

# AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

## COMPANIES AND LIMITED LIABILITY COMPANY (INITIAL COIN OFFERING) AMENDMENT ACT 2018

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WHEREAS it is expedient to amend the Companies Act 1981 and the Limited Liability Company Act 2016 to provide for Initial Coin Offerings and connected matters;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

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Citation

1 This Act may be cited as the Companies and Limited Liability Company (Initial Coin Offering) Amendment Act 2018.

*AMENDMENT OF THE COMPANIES ACT 1981*

Amends section 2

2 The Companies Act 1981 is amended in section 2—

(a) by inserting in the appropriate alphabetical order the following—

“appointed digital asset exchange” means such digital asset exchange appointed by the Minister under subsection (9);

“civil penalty” means such civil penalty as may be imposed by the Registrar under the Registrar of Companies (Compliance Measures) Act 2017;

“Initial Coin Offering” or “ICO” has the meaning given in section 34A;”;

(b) in subsection (9), by inserting after the words “stock exchange” the words “or digital asset exchange”.

Amends section 4A

3 The Companies Act 1981 is amended in section 4A by inserting after subsection (3) the following—

“(3A) The Minister’s consent given under subsection (1), in relation to an Initial Coin Offering may be made subject to such conditions as the Minister may consider appropriate to impose. ”.

Inserts Part IIIA

4 The Companies Act 1981 is amended by inserting after section 34 the following—

“PART IIIA

INITIAL COIN OFFERING

Interpretation of Part IIIA

34A (1) In this Part, unless the context otherwise requires—

“blockchain” means a digital ledger or database of transactions relating to digital assets which are recorded chronologically and capable of being audited;

“Code of Conduct” means a code of conduct issued under section 34M;

“digital asset” means anything that exists in binary format and comes with the right to use it and includes a digital representation of value that—

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- (a) is used as a medium of exchange, unit of account, or store of value and is not legal tender, whether or not denominated in legal tender;
- (b) is intended to represent assets such as debt or equity in the promoter;
- (c) is otherwise intended to represent any assets or rights associated with such assets; or
- (d) is intended to provide access to an application or service or product by means of blockchain;

but does not include—

- (e) a transaction in which a person grants value as part of an affinity or rewards program, which value cannot be taken from or exchanged with the person for legal tender, bank credit or any digital asset; or
- (f) a digital representation of value issued by or on behalf of the publisher and used within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform;

“electronic” has the meaning given in section 2 of the Electronic Transactions Act 1999;

“expert” includes a technologist, software engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him relating to an Initial Coin Offering;

“FinTech Advisory Committee” means the FinTech Advisory Committee appointed under section 272F;

“Initial Coin Offering” or “ICO” means an offer by a company to the public to purchase or otherwise acquire digital assets;

“ICO offer document” means the document referred to in section 34B;

“ICO platform”, in relation to an Initial Coin Offering, includes a website or an electronic database or other software platform;

“project” means the product or service to be created or developed as set forth in the ICO offer document;

“promoter” means a company that may be an issuer of an ICO offer document or of a digital asset or other persons who were parties to the preparation of the ICO offer document, but does not include any person by reason only of his acting in a professional capacity for persons engaged in procuring the formation of the company.

(2) Any reference in this Act to offering digital assets to the public shall, subject to any provision to the contrary contained herein, be construed as including

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a reference to offering them to any section of the public, and references in this Act or in a company's bye-laws to invitations to the public to purchase digital assets shall, subject as aforesaid, be similarly construed.

(3) For the purposes of this Part—

- (a) a statement included in an ICO offer document shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in an ICO offer document if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(4) Subsection (2) shall not be taken as requiring any Initial Coin Offering or invitation to be treated as made to the public if it is—

- (a) an offer by the promoter to existing holders of digital assets of the same class as the digital assets comprised in the offer;
- (b) an offer certified in writing by an officer of the company on behalf of the board of directors to be an offer which the board considers as not being calculated to result, directly or indirectly, in the digital assets becoming available—
  - (i) in the case of a local company, to more than 20 persons; and
  - (ii) in the case of an exempted company or a permit company, to more than 35 persons;
- (c) an offer having a private character; or
- (d) an offer certified in writing by an officer of the company on behalf of the board of directors to be an offer which the board considers as not being calculated to result, directly or indirectly, in digital assets becoming available to persons other than persons whose ordinary business involves the acquisition, disposal or holding of digital assets, whether as principal or agent.

Company offering digital assets to public shall publish an ICO offer document  
34B (1) Subject to subsection (2), no company shall offer digital assets to the public unless prior to such offer it publishes in electronic form an ICO offer document, and prior to or as soon as reasonably practicable after publication of such ICO offer document, the company shall file with the Registrar (in such form as the Registrar may require), a copy signed by or on behalf of all of the directors of the company.

