



BERMUDA MONETARY AUTHORITY

FINTECH DEPARTMENT

GUIDANCE NOTES

DIGITAL ASSET BUSINESS ACT 2018

PRODUCT DUE DILIGENCE

MAY 2021

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I. Introduction

1. This Guidance Note's primary focus is to outline the Authority's expectation in relation to the diligence conducted on products and services introduced by DABs.
2. This Guidance Note should be read in conjunction with the Digital Asset Business (DAB) Code of Practice (Code), specifically Section X, Product Due Diligence (PDD) and sets out specific guidance as it pertains to PDD.
3. The Authority recognises the need for clarity regarding the scope and implementation of provisions within the Digital Asset Business Act 2018 (DABA). Therefore, the Bermuda Monetary Authority (Authority or BMA) seeks to ensure that relevant stakeholders have a sound understanding of the Authority's expectations as it relates to PDD.
4. While the Authority aims to provide clarity to its approach, this Guidance Note should not be construed as exhaustive. The Authority may, at its discretion, require additional information and documentation. Finally, it is the DAB's responsibility to ensure it complies with DABA and all related rules, regulations and codes.

II. Notification requirement for new products and services and filing guidance for the material change of business form

5. Section 22 of DABA requires notification to the Authority of any material change to the business as defined therein.
6. It should be noted that, for entities seeking to offer multiple products within a specific category, it is possible, under powers given to the Authority by DABA's section 8, to modify the requirement under section 22. The rationale for such a request should include the risk evaluation at both the product and entity level, along with the specifications upon which the product category is defined.
7. The DAB should send the completed material change notification form found on the BMA website or its section 8 application for a modification of section 22 requirement and relevant documentation to its lead supervisor, copying FinTech@bma.bm.
8. The Authority will review such applications within 30 calendar days of submission. It is encouraged to discuss proposals with the Authority prior to formal submissions, to expedite the review process.
9. Departures from the present guidance, and the rationale for doing so, should be appropriately documented.

III. Best practices for PDD as it pertains to section XI of the DAB Code

10. Before a DAB introduces a new product/service or makes a material modification to an existing product/service an adequate due diligence analysis must be conducted.
11. The Authority considers a material change as anything susceptible to significantly impacting a reasonable customer. In particular, any changes to the product and services’ inner functionalities or features may be deemed material.
12. Prior to the submission of the Material Change Notification Form, the Authority expects that the appropriate governance process pertaining to its governance policy and procedures has been activated such that the DAB’s board or relevant internal committees have reviewed and signed off on the intended new product/service or the intended material modification to an existing product or service.
13. In accordance with section IX – PDD of the DAB Code, the following should be evaluated when carrying out PDD:

<p>i. Product details</p>	<p>A detailed description of the product, inclusive of product and market research, functional specifications, technical specifications and product architecture (e.g., user flows)</p>
<p>ii. Product intended usage</p>	<p>Examples of products/services use cases for customers</p>
<p>iii. Product risk profile</p>	<p>A detailed description of risks inherent to the intended product, its features, services, etc.</p> <p>(Additional specification should indicate the acceptable level of risk undertaken by the company subsequent to its analysis of the risk profile)</p>
<p>iv. Targeted customers</p>	<p>A description of the intended target customer base, inclusive of targeted jurisdiction(s) and sophistication of customers (e.g., retail, institutional, high networth)</p>
<p>v. Evaluation of risks to the DAB</p>	<p>An analysis of risks borne from the inclusion of the intended product to the overall business</p>

	(Consideration should be paid to downstream implications to the risk profiles of other functions, systems, products, services, etc.)
vi. Evaluation of risks to customers	A detailed description of specific risks to a target customer base, including information on the appropriate risk disclosures
vii. Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF)	An analysis of any AML/ATF considerations pertaining to the product risk profile and a description of compliance in accordance with the Proceeds of Crime Act 2008 and other relevant regulations and guidance notes made available by the Authority (e.g., customer risk assessment, business risk assessment)
viii. Marketing strategy	A detailed description of the product marketing strategy, inclusive of but not limited to jurisdictions marketed to, communication channels and promotions
ix. Fee model	A description of all applicable fees, inclusive of but not limited to fees specific to the product and any other fees influenced by the introduction of the intended product
x. Internal training	A description of the identified training requirements, inclusive of a timeline to execute and personnel required to be trained
xi. Customer training	A description of the identified training requirements for the customer-specific to the intended product
xii. Potential conflicts of interests	<p>A disclosure of any direct or indirect conflicts of interest arising with any party as a result of the introduction of the intended product</p> <p>(For any conflicts of interests, it is expected that relevant mitigation measures are provided)</p>
xiii. Systems requirements	An analysis of any system requirements inclusive of but not limited to updates to existing systems and/or the acquisition of new systems

xiv. Impact on staffing	An identification of any resource requirements as a result of the introduction of the new product, inclusive of but not limited to split roles/responsibilities and the acquisition of new staff
xv. Legal implications	An analysis of any legal implications arising from the introduction of the intended product, inclusive of but not limited to any licensing requirements triggered in Bermuda’s regulated sectors and/or those jurisdictions targeted for the intended product (For any legal implications, a plan of action for compliance to and/or adherence to the requirements is required)

14. Following the introduction of a new product/service or a material change to a product/service the Authority expects that processes be implemented to:
- a. Monitor customer complaints and grievances related to the product(s)
 - b. Reassess training needs periodically
 - c. Monitor compliance with any restrictions placed on the sale of the product(s)
 - d. Periodically reassess the risk profile of the product(s) and associated controls