

CAYMAN ISLANDS



SECURITIES INVESTMENT BUSINESS (AMENDMENT) BILL, 2020

Supplement No. 9 published with Legislation Gazette No. 31 dated 28th April, 2020.

**A BILL FOR A LAW TO AMEND THE SECURITIES INVESTMENT BUSINESS LAW
(2020 REVISION) TO INCLUDE RELEVANT VIRTUAL ASSET INSTRUMENTS INTO
THE REGULATORY FRAMEWORK; TO AMEND CERTAIN DEFINITIONS; AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of Financial Services and Home Affairs
(FSHA)



Memorandum of OBJECTS AND REASONS

This Bill amends the Securities Investment Business Law (2020 Revision) (the “principal Law”) to include relevant virtual asset instruments into the regulatory framework, to amend certain definitions and for incidental and connected purposes.

Clause 1 provides the short title of the legislation and contains the commencement provision.

Clause 2 amends section 2 of the principal Law by deleting and substituting new definitions of “equity interest”, “listed security” and “recognized securities exchange”. The clause also inserts new definitions of “fiat currency”, “virtual asset” and “virtual asset trading platform”.

Clause 3 amends section 14 of the principal Law to require a licensee to list on the Exchange or a virtual asset trading platform which is licensed under the Virtual Asset (Service Providers) Law, 2020 any virtual assets which are securities under the principal Law and are being issued, sold or advertised to persons in the Islands.

Clause 4 amends section 16 of the principal Law by inserting proposed new subsection (1B) which empowers the Authority to exempt a person from registration or licensing under the principal Law where the person is engaged in an activity which requires a licence under the Virtual Asset (Service Providers) Law, 2020 and it is determined by the Authority that the activity would be more capably supervised under the Virtual Asset (Service Providers) Law, 2020 due to the technology and method of delivery, nature and complexity of the activity, or the supervisory needs of the person carrying out the activity.

Proposed new subsection (1B) also empowers the Authority to exempt a person from registration or licensing under the principal Law where it is determined that additional licensing or registration under this Law is unnecessary as the person is already licensed under the Virtual Asset (Service Providers) Law, 2020.

Clause 4 also inserts proposed new subsection (1C) which empowers the Authority to require a person to apply for a licence under the Virtual Asset (Service Providers) Law, 2020 where it exempts a person from registration or licencing in accordance with subsection (1B)(a).

Clause 5 amends section 27 of the principal Law to provide that an individual does not commit the offence of insider dealing under section 25(a) unless the dealing occurred on a virtual asset trading platform which is a recognized securities exchange.

Clause 6 amends section 34 of the principal Law to include information published in accordance with the rules of a virtual asset trading platform which is a recognized securities exchange for the purpose of informing investors and their professional advisors in the meaning of information which is made public.



Clause 7 amends Schedule 1 of the principal Law to provide for a contract to be regarded as made for investment purposes if it is a virtual asset which is traded on any virtual asset trading platform. The clause amends paragraph 11 to provide that a contract is made for investment purposes if it is expressed to be as traded on a virtual asset trading platform or performance of the contract is ensured by a virtual asset trading platform.

The clause also inserts new proposed paragraph 14 in Schedule 1 to include as a security, virtual assets which can be sold, traded or exchanged immediately or at any time in the future that represent or can be converted into any of the securities listed in paragraphs 1 to 13 of Schedule 1 or represent a derivative of any of the securities listed in paragraphs 1 to 13 of Schedule 1.

Clause 8 amends Schedule 3 of the principal Law to include a company, partnership or trust issuing, redeeming or repurchasing any virtual assets which represent or can be converted into any of the securities, falling within paragraphs 1 to 3 of Schedule 1 as an excluded activity.



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CAYMAN ISLANDS**SECURITIES INVESTMENT BUSINESS
(AMENDMENT) BILL, 2020**

A BILL FOR A LAW TO AMEND THE SECURITIES INVESTMENT BUSINESS LAW (2020 REVISION) TO INCLUDE RELEVANT VIRTUAL ASSET INSTRUMENTS INTO THE REGULATORY FRAMEWORK; TO AMEND CERTAIN DEFINITIONS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title and commencement

1. (1) This Law may be cited as the Securities Investment Business (Amendment) Law, 2020.
- (2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

Amendment of section 2 of the Securities Investment Business Law (2020 Revision) - interpretation

2. The *Securities Investment Business Law (2020 Revision)*, in this Law referred to as the “principal Law”, is amended in section 2 as follows —
 - (a) by renumbering the section as section 2(1);
 - (b) in subsection (1) as renumbered as follows —
 - (i) by deleting the definition of “equity interest” and substituting the following definition —



