulations relating to utility token exchanges, collective investment schemes/funds or securities in any country or jurisdiction or has the issuer or any affiliate been so registered, licensed, recognized or authorized in the past? (YES or NO):

If YES please supply full details:

20. Has the Applicant or any of its directors been the subject of a:
- (a) Refusal of an application for registration, licensing or authorization by any regulatory authority in any country or jurisdiction?
 - (b) Suspension, cancellation or revocation of registration, licence, or authorization by any regulatory authority in any country or jurisdiction?
 - (c) Regulatory or enforcement action by any regulatory authority in any country or jurisdiction?

Provide full details including reasons for the answer to each question if the answer is “YES”

21. Has a judgment been rendered or any suit, action or proceedings pending against the Applicant or any director thereof, in civil proceedings in any court or tribunal in any country or jurisdiction which has been or is based in whole or in part on fraud, theft, deceit, misrepresentation, misappropriation or similar conduct?
22. Has any director of the Applicant been, or is being, charged, indicted or convicted in any country or jurisdiction for any offence in any criminal or civil proceedings in relation to fraud, theft, deceit, misrepresentation or misappropriation arising out of operating or dealing in any initial token offering, blockchain related exchange, mutual funds, collective investment schemes/funds, securities, banking or insurance business or company management?

Provide full details if the answer is “YES.”

23. Has any director of the Applicant, in any country or jurisdiction -
- (a) been declared bankrupt or been a party to bankruptcy or insolvency?
 - (b) been subjected to proceedings relating to winding-up, dissolution or creditors’ arrangements?
 - (c) been subjected to proceedings relating to receivership or creditors’ compromise?

Provide full details if the answer to any of the above is YES.

24. Provide details of any matter that Applicant (or representative of Applicant completing this Schedule) believes may be relevant to the assessment of the fit and proper status of the Applicant or any of its directors.
25. State the address in Anguilla where the issuer's accounting records and financial statements of Applicant (or copies thereof) will be kept.
26. Specify name and office address of auditors of Applicant and attach evidence of the auditor's acceptance of their appointment or their willingness to act.
27. Specify name and office address of legal counsel of Applicant and attach evidence of their willingness to act.
28. Specify the uniform resource locator (URL) at which the licensed utility token exchange will be located and maintained.
29. Please provide a Business Plan that sets out the following information (including technical data) with regard to the proposed licensed utility token exchange:
- (a) Details of the operations of the exchange including provisions relating to trading, asset custody, currency exchange and any other activities related to the operations and usage of the exchange;
 - (b) Details of the facilities and systems for the operation of the exchange;
 - (c) Details of the rules and practices to be implemented by the Applicant to ensure that operations conducted by means of the facilities and systems will be conducted in an orderly and fair manner;
 - (d) Details of arrangements:
 - i. For the safety and security of utility tokens, currency and other digital assets utilized by users;
 - ii. To ensure compliance with the provisions of the *Utility Token Exchange (Anti-Money Laundering and Terrorist Financing) Regulations, 2020*;

- iii. For the safe and timely performance of transactions effected on the exchange, and for the recording and publication of such transactions;
- iv. To conduct market surveillance with regard to transactions conducted on the exchange;
- v. For effective monitoring and enforcement of compliance with the rules of the exchange, the Act and regulations; and
- vi. To investigate complaints in respect of transactions by any users.
- vii. For storage of data on primary and backup servers, including the location of each server

30. Please provide a legal opinion from a law firm acceptable to the Commission that the tokens to be listed on the proposed licensed utility token exchange conforms to the requirements of Sections 19(1) and Section 20(1) of the Act. [Applicants must provide such legal opinion with respect to each new utility token proposed to be listed on the exchange following grant of a licence].

31. Please provide a report from a technical expert acceptable to the Commission that the technical components of proposed licensed utility token exchange are reasonable and will satisfactorily address their stated purposes in the Business Plan.

32. Please provide a statement of the financial, technical and human resources and administrative facilities that are or will be available to the Applicant for competent and efficient conduct of the proposed licensed utility token exchange.