(2) It is not necessary to file an ICO offer document under subsection (1), at any time or in any circumstances, where—

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- (a) the digital assets are listed on an appointed stock exchange or appointed digital asset exchange, or an application has been made for the digital assets to be so listed, and the rules of the appointed stock exchange or appointed digital asset exchange do not require the company to publish and file an ICO offer document at such time or in such circumstances;
- (b) the company is subject to the rules or regulations of a competent regulatory authority and such rules or regulations do not require the company to publish and file an ICO offer document at such time or in such circumstances, except where exemption from publication and filing of an ICO offer document is given by reason of the offer being made only to persons who are resident outside the jurisdiction of the authority; or
- (c) an appointed stock exchange, appointed digital asset exchange or any competent regulatory authority has received or otherwise accepted an ICO offer document or other document in connection with the Initial Coin Offering to the public.

(3) The Registrar shall not accept for filing a copy of an ICO offer document unless it is accompanied by a certificate signed by an attorney or an officer of the company certifying that the ICO offer document contains the particulars required by section 34C.

(4) The directors of any company and promoters of any Initial Coin Offering that fail to comply with this section shall each be liable to a civil penalty.

Contents of an ICO offer document

34C (1) Every ICO offer document shall contain or there shall be attached thereto documents showing—

- (a) the name and the address of the registered office or principal office of the promoters;
- (b) the name, description and titles of the officers of the promoter;
- (c) the business or proposed business of the company;
- (d) a description of the project, the proposed timeline for the project including any proposed project phases and milestones;
- (e) the amount of money equivalent (in Bermuda dollars) that the Initial Coin Offering is intended to raise;
- (f) the disclosure as to the allocation of the amounts intended to be raised amongst the classes of any issuance (pre-sale, post-Initial Coin Offering etc.);
- (g) any rights or restrictions on the digital assets that are being offered;

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- (h) the date and time of the opening and closing of the offering of digital assets;
- (i) the general Initial Coin Offering risk warning referred to in section 34F;
- (j) a statement as to how personal information will be used.

(2) The ICO offer document shall also comply with any other requirements as may be prescribed by regulations or any Code of Conduct issued in relation to this Part.

(3) Nothing in subsection (1) shall be construed as preventing a promoter from including such other additional information as the promoter considers relevant with respect to the Initial Coin Offering.

Companies offering digital assets to the public

34D (1) Where any company over a period offers digital assets to the public and any of the particulars in an ICO offer document issued by that company ceases to be accurate in a material respect, the company, as soon as reasonably practicable after becoming aware of that fact, shall—

- (a) publish supplementary particulars disclosing the material changes; and
- (b) file a copy of the supplementary particulars with the Registrar.

(2) Each of the directors of any company that fails to comply with this section shall be liable to a civil penalty.

Providing a communication facility; cooling-off rights

34E (1) The promoter shall at all times while the offer is open or suspended, provide an electronic facility that can be used for the following purposes—

- (a) for people who access the ICO offer document through the ICO offer document—
  - (i) to make posts relating to the offer;
  - (ii) to see posts relating to the offer made by others; and
  - (iii) to ask the company making the offer, or other service provider, questions relating to the offer; and
- (b) for the company or other service provider, as the case may be, to make posts responding to questions and posts.

(2) If a person in relation to an Initial Coin Offering makes an application pursuant to the Initial Coin Offering, the person may withdraw the application within three business days after the application is made.

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(3) The withdrawal of an application pursuant to subsection (1) can only be made by a method specified on the ICO platform and the ICO platform must include specific instructions and a means to withdraw.

General Initial Coin Offering risk warning

34F (1) The promoter shall ensure that the general Initial Coin Offering risk warning appears in the ICO offer document and prominently on the ICO platform at all times while the offer is open or suspended.

(2) The general Initial Coin Offering risk warning is a statement that includes the following—

- (a) information regarding any substantial risks to the project which are known or reasonably foreseeable;
- (b) information as to a person's rights or options if the project which is the subject of the Initial Coin Offering in question does not go forward;
- (c) a description of the rights (if any) in relation to the digital assets that are being offered;
- (d) information regarding any disclaimer in respect of guarantees or warranties in relation to the project to be developed or any other asset related to the Initial Coin Offering.

Identification of persons in relation to ICO offer document

34G (1) A company shall, in relation to an Initial Coin Offering, ensure that it applies appropriate measures relating to identification and verification of persons participating in the Initial Coin Offering.

(2) For the purposes of subsection (1), the Minister may make such regulations, subject to the negative resolution procedure, as he considers appropriate.

Security of digital assets, confidentiality, disclosure of information

34H The company shall ensure that appropriate mechanisms are in place in respect of the security of digital assets issued to recipients, confidentiality, disclosure of information and connected matters and that applicable Bermuda laws are complied with in these respects.

