



BERMUDA MONETARY AUTHORITY

GUIDANCE NOTES

**DIGITAL ASSET BUSINESS AND INVESTMENT
BUSINESS**

**GUIDANCE FOR DIGITAL ASSET BUSINESSES
CONDUCTING INVESTMENT BUSINESS IN AN
'ANCILLARY' MANNER**

October 2022 (Revised)

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1.0 INTRODUCTION

1. These Guidance Notes have been issued by the Bermuda Monetary Authority (Authority or BMA) to provide information and clarity regarding the circumstances under which an entity licensed under the Digital Asset Business Act 2018 (DABA) which also carries on investment business, which would otherwise require licensing or registration under the Investment Business Act 2003 (IBA), may be deemed a Non-Registrable Person (NRP) under the Investment Business Act 2003 (IBA), pursuant to the Investment Business (Non-Registrable Persons) Order 2022, on the basis that those investment activities are carried on in an *ancillary manner*¹.
2. This Guidance will be kept up to date and revisions published from time to time.
3. The definition of ‘ancillary’ used herein only relates to the context and scope as outlined in this Guidance.

2.0 SCOPE AND CRITERIA OF ‘ANCILLARY’

4. Determining whether investment activities are ‘ancillary’ in this context, is relevant to entities whose main business comprises the provision or the offering of products, or services related to products, falling within the digital asset business (DAB) framework as defined under section 2 of DABA, but which also offer certain products, or services related to products, triggering, in principle, a licensing or registration requirement under the IBA, albeit in a limited, ancillary manner to the digital asset business they are licensed to conduct.
5. In order for its investment business activities to be deemed ancillary, and therefore qualify as a NRP under the IBA, the total gross revenue which a DAB generates from any investment activity it conducts should not exceed 25% of the total gross revenue generated from the activity or activities falling within the ambit of the IBA and DABA. It should therefore be noted that revenue generated from any non-licensable activities conducted by the entity would be excluded for the purposes of this calculation.
6. Taking into consideration the volatility associated with digital assets and investments, and with the aim of streamlining the process pertaining to the application for a second licence, the Authority has introduced a buffer zone for DABs qualifying for NRP status under the IBA, based on their ‘ancillary’ investment activities, ranging from 25% to 35% of the total gross revenue generated by the DAB. Therefore, where the gross revenue generated by a DAB from its ancillary investment activity exceeds the 25% of total gross revenue threshold, it will be required to notify the Authority in this regard (vide paragraph 8 below for relevant timeframe) and agree on either [i] a ‘remediation plan’ towards compliance with the 25% threshold, or [ii] the roadmap

¹These Guidance Notes were revised in October 2022 to further clarify which entities fall within scope, and the manner in which the Authority will determine whether activities are “ancillary”.

towards the acquisition of an investment business licence. The DAB will be allowed, subject to any direction from the Authority to the contrary, to operate within the buffer zone for a period not exceeding one year.

7. In determining the above threshold and buffer zone, the Authority took into consideration its approach to supervising applicable entities², the applicable reporting requirements and the obligations of senior representatives (outlined herein).
8. Pursuant to section 20 of DABA, the senior representative is required to forthwith notify the Authority of threshold breach in the case of entities licensed under the DABA.
9. As pertains to applicants for a licence under the DABA, and in the absence of a financial track record, the Authority shall rely, for the purpose of determining total gross revenue, on the revenue projections submitted by such entities as part of their application for licence.

3.0 REPORTING REQUIREMENTS

10. Entities subjected to the ancillary exemption are required to report the following semi-annually to the Authority:
 - a. Revenue projection for the next 12 months; and
 - b. Key assumptions in support of the revenue projection.

4.0 GENERAL OBLIGATIONS AND EXPECTATIONS

11. Consistent with the prudent business minimum criteria for licensing, DABs are required to implement, and have at all times in place, adequate systems of control to ensure that they continuously operate within the permitted thresholds.
12. The introduction of new products would result in a change in the business plan of the DAB, thus triggering a material change notification requirement pursuant to section 22 of DABA. This is further clarified in the DABA Code of Practice as well as under the Product Due Diligence Guidance Note.
13. Notwithstanding the fact that a dual licensing requirement may not be triggered as regards an activity that has been determined to be ‘ancillary’ to the main digital asset activities of an entity, the Authority may impose conditions or limitations to a licence under the DABA, as necessary – in order to mitigate against any risks associated with the additional activity.

² Entities in-scope for this Guidance will be supervised by a Supervisory Panel comprising the Authority’s staff responsible for the supervision of entities licensed and registered under the DABA and the IBA.

14. The Authority's approach to supervising entities in scope for this Guidance (including the applicable annual licensing fees) will be kept under review, given the nature and complexity of the product and/or service offerings of in scope entities. As a consequence, the Authority may seek to adjust its approach to supervising these firms and the relevant annual licensing fees.