- “**equity interest**” means a share, trust unit, partnership interest or any other representation of an interest that —
- (a) carries an entitlement to participate in the profits or gains of the company, unit trust or partnership; and
 - (b) is redeemable or repurchasable at the option of the investor and, in respect of a company incorporated in accordance with the *Companies Law (2020 Revision)* (including an existing company as defined in that Law), in accordance with but subject to section 37 of the *Companies Law (2020 Revision)* before the commencement of winding-up or the dissolution of the company, unit trust or partnership, but does not include debt, or alternative financial instruments as prescribed under the *Banks and Trust Companies Law (2020 Revision)*”;
- (ii) by deleting the definition of “listed security” and substituting the following definition —
- “**listed security**” means any security which is listed on the Exchange or a virtual asset trading platform which is a recognized securities exchange”;
- (iii) by deleting the definition of “recognised securities exchange” and substituting the following definition —
- “**recognized securities exchange**” means the Exchange or any other securities exchange or virtual asset trading platform licensed under the *Virtual Asset (Service Providers) Law, 2020* that the Authority has declared by notice published in the *Gazette* to be a recognized exchange for the purposes of this Law”;
- (iv) by inserting in the appropriate alphabetical sequence the following definitions —
- “**fiat currency**” means currency that is issued by the relevant body in a country or by a government that is designated as legal tender in its country of issuance through, among other things, government decree or law; and
- “**virtual asset**” means a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes but does not include a digital representation of fiat currencies”;
- (c) by inserting after subsection (1) as renumbered, the following subsections —



- “(2) For the purposes of this Law, “**virtual asset trading platform**” means a centralized or decentralized digital platform —
- (a) which facilitates the exchange of virtual assets for fiat currency or other virtual assets on behalf of third parties for a fee, commission, spread or other benefit; and
 - (b) which —
 - (i) holds custody of or controls virtual assets on behalf of its clients to facilitate an exchange; or
 - (ii) purchases virtual assets from a seller when transactions or bids and offers are matched in order to sell them to a buyer,
 and includes its owner or operator, but does not include a platform that only provides a forum where sellers and buyers may post bids and offers and a forum where the parties trade in a separate platform or in a peer-to-peer manner.
- (3) For the purposes of the definition of “**virtual asset trading platform**”, where a single entity or group that controls the platform cannot be identified, the operator of the platform shall be deemed the owner of the entity under which the platform operates.”.

Amendment of section 14 - certain prohibitions on licensee

3. The principal Law is amended in section 14 by inserting after subsection (2) the following subsection —
- “(3) A licensee shall list on the Exchange or a virtual asset trading platform which is licensed under the *Virtual Asset (Service Providers) Law, 2020* any virtual assets which are securities under this Law and are being issued, sold or advertised to persons in the Islands.”.

Amendment of section 16 - powers and duties of the Authority

4. The principal Law is amended in section 16 by inserting after subsection (1A) the following subsections —
- “(1B) The Authority may exempt a person from registration or licensing under this Law where —
- (a) the person is engaged in an activity which requires a licence under the *Virtual Asset (Service Providers) Law, 2020* and the Authority determines that the activity would be more capably supervised under the *Virtual Asset (Service Providers) Law, 2020* due to the technology and method of delivery, nature and complexity of the activity, or the supervisory needs of the person carrying out the activity; or

(b) the Authority determines that additional licensing or registration under this Law is unnecessary as the person is already licensed under the *Virtual Asset (Service Providers) Law, 2020*.

(1C) Where the Authority exempts a person from registration or licensing in accordance with subsection (1B)(a), it shall require the person to apply for a licence under the *Virtual Asset (Service Providers) Law, 2020*.”.

Amendment of section 27 - territorial scope of offence of insider dealing

5. The principal Law is amended in section 27(1) as follows —

- (a) in paragraph (a), by deleting the words “alleged dealings; or” and substituting the words “alleged dealings;”;
- (b) in paragraph (b), by deleting the words “the Exchange.” and substituting the words “the Exchange; or”; and
- (c) by inserting after paragraph (b) the following paragraph —
 - “(c) the dealing occurred on a virtual asset trading platform which is a recognized securities exchange.”.

Amendment of section 34 - definition of "made public"

6. The principal Law is amended in section 34(2)(a) by inserting after the words “the Exchange” the words “or a virtual asset trading platform which is a recognized securities exchange”.

Amendment of Schedule 1 - securities

7. The principal Law is amended in Schedule 1 as follows —

- (a) in paragraph 7 by inserting after the words “made on such an exchange”, the words “or in the case of a virtual asset, if it is traded on any virtual asset trading platform”;
- (b) in paragraph 11 as follows —
 - (i) in subparagraph (a), by inserting after the words “securities exchange” the words “or virtual asset trading platform”; and
 - (ii) in subparagraph (b), by inserting after the words “a securities exchange” the words “, a virtual asset trading platform”; and
- (c) by inserting after paragraph 13 the following paragraph —

“**Virtual Assets**

14. Virtual assets which can be sold, traded or exchanged immediately or at any time in the future that —

- (a) represent or can be converted into any of the securities listed in paragraphs 1 to 13 of this Schedule; or



