

YOUR GUIDE TO -

# Setting up a Bermuda Digital Asset or Blockchain Fund





This helpful guide should tell you everything you need to know about setting up a Digital Asset or Blockchain fund in Bermuda.

## Why Bermuda For Your Digital Asset Fund?

Since 2018 the Bermuda Government has strived for the jurisdiction to be the FinTech hub for regulated digital asset businesses and sought to attract a breadth of FinTech clients into the jurisdiction.

Consequently, Bermuda, with its established and clear regulatory frameworks for investment funds and digital asset businesses, is perfectly situated to set-up your digital asset or blockchain fund.

### **Some of the benefits of using Bermuda include.**

1. World-Class Financial Centre
2. Innovative, flexible structures with a robust legal and regulatory compliance framework
3. Quality & Expertise of Service Providers
4. Ease of Doing Business
5. Stable Political Climate

## Structure

Structuring your fund in the most optimal manner is of utmost importance. If any of the investors are located outside of the U.S. and/or are U.S. tax exempt, offshore jurisdictions such as Bermuda often form part of the fund structure. Bermuda has a strong reputation as an offshore jurisdiction because of the flexibility of the fund products available. Whatever investment strategy you wish to pursue (investing and trading in cryptocurrencies, blockchain start-ups or a combination of the two) we can advise you on the most optimal structure. There are a variety of categories of funds that can be established in Bermuda depending on your type of investor.

The most common categories are:

- Private Funds (no more than 20 investors and not offered to the public, typically used for family offices, as a master fund or seeding vehicle – can be open or closed ended);
- Professional Class A and Class B Funds (open to 'qualified participants', typically for high-net-worth/institutional type investors).
- Standard Fund (no minimum investment or investor qualification test, favored for retail investors).

Bermuda also has legislation in place to incorporate an array of flexible legal structures for your fund, including companies limited by shares, partnerships, limited liability companies (LLCs) as well as segregated accounts (cell companies and incorporated segregated accounts companies. (cell companies where each cell enjoys separate legal personality).

## Open-Ended Bermuda Exempted Company

This structure is more common for those managers looking to pursue an investment strategy which focuses on trading in cryptocurrencies.

These strategies tend to be more liquid in nature and investors are able to redeem their investment at their own initiative. These structures are therefore open-ended and similar to a traditional hedge fund. All funds are required to seek permission from the Bermuda Monetary Authority ("BMA"). Directors and service providers need to be 'fit and proper', however, there is no requirement for directors to be registered with the BMA.

To the extent that the equity interests of the fund are to be tokenized, the BMA would consider the fund to still be offering equity interests and therefore BMA registration will be required.

## Closed-Ended Bermuda Exempted Limited Partnership

This structure is more common for those managers looking to pursue an investment strategy which focuses on long term investments in Blockchain start-ups or projects. These strategies tend to be illiquid in nature and investors are unable to redeem their investment without the manager's consent. These types of funds are akin to a private equity or venture capitalist fund. Closed-ended funds need to be registered with the BMA.

## Service Providers

Once you have decided on the most appropriate structure for your fund, it is necessary to also consider the various service providers that your fund may need to engage. The following are among the key service providers:

- **An Administrator and Custodian**  
It is common for open-ended funds to appoint a third-party administrator who will be responsible for the accounting of investor subscriptions and redemptions, and computing the net asset value of the fund. With regards to custodians, the option to self-custody rather than appoint a third party custodian is preferred by many sponsors with expertise in the digital asset space. However, for institutional investors that invest in cryptocurrency funds a third party custodian will most likely be required.
- **An Auditor**  
The BMA require a registered fund to appoint an auditor, however such auditor does not need to be based in Bermuda. All of the big 4 accounting firms have a physical presence in Bermuda. In certain circumstances, the BMA may grant an exemption to the audit requirements provided appropriate arrangements are in place to safeguard the interests of participants in the fund.
- **Independent Directors**  
Independent directors are more commonly seen in open-ended structures. They are viewed as the investors' "watchdogs" over the investment manager and other service providers to the fund. However, as the digital asset space is relatively new, the sponsor tends to provide the directors to the funds. Directors must, however, meet a 'fit and proper' test.
- **FATCA and Anti-Money Laundering and Anti-Terrorist Financing Requirements**  
Funds will be required to comply with Bermuda laws relating to FATCA (Model 2), the Common Reporting Standard and Anti-Money Laundering. A fund must appoint a Money Laundering Reporting Officer ("MLRO") and a Compliance Officer ("CO"), who can be the same person satisfying the 'fit and proper' criteria. This is often provided by the fund administrator. It is possible for the fund to accept subscriptions in cryptocurrencies, the fund administrator would need to conduct the usual AML due diligence, including source of wealth.
- **A Registered Office provider in Bermuda**  
Under Bermuda law it is a requirement for the fund to have a registered office ("RO") in Bermuda. The RO will carry out a wide variety of administrative matters on behalf of the fund. Such services can be provided by our affiliate entity, Walkers Corporate (Bermuda) Limited.