33. Schedule 2 must be completed by each director and by each shareholder holding 10% or more of the net equity of the Applicant or its material affiliates relating to the development, operation and management of the proposed licensed utility token exchange.

Application is accordingly hereby made for the grant of the licence specified above and it is certified that all the particulars contained in the Application and in the documents accompanying it or otherwise furnished in the support hereof are true and correct and that any change to the information submitted will be communicated to the Commission forthwith.

Dated thisday of 20.....

.....
Name of Applicant

By Director/Secretary or other duly authorized person

Signed

AUTHORISATION TO SEEK ADDITIONAL INFORMATION

I/We hereby authorize you to contact all relevant authorities and authorize said authorities to provide you with whatever information you may request.

Signed

SCHEDULE 2

(Section 2)

**INFORMATION IN SUPPORT OF AN APPLICATION FOR A LICENCE TO OPERATE A
UTILITY TOKEN EXCHANGE**

Details required from each (i) director/manager of an Applicant entity; (ii) shareholder holding 10% or more of the net equity of the Applicant and (iii) such other person(s) as the Commission may require.

1. Full name:
2. Former name (if different from name given above):
3. Date and place of birth:
4. Nationality (if naturalized attach a copy of the naturalization certificate, and state former nationality):
5. Full home address at present time:
6. List home addresses in full for previous five years where different from that given above, and give the related dates:
7. Marital status. If married give full name of spouse including maiden name of wife.
8. Passport particulars (enclose copies of relevant pages).
9. Please provide a detailed curriculum vitae giving full details of your profession or occupation over the past ten (10) years; include the names and addresses of all employers and the nature of your employment give all relevant dates and state briefly the reasons for changes:
10. Give a list of all companies in which you have held or hold an interest of 25% or more during the past ten years. Give brief particulars of the nature of the business of all such companies:

11. Give details of academic and professional qualifications and date(s) obtained:

12. Have you ever been employed in, or had an interest in, in any country, -

(a) A financial services activity -

OR

(b) A gambling activity -

(State YES or NO).

13. In relation to the proposed operation are you acting wholly or partly as a nominee or agent for, or trustee of another person, persons or organizations? (State YES or NO):

If YES, give the name and address of the person, or persons, or organizations and the precise nature of your relationship and/or the arrangement:

14. Give the full details of your financial interest in the proposed operation, and the percentage ownership that this will represent:

15. Have you or your spouse ever been declared bankrupt or been the subject of a bankruptcy petition, or ever received a judgment against you in a civil court? (State YES or NO):

If YES give full details:

16. Has any company or firm of which you or your spouse was a shareholder, partner or director been the subject of a winding up petition? (State YES or NO):

17. Have you ever applied for a financial services licence or digital ledger technology licence in any other jurisdiction? (State YES or NO).

If YES state type of licence, name of company, location and period held and where granted:

18. Have you ever been the subject of an investigation in relation to a financial institution or a gambling or lottery business or been refused a financial services licence or digital ledger technology licence, or had an interest in any entity that has been refused a licence or been subject to an adverse finding of suitability? (State YES or NO):

If YES to either of the above, state where, when and for what reason:

19. Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder, manager, officer or comptroller, anywhere, had its authorization revoked? If so give particulars.
20. Have you ever appeared before any licensing agency or similar authority for any reason whatsoever, for example as a witness? (State YES or NO):

If YES provide details:

21. Have you as an individual, member of a partnership, or owner, director or officer of a corporation, ever been a party to a lawsuit in relation to corporate, commercial or criminal matters as either a plaintiff, or defendant? (State YES or NO):

If YES give details below: (List all cases without exception, including bankruptcies):

Plaintiff/Defendant:

Court and Case Number: Location:

Result:

22. (i) Have you ever been convicted of any criminal offence in any country (excluding traffic offences);
or

- (ii) Have you ever been arrested, detained, charged, indicted or summoned to answer for any criminal offence (excluding traffic offences) including of which the result is still pending:

If you have answered YES to either (i) or (ii) please give details. (List all cases without exception):

Date of Arrest or Detention:

Age:

Charge:

Location:

Result:

23. Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder, manager, officer, or comptroller, anywhere, been compulsorily wound up or made any compromise or arrangement with its creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims, either while you were associated with it or within one year after you ceased to be associated with it? If so, give particulars.