Offences relating to the issue of an ICO offer document

34I Any person who makes or authorizes the making of an untrue statement in an ICO offer document unless he proves either that the statement was immaterial or that at the time he made the statement he had reasonable grounds to believe it was true shall be liable—

- (a) on summary conviction to imprisonment for a period of one year or to a fine of \$50,000 or to both such imprisonment and fine;

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- (b) on conviction on indictment, to imprisonment for a period of five years or to a fine of \$250,000 or to both such imprisonment and fine.

Civil liability for mis-statements in ICO offer document

34J (1) Where an ICO offer document invites persons to purchase digital assets of a company, the following persons shall be liable to pay compensation to all persons who prove that they purchased any digital assets in reliance on the ICO offer document for the loss or damage they may have sustained by reason of any untrue statement included therein which is relevant to the Initial Coin Offering that is to say—

- (a) every person who is an officer of the company at the time of the issue of the ICO offer document;
  - (b) every person who has consented to be named and is named in the ICO offer document as an officer or as having agreed to become an officer either immediately or after an interval of time;
  - (c) a promoter of the Initial Coin Offering; and
  - (d) every person who has authorized the issue to the public of the ICO offer document.
- (2) No person shall be liable under subsection (1) if he proves—
- (a) that, having consented to become an officer of the company, he withdrew his consent before the issue of the ICO offer document, and that it was issued without his authority or consent;
  - (b) that the ICO offer document was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent;
  - (c) that, after the issue of the ICO offer document and before any issue thereunder, he, on becoming aware of an untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor;
  - (d) that as regards—
    - (i) every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the issue of the digital assets believe, that the statement was true;
    - (ii) every untrue statement purporting to be a statement made by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it—

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- (A) fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and
  - (B) he had reasonable ground to believe and did up to the time of the issue of the ICO offer document believe that the person making the statement was competent to make it and had not withdrawn or altered it; and
- (iii) every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.
- (3) Where the ICO offer document contains—
- (a) the name of a person as an officer of the company or as having agreed to become an officer of the company thereof, and he has not consented to become an officer, or has withdrawn his consent before the issue of the ICO offer document, and has not authorized or consented to the issue thereof; or
  - (b) a statement by an expert or contains what purports to be a copy of or extract from a report or valuation of an expert, which the expert has withdrawn or altered,

the officers of the company, except any without whose knowledge or consent the ICO offer document was issued, and any other person who authorized the issue thereof shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against the matters set forth in subsection (4).

(4) With respect to subsection (3), the officers of the company referred to in that subsection shall indemnify any such person referred to in that subsection against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the ICO offer document or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof.

(5) Notwithstanding subsection (2)(d), a person shall not be deemed for the purposes of that subsection to have authorized the issue of an ICO offer document by reason only of the inclusion therein of a statement purporting to be made by him as an expert.

When experts are not liable

34K A person referred to as an expert in an ICO offer document shall not be liable under section 34I or 34J if—

- (a) any untrue statement was not made by him; or

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- (b) that as regards any untrue statement made by him he was competent to make the statement and—
  - (i) had reasonable grounds to believe and did believe up to the date of the issue of the ICO offer document that it was true; or
  - (ii) on becoming aware that the statement was untrue before the issue of the ICO offer document he had given reasonable public notice of his disassociation from the ICO offer document and the reasons therefor.

Regulations

34L (1) The Minister may make such regulations as he considers expedient providing for the purposes of this Part.

(2) Without prejudice to, and without limiting, the generality of subsection (1), regulations made under subsection (1) shall prescribe the minimum required information that must accompany an application for consent for an Initial Coin Offering under section 4A.

(3) Regulations made by the Minister under this section shall be subject to the negative resolution procedure.

Code of Conduct

34M (1) The Minister, in consultation with the FinTech Advisory Committee, shall issue a Code of Conduct in relation to Initial Coin Offerings for the purpose of providing guidance as to the duties and requirements to be complied with, and the procedures (whether as to client identification, record-keeping, internal reporting or otherwise) and sound principles to be observed by persons to whom this Part applies.

(2) Every company, promoter or other person to whom this Part applies shall in the conduct of any Initial Coin Offering comply with the provisions of any Code of Conduct issued by the Minister.

(3) A failure on the part of such person referred to in subsection (2) to comply with the provisions of such Code of Conduct shall be taken into account by the Minister in determining whether the Initial Coin Offering is being conducted in accordance with this Part.

Power to obtain information and reports

34N (1) The Registrar may at any time, for the purpose of ensuring compliance with the provisions of this Part and any conditions imposed under section 4A(3A), require a company—

- (a) to provide the Registrar (or such person acting on behalf of the Registrar as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Registrar may reasonably require in order to ensure such compliance;

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(b) to provide the Registrar with a report, in such form as may be specified by the Registrar, of any matter about which the Registrar has required or could require that company to provide information pursuant to this Part.

(2) The person to whom such a requirement is made under subsection (1) shall as soon as reasonably practicable thereafter provide the information or report required by the Registrar.

Application of Public Access to Information Act 2010

34O (1) Notwithstanding any provision of the Public Access to Information Act 2010, this section shall have effect.

