EXTRAORDINARY

OFFICIAL GAZETTE
THE BAHAMAS

PUBLISHED BY AUTHORITY

NASSAU 20th May, 2022

DIGITAL ASSETS AND REGISTERED EXCHANGES (AMENDMENT) ACT, 2022

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No. 10 of 2022

DIGITAL ASSETS AND REGISTERED EXCHANGES (AMENDMENT) ACT, 2022

AN ACT TO AMEND THE DIGITAL ASSETS AND REGISTERED EXCHANGES ACT TO PROVIDE FOR THE MONITORING AND SANCTION OF PERSONS CARRYING ON OR PURPORTING TO CARRY ON DIGITAL ASSET BUSINESS ACTIVITIES WITHOUT THE REQUISITE REGISTRATION

[Date of Assent – 20th May, 2022)

Enacted by the Parliament of The Bahamas

1. Short title.

This Act, which amends the Digital Assets and Registered Exchanges Act, 2020 (*No. 28 of 2020)* may be cited as the Digital Assets and Registered Exchanges (Amendment) Act, 2022.

2. Amendment of Part V of the principal Act.

The subheading of Part V of the principal Act is deleted and substituted as follows –

"PART V – INVESTIGATION, MONITORING AND COOPERATION".

3. Amendment of section 39 of the principal Act.

Section 39 of the principal Act is amended by the insertion immediately after subsection (2), of the following new subsection –

"(3) The Commission shall implement systems to identify any person who is not registered under sections 8 or 9 of this Act and who —

(i) is carrying on or involved in digital asset business activities; or

(ii) who purports to carry on or to be involved in digital asset business.".

4. Insertion of new sections 40A and 40B into the principal Act.

The principal Act is amended by the insertion immediately after section 40 of the following new sections —

"40A. Powers to compel.

Where the Commission considers that a person is or may be able to give information or produce a document, which is or may be relevant to an investigation, it may —

(a) require such person to attend before it at a specified time and place to answer questions, including under oath or affirmation that the statements that the person will make will be true;

(b) require such person to produce, or procure the production of specified documents or documents of a specified description;

(c) require such person to give an explanation of or further particulars regarding any information or document produced under paragraphs (a) and (b).

40B. Uncooperative witness liable for contempt.

On application by the Commission to the court, a person summoned under section 40A is liable to be committed for contempt, as if in breach of an order or judgement of the court, if the person neglects or refuses to —

(a) attend;

(b) give evidence; or

(c) produce a document in the custody, possession or control of that person.".

5. Insertion of new sections 42A and 42B into the principal Act.

The principal Act is amended by the insertion immediately after section 42 of the following new sections –

"42A. Compliance Orders.

Without prejudice to any action that may be instituted or taken against a person identified under section 39(3), if at any time it appears to the Commission that such person has failed to comply with any requirement under this Act, the Commission may by written notice —

(a) direct that person to comply with the requirements within such period and on such terms and conditions as the Commission shall specify;

(b) direct that the person cease and desist carrying on digital asset business or their involvement in digital asset business;

(c) direct that the person cease and desist any activity which purports that the person is carrying on or is involved in digital asset business in or from within The Bahamas.

42B. Penalty.

(1) Any person failing to comply with a directive of the Commission made under section 42A shall be subject to a penalty of up to $100,000 for each contravention.

(2) The Commission shall not impose a penalty under subsection (1) unless the Commission notifies the person in writing of—

(a) the directive or directives contravened;

(b) the Commission's intention to impose a penalty, and invites the person to make a representation in writing within a period specified by the Commission, providing reasons why the Commission should not impose a penalty.

(3) Where after considering the representation made or after the specified period for doing so has elapsed, the Commission imposes a penalty, it shall notify the person in writing of the Commission's decision and specify the period within which the penalty shall be paid.".

6. Insertion of new section 46A into the principal Act.

The principal Act is amended by the insertion immediately after section 46 of the following new section —

"46A Freeze Orders.

(1) If the Commission considers it in the public interest to do so, the Commission may, for the administration of digital asset laws or to assist in the administration of the digital assets legislation of another jurisdiction, by order for a period not to exceed five days, direct —

(a) a person having on deposit, under control or for safekeeping any funds, digital assets or other property of the person named in the order to hold them; or

(b) a person —

(i) not to withdraw any funds, digital assets or other property from any person having them on deposit, under control or for safekeeping; or

(ii) to hold all funds, digital assets or other property of a client of that person, or of others, in the person's possession or control in trust for a receiver, receiver-manager, trustee or liquidator appointed under an enactment of The Bahamas.

(2) An aggrieved person may apply to a judge in chambers to discharge the order of the Commission under this section and shall serve notice on the Commission to join in the proceedings, but the order of the Commission shall remain in effect until the judge determines otherwise.

(3) Unless expressly stated, an order made under subsection (1) does not apply to funds, digital assets or other property in the process of transfer.".