24. Will you participate actively in the management or operation of the proposed operation? (State YES or NO):

If YES give full details:

25. Has your interest in the proposed operation been assigned, pledged or hypothecated to any person, persons, firms, partnerships or companies; or have you entered into any agreement, whereby your interest is to be assigned or pledged or sold either wholly or in part? (State YES or NO):

26. Have you made any arrangements for persons, firms or companies to advance money, or other equity, to you to assist in financing your investment in the proposed operation? (State YES or NO):

27. Do your assets exceed your liabilities, including contingent liabilities, and are they likely to remain so for the foreseeable future? (State YES or NO):

28. Explain how you intend to finance your investment in the proposed operation, if applicable:

29. Give the names, addresses and telephone numbers of three referees. Referees should not be relatives. They should be told that the Commission might wish to contact them.

It is certified that all the particulars contained in this information declaration and in the documents accompanying it or otherwise furnished in the support hereof are true and correct.

Dated thisday of 20.....

.....
Name

By Director/Secretary or other duly authorized person

Signed

AUTHORISATION TO SEEK ADDITIONAL INFORMATION

I/We hereby authorize you to contact all relevant authorities and authorize said authorities to provide you with whatever information you may request.

Signed

SCHEDULE 3

(Section 3)

FEE SCHEDULE

Application fees		
	On Application for utility token exchange licence under section 3 of the Act	US\$5, 000
	Application for approval of issue or transfer or shares or other interests with respect to holder of utility token exchange licence	US\$1,000
	Application for approval of directors/managers of holder of utility token exchange licence	US\$500

Licence Fee	
Fee upon grant of utility token exchange licence under section 4 of the Act	US\$40,000
For licences granted after 01 st July of any calendar year, a reduction of 50% shall be applied to the Licence Fee	

Annual Fee for utility token exchange licence (other than for the year in which the registration is granted)	US\$40,000
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Date by which Annual Fee must be paid:

In accordance with sections 4(5) of the Act, the annual fee payable by each holder of a utility token exchange licence shall be paid on or before the 15th day of January of each year.

If the annual fee is paid after the 15th day of January, the Administrative Penalties Regulations, R.R.A. F28-2 will apply in relation to late payment penalties.

SCHEDULE 4

(Section 4)

APPLICATION FOR APPROVAL OF ISSUE OR TRANSFER OF SHARES OR OTHER INTERESTS WITH RESPECT TO HOLDER OF UTILITY TOKEN EXCHANGE LICENCE

Financial Services Commission
The Valley
Anguilla

Dear Sir

Re: Name of company

Application to be accompanied by the non-refundable Application Fee set out in Schedule 3

We apply herewith for your approval of the issue/transfer/ other dispositions* of shares/ other interests* in the above-mentioned company.

Name and address of allottee or transferee of shares or other interests*

If the interests being issued, transferred or otherwise disposed of are not shares, please give a description thereof*

Number of shares and/or percentage of total interests to which application relates

Where transfer changes are greater than or equal to 50%, please attach an updated business plan.

We attach Schedule 2 of these Regulations (Information in support of an Application) duly completed by any new allottee or transferee.

Dated thisday of 20.....

Yours faithfully

* Complete and/or delete as appropriate.

SCHEDULE 5

(Section 5)

**APPLICATION FOR APPROVAL OF DIRECTORS/MANAGERS OF HOLDER OF UTILITY
TOKEN EXCHANGE LICENCE**

Financial Services Commission
The Valley
Anguilla

Dear Sir,

Re:

Application to be accompanied by the non-refundable Application Fee set out in Schedule 3

We apply herewith for approval for the appointment of

_____ * as a director of this licensed institution

We attach herewith Schedule 2 (Information in support of an Application) of these Regulations duly completed with respect to the aforementioned person(s).

Dated thisday of 20.....

Yours faithfully

* *Completed and /or delete as appropriate*

Made by the Governor this 9 day of October, 2020



Timothy J. Foy, OBE
GOVERNOR OF ANGUILLA