(2) For the purposes of this Part, no person who—

(a) obtains information relating to any application for consent pursuant to section 4A(3A); or

(b) obtains information pursuant to section 34N; and

(c) receives a request under the Public Access to Information Act 2010 for such information,

shall disclose the request or such information so requested.”.

Inserts Part XIVC

5 The Companies Act is amended by inserting after section XIVB the following—

“PART XIVC

FINTECH ADVISORY COMMITTEE

FinTech Advisory Committee

272F (1) The Minister shall appoint a committee to be known as the FinTech Advisory Committee whose primary function shall be to advise the Minister on any matter relating to FinTech, or the development of the FinTech industry, which the Minister may refer to it.

(2) The FinTech Advisory Committee may advise the Minister on any matter relating to the development and promotion of the FinTech industry in Bermuda.

(3) The FinTech Advisory Committee shall consist of such persons (not fewer than five in number) to be appointed by the Minister, in consultation with the Minister responsible for e-commerce, as the Minister may think fit.

(4) Not fewer than three members of the FinTech Advisory Committee shall be persons appearing to the Minister to be senior industry professionals who are knowledgeable about FinTech business, blockchain and distributed ledger technology.

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(5) The Minister may make such regulations as he considers appropriate or expedient in relation to the FinTech Advisory Committee.”

Amends section 287A

6 Section 287A of the Companies Act 1981 is amended in subsection (2), by deleting the word “affirmative” and substituting the word “negative”.

Amends section 289

7 Section 289 of the Companies Act 1981 is amended by inserting after subsection (5) the following—

“(6) Nothing in Part IIIA shall be construed as affecting any requirements under any statutory provision relating to securities or foreign exchange or any other applicable law.

(7) Part IIIA does not affect any liability that a person has under any other law.”.

Amends Ninth Schedule

8 The Companies Act 1981 is amended in the Ninth Schedule by deleting the word “or” from the end of paragraph (a) and inserting after that paragraph the following—

“(aa) Initial Coin Offerings; or”.

*AMENDMENT OF THE LIMITED LIABILITY COMPANY ACT 2016*

Amends section 2

9 The Limited Liability Company Act 2016 is amended in section 2 by inserting in the appropriate alphabetical order the following—

“ “appointed digital asset exchange” means such digital asset exchange appointed by the Minister under subsection (9) of section 2 of the Companies Act 1981;

“civil penalty” means such civil penalty as may be imposed by the Registrar under the Registrar of Companies (Compliance Measures) Act 2017;

“Initial Coin Offering” or “ICO” has the meaning given in section 85A;”.

Amends section 67

10 The Limited Liability Company Act 2016 is amended in section 67 by inserting after subsection (3) the following—

“(3A) The Minister’s consent under subsection (1) relating to an Initial Coin Offering may be made subject to such conditions as the Minister may consider appropriate to impose. ”.

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Inserts Part 10A

11 The Limited Liability Company Act 2016 is amended by inserting after section 85 the following—

“PART 10A  
INITIAL COIN OFFERING

Interpretation of Part 10A

85A (1) In this Part, unless the context otherwise requires—

“blockchain” means a digital ledger or database of transactions relating to digital assets which are recorded chronologically and capable of being audited;

“Code of Conduct” means a Code of Conduct issued under section 85L;

“digital asset” means anything that exists in binary format and comes with the right to use it and includes a digital representation of value that—

- (a) is used as a medium of exchange, unit of account, or store of value and is not legal tender, whether or not denominated in legal tender;
- (b) is intended to represent assets such as debt or equity in the promoter;
- (c) is otherwise intended to represent any assets or rights associated with such assets; or
- (d) is intended to provide access to an application or service or product by means of blockchain;

but does not include—

- (e) a transaction in which a person grants value as part of an affinity or rewards program, which value cannot be taken from or exchanged with the person for legal tender, bank credit or any digital asset; or
- (f) a digital representation of value issued by or on behalf of the publisher and used within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform;

“distributed ledger technology” means a decentralised database system in which—

- (a) information is recorded and consensually shared and synchronised across a network or multiple nodes; and
- (b) all copies of the database are regarded as equally authentic;

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“electronic” has the meaning given in section 2 of the Electronic Transactions Act 1999;

“expert” includes a technologist, software engineer, valuer, an accountant and any other person whose profession gives authority to a statement made by him relating to an Initial Coin Offering;

“FinTech Advisory Committee” means the FinTech Advisory Committee appointed under section 272F of the Companies Act 1981;

“Initial Coin Offering” or “ICO” means an offer by a limited liability company to the public to purchase or otherwise acquire digital assets;

“ICO offer document” means the document referred to in section 85B;

“ICO platform”, in relation to an Initial Coin Offering, includes a website or an electronic database or other software platform;

“project” means the product or service to be created or developed as set forth in the ICO offer document;

“promoter” means a limited liability company that may be an issuer of an ICO offer document or of a digital asset or other persons who were parties to the preparation of the ICO offer document, but does not include any person by reason only of his acting in a professional capacity for persons engaged in procuring the formation of the limited liability company.