## Digital Asset Business Act 2018 (“DABA”) and Digital Asset Issuance Act 2019 (“DAIA”)

Bermuda was a pioneer in the digital asset sector and first implemented its digital asset legislation in 2018 which established the foundation for a comprehensive legislative and regulatory framework designed to support and facilitate growth in the financial technology (Fintech) Sector. DABA regulates ‘digital asset business’ activities where they are conducted by any entity in or from within Bermuda which includes, among other things, issuing, selling or redeeming virtual coins, tokens or any other form of digital asset; provision of digital asset custodial wallet services and digital asset services vendors. The term ‘digital asset’ is widely defined and covers anything which exists in binary form and comes with the right to use it and includes a digital representation of value. It captures digital coins, security, equity or utility tokens and anything intended to provide access to an application, product or service by means of distributed ledger technology.

In the ordinary course, funds pursuing a digital asset and/or blockchain focused strategy would not be subject to DABA or DAIA unless such investment fund conducts a public sale of its tokenized equity interests. We have provided a more detailed advisory on DABA which can be found here.

## Other considerations

Some final questions which you may need to consider and which we would be delighted to discuss with you in more detail:

### **Have you engaged any onshore counsel to assist with the launch?**

Investment funds typically target investors onshore. Therefore, we tend to work with onshore lawyers on the offering documents of the Bermuda domiciled fund. The fund will need to comply with the securities offering laws in which the investors are based.

### **What is your timing for launching your fund?**

BMA applications are submitted electronically, and the Registrar of Companies system is now fully electronic, we also have legislation to recognize electronic signatures. This provides an efficient and streamlined formation and registration system.

### **Where is the investment manager located?**

Pursuant to recent amendments to the Investment Business Act 2003, (“IBA”), an investment manager incorporated in Bermuda, but without a physical presence in Bermuda, is now required to register with the BMA under one of two categories, depending on whether or not the investment manager is already licensed, authorised or registered by an approved regulator, unless it has been deemed non-registrable by the Minister of Finance. Investment managers seeking to carry on investment business in or from Bermuda have to be licensed by the BMA.

Uniquely beneficial to the digital assets space, the amendments to the IBA now allow for a ‘test’ license, under which licensees are allowed to carry on investment activities within the controlled environment of the BMA’s regulatory sandbox, and may offer innovative products and test new technologies and delivery methods. It is also proposed that DABA will soon be amended, such that a DABA license will not be required where certain investment providers registered or licensed under the IBA wish to conduct ancillary digital asset business. There is no requirement for the investment manager of a Bermuda domiciled fund to be established in Bermuda, however more sponsors are choosing to do so and to physically relocate in Bermuda.

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## Further information

For more information or to speak to an expert simply contact [fintech@walkersglobal.com](mailto:fintech@walkersglobal.com) or contact one of the below:



**Sarah Demerling**

Partner

+1 441 242 1525

[sarah.demerling@walkersglobal.com](mailto:sarah.demerling@walkersglobal.com)



**Natalie Neto**

Partner

+1 441 242 1533

[natalie.neto@walkersglobal.com](mailto:natalie.neto@walkersglobal.com)



**Rachel Nightingale**

Senior Counsel

+1 441 242 1520

[rachel.nightingale@walkersglobal.com](mailto:rachel.nightingale@walkersglobal.com)



**Shaela Rae**

Senior Associate

+1 411 242 1557

[shaela.rae@walkersglobal.com](mailto:shaela.rae@walkersglobal.com)