(2) Any reference in this Act to offering digital assets to the public shall, subject to any provision to the contrary contained herein, be construed as including a reference to offering them to any section of the public, and references in this Act or in an LLC Agreement to invitations to the public to purchase digital assets shall, subject as aforesaid, be similarly construed.

(3) For the purposes of this Part—

- (a) a statement included in an ICO offer document shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in an ICO offer document if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(4) Subsection (2) shall not be taken as requiring any offer or invitation to be treated as made to the public if it is—

- (a) an offer by the promoter to existing holders of digital assets of the same class as the digital assets comprised in the offer;
- (b) an offer certified in writing by a manager of the limited liability company on behalf of the managers to be an offer which the board

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considers as not being calculated to result, directly or indirectly, in the digital assets becoming available—

- (i) in the case of a local LLC, to more than 20 persons; and
- (ii) in the case of an exempted LLC, to more than 35 persons;
- (c) an offer having a private character; or
- (d) an offer certified in writing by a manager of the limited liability company on behalf of the managers to be an offer which the managers consider as not being calculated to result, directly or indirectly, in digital assets becoming available to persons other than persons whose ordinary business involves the acquisition, disposal or holding of digital assets, whether as principal or agent.

Limited liability company offering digital assets to public shall publish an ICO offer document

85B (1) Subject to subsection (2) and to any other enactment, no limited liability company shall offer digital assets to the public unless prior to such offer it publishes in electronic form an ICO offer document, and prior to or as soon as reasonably practicable after publication of such ICO offer document, the limited liability company shall file with the Registrar (in such form as the Registrar may require), a copy signed by or on behalf of all of the managers of the limited liability company.

(2) It is not necessary to file an ICO offer document under subsection (1), at any time or in any circumstances, where—

- (a) the digital assets are listed on an appointed stock exchange or appointed digital asset exchange, or an application has been made for the digital assets to be so listed, and the rules of the appointed stock exchange or appointed digital asset exchange do not require the limited liability company to publish and file an ICO offer document at such time or in such circumstances;
- (b) the limited liability company is subject to the rules or regulations of a competent regulatory authority and such rules or regulations do not require the limited liability company to publish and file an ICO offer document at such time or in such circumstances, except where exemption from publication and filing of an ICO offer document is given by reason of the offer being made only to persons who are resident outside the jurisdiction of the authority; or
- (c) an appointed stock exchange, appointed digital asset exchange or any competent regulatory authority has received or otherwise accepted an ICO offer document or other document in connection with the Initial Coin Offering to the public.

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(3) The Registrar shall not accept for filing a copy of an ICO offer document unless it is accompanied by a certificate signed by an attorney or a manager of the limited liability company certifying that the ICO offer document contains the particulars required by section 85C.

(4) The managers of any limited liability company and promoters of an Initial Coin Offering that fail to comply with this section shall each be liable to a civil penalty.

(5) A limited liability company shall not market or advertise any Initial Coin Offering for which the Minister's consent is required prior to receipt of the Minister's consent.

Contents of an ICO offer document

85C (1) Every ICO offer document shall contain or there shall be attached thereto documents showing—

- (a) the name and the address of the registered office or principal office of the promoters;
- (b) the name, description and titles of the managers of the promoter;
- (c) the business or proposed business of the limited liability company;
- (d) a description of the project, the proposed timeline for the project including any proposed project phases and milestones;
- (e) the amount of money equivalent (in Bermuda dollars) that the Initial Coin Offering is intended to raise;
- (f) the allocation of the amount of money equivalent (in Bermuda dollars) intended to be raised amongst purchasers of digital assets at each point at which digital assets will be offered for purchase;
- (g) any rights or restrictions on the digital assets that are being offered;
- (h) the date and time of the opening and closing of the offering of digital assets;
- (i) the general Initial Coin Offering risk warning referred to in section 85F;
- (j) a statement as to how personal information will be used.

(2) The ICO offer document shall also comply with any other requirements as may be prescribed by any Code of Conduct issued in relation to this Part.

(3) Nothing in subsection (1) shall be construed as preventing a promoter from including such other additional information as the promoter considers relevant with respect to the Initial Coin Offering.

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Limited liability companies offering digital assets to the public

85D (1) Where any limited liability company over a period offers digital assets to the public and any of the particulars in an ICO offer document issued by that limited liability company ceases to be accurate in a material respect, the limited liability company, as soon as reasonably practicable after becoming aware of that fact, shall—

- (a) publish supplementary particulars disclosing the material changes; and
- (b) file a copy of the supplementary particulars with the Registrar.

(2) Each of the managers of any limited liability company that fails to comply with this section shall be liable to a civil penalty.

Providing a communication facility; cooling-off rights

85E (1) The promoter shall at all times while the offer is open or suspended, provide an electronic facility that can be used for the following purposes—

- (a) for people who access the ICO offer document through the ICO platform—
  - (i) to make posts relating to the offer;
  - (ii) to see posts relating to the offer made by others; and
  - (iii) to ask the limited liability company making the offer, or other service provider, questions relating to the offer; and
- (b) for the limited liability company or other service provider, as the case may be, to make posts responding to questions and posts.

(2) If a person in relation to an Initial Coin Offering makes an application pursuant to the Initial Coin Offering, the person may withdraw the application within three business days after the application is made.

(3) The withdrawal of an application pursuant to subsection (1) can only be made by a method specified on the ICO platform and the ICO platform must include specific instructions and a means to withdraw.

General Initial Coin Offering risk warning

85F (1) The promoter shall ensure that the general Initial Coin Offering risk warning appears in the ICO offer document and prominently on the ICO platform at all times while the offer is open or suspended.

(2) The general Initial Coin Offering risk warning is a statement that includes the following—

- (a) information regarding any substantial risks to the project which are known or reasonably foreseeable;

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- (b) information as to a person's rights or options if the project which is the subject of the Initial Coin Offering in question does not go forward;
- (c) a description of the rights (if any) in relation to the digital assets that are being offered;
- (d) information regarding any disclaimer in respect of guarantees or warranties in relation to the project to be developed or any other asset related to the Initial Coin Offering.

Identification of persons in relation to ICO offer document

85G (1) A company shall, in relation to an Initial Coin Offering, ensure that it applies appropriate measures relating to identification and verification of persons participating in the Initial Coin Offering.

(2) For the purposes of subsection (1), the Minister may make such regulations, subject to the negative resolution procedure, as he considers appropriate.

Security of digital assets, confidentiality, disclosure of information

85H The limited liability company shall ensure that appropriate mechanisms are in place in respect of the security of digital assets issued to recipients, confidentiality, disclosure of information and connected matters and that applicable Bermuda laws are complied with in these respects.

Offences relating to the issue of an ICO offer document

85I Any person who makes or authorizes the making of an untrue statement in an ICO offer document unless he proves either that the statement was immaterial or that at the time he made the statement he had reasonable grounds to believe it was true shall be liable—

- (a) on summary conviction to imprisonment for a period of one year or to a fine of \$50,000 or to both such imprisonment and fine;
- (b) on conviction on indictment, to imprisonment for a period of five years or to a fine of \$250,000 or to both such imprisonment and fine.

Civil liability for mis-statements in ICO offer document

85J (1) Where an ICO offer document invites persons to purchase digital assets of a limited liability company, the following persons shall be liable to pay compensation to all persons who can prove that they purchased any digital assets in reliance to his detriment on the ICO offer document for the loss or damage they may have sustained by reason of any untrue statement which is relevant to the Initial Coin Offering included therein that is to say—

- (a) every person who is a manager of the limited liability company at the time of the issue of the ICO offer document;

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- (b) every person who has consented to be named and is named in the ICO offer document as a manager or as having agreed to become a manager either immediately or after an interval of time;
  - (c) a promoter of the Initial Coin Offering; and
  - (d) every person who has authorized the issue to the public of the ICO offer document.
- (2) No person shall be liable under subsection (1) if he proves—
- (a) that, having consented to become a manager of the limited liability company, he withdrew his consent before the issue of the ICO offer document, and that it was issued without his authority or consent;
  - (b) that the ICO offer document was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent;
  - (c) that, after the issue of the ICO offer document and before any issue thereunder, he, on becoming aware of an untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor;
  - (d) that as regards—
    - (i) every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the issue of the digital assets believe, that the statement was true;
    - (ii) every untrue statement purporting to be a statement made by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it—
      - (A) fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and
      - (B) he had reasonable ground to believe and did up to the time of the issue of the ICO offer document believe that the person making the statement was competent to make it and had not withdrawn or altered it; and
    - (iii) every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.
- (3) Where the ICO offer document contains—

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- (a) the name of a person as a manager of the limited liability company or as having agreed to become a manager of the limited liability company thereof, and he has not consented to become a manager, or has withdrawn his consent before the issue of the ICO offer document, and has not authorized or consented to the issue thereof; or
- (b) a statement by an expert or contains what purports to be a copy of or extract from a report or valuation of an expert, which the expert has withdrawn or altered,

the managers of the limited liability company, except any without whose knowledge or consent the ICO offer document was issued, and any other person who authorized the issue thereof shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against the matters set forth in subsection (4).

(4) With respect to subsection (3), the managers of the limited liability company referred to in that subsection shall indemnify any such person referred to in that subsection against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the ICO offer document or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof.

(5) Notwithstanding subsection (2)(d), a person shall not be deemed for the purposes of that subsection to have authorized the issue of an ICO offer document by reason only of the inclusion therein of a statement purporting to be made by him as an expert.

When experts are not liable

85K A person referred to as an expert in an ICO offer document shall not be liable under section 85I or 85J if—

- (a) any untrue statement was not made by him; or
- (b) that as regards any untrue statement made by him he was competent to make the statement and—
  - (i) had reasonable grounds to believe and did believe up to the date of the issue of the ICO offer document that it was true or
  - (ii) on becoming aware that the statement was untrue before the issue of the ICO offer document he had given reasonable public notice of his disassociation from the ICO offer document and the reasons therefor.

Code of Conduct

85L (1) The Minister, in consultation with the FinTech Advisory Committee, may issue a Code of Conduct in relation to Initial Coin Offerings for the purpose of

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providing guidance as to the duties and requirements to be complied with, and the procedures (whether as to client identification, record-keeping, internal reporting or otherwise) and sound principles to be observed by persons to whom this Part applies.

(2) Every limited liability company, promoter or other person to whom this Part applies shall in the conduct of any Initial Coin Offering comply with the provisions of any Code of Conduct issued by the Minister.

(3) A failure on the part of such person referred to in subsection (2) to comply with the provisions of such Code of Conduct shall be taken into account by the Minister in determining whether the Initial Coin Offering is being conducted in accordance with this Part.

(4) In this section, “Minister” has the meaning given in section 2(1) of the Companies Act 1981.

Power to obtain information and reports

85M (1) The Registrar may at any time, for the purpose of ensuring compliance with the provisions of this Part and any conditions imposed under section 67(3A), require a limited liability company—

- (a) to provide the Registrar (or such person acting on behalf of Registrar as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Registrar may reasonably require in order to ensure such compliance;
- (b) to provide the Registrar with a report, in such form as may be specified by the Registrar, of any matter about which the Registrar has required or could require that limited liability company to provide information pursuant to this Part.

(2) The person to whom such a requirement is made under subsection (1) shall as soon as reasonably practicable thereafter provide the information or report requested by the Registrar.

Application of Public Access to Information Act 2010

85N (1) Notwithstanding any provision of the Public Access to Information Act 2010, this section shall have effect.

(2) For the purposes of this Part, no person who—

- (a) obtains information relating to any application for consent pursuant to section 67(3A); or
- (b) obtains information pursuant to section 85M; and
- (c) receives a request under the Public Access to Information Act 2010 for such information,

shall disclose the request or such information so requested.”.

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Amends section 255

12 Section 255 of the Limited Liability Company Act 2016 is amended by inserting after subsection (2) the following—

“(2A) Without prejudice to, and without limiting, the generality of subsection (1), regulations made under subsection (1) shall prescribe the minimum required information that must accompany an application for consent for an Initial Coin Offering under section 67.”.

Amends section 257

13 Section 257 of the Limited Liability Company Act 2016 is amended by adding after subsection (5) the following—

“(6) Nothing in Part 10A shall be construed as affecting any requirements under any statutory provision relating to securities or foreign exchange or any other applicable law.

(7) Part 10A does not affect any liability that a person has under any other law.”.

*FINAL PROVISIONS*

Amends Government Fees Regulations 1976

14 The Government Fees Regulations 1976 are amended in the Schedule in Head 16, by inserting after paragraph 42 the following—

“(42A) considering an application for consent to an ICO pursuant to section 4A \$5,000 ”.

Consequential amendments: general

15 The Minister responsible for the Registrar of Companies may by order subject to the negative resolution procedure repeal or amend any provision relating to subject matter provided for in this Act—

- (a) in any law that is passed before this Act; or
- (b) in any other instrument made under an Act before the passing of this Act,

if it appears to him that that provision is inconsistent with, or requires amendment consequentially upon, or has become unnecessary in consequence of, the provisions of this Act.

Commencement

16 (1) This Act shall come into operation on such day as the Minister responsible for companies may appoint by notice in the Gazette.

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(2) The Minister may appoint different days for the coming into operation of different provisions of this Act.

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EXPLANATORY MEMORANDUM

(Updated)

This Bill seeks to amend the Companies Act 1981 and the Limited Liability Company Act 2016 to provide a framework for Initial Coin Offerings (“ICOs”) in or from Bermuda. The framework will be implemented primarily through this Bill, associated regulations and Code of Conduct.

Clause 1 provides a title to this Bill.

Clause 2 amends section 2 of the Companies Act 1981 (the “Companies Act”) to insert new definitions for the interpretation of that Act.

Clause 3 amends section 4A of the Companies Act to insert a new subsection (3A) to include ICOs as a restricted activity for which consent of the Minister is required under section 4A. The consent of the Minister may be granted to a company subject to conditions.

Clause 4 inserts a new Part IIIA in the Companies Act. Part IIIA applies the provisions of the new Part to ICOs. The new sections 34A to 34O provide as follows:

- Section 34A inserts definitions for the interpretation of the new Part IIIA.
- Section 34B requires a company that receives consent to offer digital assets to the public to publish an ICO offer document.
- Section 34C provides a list of required information that must be included in the ICO offer document. This clause also provides that the ICO offer document must comply with any other specified requirements and the Code of Conduct.
- Section 34D requires any company that offers digital assets to the public to update their offering document with supplementary particulars if the details in the ICO offer document cease to be accurate. Failure to comply with this section attracts a civil penalty.
- Section 34E requires that the promoter provide an electronic facility for communication purposes between the people who access the ICO offer document through the ICO platform and the company or other service provider. Section 34E also provides for cooling-off rights with respect to applications made pursuant to an ICO.
- Section 34F provides the definition of what a general Initial Coin Offering risk warning is and requires that a promoter prominently display the risk warning on the ICO offer document at all times.
- Section 34G requires a company to ensure that appropriate measures are taken with respect to identification and verification of the identity of persons who participate in its ICO.

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- Section 34H requires the promoter to ensure that he has the appropriate mechanisms in place with respect to security of issued digital assets, confidentiality, disclosure of information and any other connected matters. It also requires the promoter to comply with applicable Bermuda laws in this respect.
- Section 34I provides for offences relating to the issue of an ICO offer document.
- Section 34J provides a list of people who may be civilly liable to persons who purchase digital assets.
- Section 34K provides exceptions from liability for experts.
- Section 34L provides that the Minister may make regulations for the purposes of this new Part IIIA.
- Section 34M provides that the Minister, in consultation with the FinTech Advisory Committee, may issue a Code of Conduct with respect to Initial Coin Offerings. The Code of Conduct is to provide guidance on duties, requirements, procedures and to provide sound principles to be observed by persons that come under Part IIIA.
- Section 34N gives the Registrar power to obtain information and reports for the purposes of this Part.
- Section 34O provides for matters relating to the Public Access to Information Act 2010.

Clause 5 inserts a new Part relating to a FinTech Advisory Committee.

Clause 6 amends section 287A of the Companies Act which relates to the regulation-making power.

Clause 7 amends section 289 of the Companies Act to provide for savings.

Clause 8 amends the Ninth Schedule to the Companies Act to include Initial Coin Offerings as a restricted activity.

Clause 9 amends section 2 of the Limited Liability Company Act 2016 (the “LLC Act”), the interpretation section, to insert new definitions for the purposes of the new Part 10A.

Clause 10 inserts a new subsection (3A) in section 67 of the LLC Act to include ICOs as a restricted activity for which consent of the Minister is required under section 67. The consent of the Minister may be granted to a limited liability company subject to conditions.

Clause 11 inserts a new Part 10A in the LLC Act to apply the provisions of the new Part 10A to ICOs that offer digital assets. The new sections 85A to 85M provide as follows:

- Section 85A inserts definitions for the interpretation of the new Part 10A.
- Section 85B requires an LLC that receives consent to offer digital assets to the public to publish an ICO offer document.
- Section 85C provides a list of required information that must be included in the ICO offer document. This clause also provides that the ICO offer document must comply with any other requirements and the Code of Conduct.

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- Section 85D requires any limited liability company that offers digital assets to the public to update their offering document with supplementary particulars if the details in the ICO offering document cease to be accurate. Failure to comply with this section attracts a civil penalty.
- Section 85E requires that the promoter provide an electronic facility for communication purposes between the people who access the ICO offer document through the ICO platform and the limited liability company or other service provider. Section 85E also provides for cooling-off rights with respect to applications made pursuant to an ICO.
- Section 85F provides the definition of what a general Initial Coin Offering risk warning is and requires that a promoter prominently display the risk warning on the ICO offer document at all times.
- Section 85G requires a limited liability company to ensure that appropriate measures are taken with respect to identification and verification of the identity of persons who participate in its ICO.
- Section 85H requires the promoter to ensure that he has the appropriate mechanisms in place with respect to security of issued digital assets, confidentiality, disclosure of information and any other connected matters. It also requires the promoter to comply with applicable Bermuda laws in this respect.
- Section 85I provides for offences relating to the issue of an ICO offer document.
- Section 85J provides a list of people who may be civilly liable to persons who purchase digital assets.
- Section 85K provides exceptions from liability for experts.
- Section 85L provides that the Minister, in consultation with the FinTech Advisory Committee, may issue a Code of Conduct with respect to Initial Coin Offerings. The Code of Conduct is to provide guidance on duties, requirements, procedures and to provide sound principles to be observed by persons that come under Part 10A.
- Section 85M gives the Registrar power to obtain information and reports for the purposes of this Part.
- Section 85N provides for matters relating to the Public Access to Information Act 2010.

Clause 12 amends section 255 of the LLC Act to extend the regulation-making power for purposes of the new Part 10A.

Clause 13 amends section 257 of the LLC Act to provide for savings.

Clause 14 amends the Government Fees Regulations 1976 to provide a new fee for an application for consent to an ICO.

Clause 15 makes general provision for consequential amendments to be made by order subject to the negative resolution procedure.

Clause 16 provides for the commencement of this Act.