



## BERMUDA'S SEGREGATED STRUCTURES SUPPORT STABLECOINS AND REAL WORLD ASSETS (RWAs)

Since the successful launch of its regulatory regime for cryptocurrencies and other digital assets in 2018, Bermuda has developed its reputation as a first-class jurisdiction for digital assets businesses and has attracted a significant number of digital asset businesses who have established their headquarters and obtained a digital asset business licence from the island's financial regulator, the Bermuda Monetary Authority (**BMA**) – including issuers of stablecoins and RWAs (or tokens referencing real world assets).

Bermuda's digital asset regulatory regime, enacted by the Digital Asset Business Act 2018 (**DABA**) and overseen by the BMA, regulates digital asset business carried on in or from within Bermuda and allows for a wide range of digital asset business activities, including issuing tokens, providing custodial wallet services and operating as a "digital asset services vendor" which involves a undertaking digital asset transactions on behalf of another person – that are applicable for many stablecoin and RWA issuer businesses.

### Increasing regulatory sophistication required for stablecoin businesses and asset referencing tokens

Due to the rapid increase in the issuance and usage of stablecoins in recent years (surpassing \$170 billion in market capitalisation according to data platform [rwa.xyz](http://rwa.xyz)), leading international supervisory authorities have recognised systemic risks arising and sought to bring stablecoins within the regulatory perimeter, either within existing frameworks or introduced standards. In April, in a paper for the Financial Stability Institute (part of the Bank of International Settlements)<sup>1</sup>, the authors compared regulatory regimes for stablecoins across key major economies and noted common regulatory requirements included those related to:

- Reserve asset (or "backing assets") – including in respect of liquidity (and type), segregation (by separate accounts, own asset separation, custodian arrangements), investment policies;
- Disclosures and Redemption rights;
- Prudential requirements – including capital and liquidity requirements, stress testing, recovery and resolution planning; and
- Governance measures.

In May 2024 the BMA conducted a consultation and published guidance for stablecoins referencing fiat currency – or “Single Currency Pegged Stablecoins” (SCPS)<sup>2</sup>, in which it identified similar factors, however one additional factor of note – bankruptcy remoteness, which is discussed below. The resulting SCPS Guidance, which is published on the BMA website has not been formally adopted by the BMA, but is indicative of the BMA’s regulatory stance and view of best practice.

### **Bankruptcy remoteness structures in Bermuda**

In the SCPS Guidance the BMA stated “Backing assets are expected to be placed in structures that are bankruptcy remote” from any group entities and/or party that issues, manages or is otherwise involved in the issuance of tokens, such that other creditors have no claims on the backing assets. The SCPS Guidance details that the BMA will assess the efficacy of bankruptcy remoteness structures and obligations on DABA licensees to analyse and explain such structures - when obtaining a licence and operating – including with clear contractual arrangements, documented and designed to operate under normal and distressed conditions.

As a full service offshore jurisdiction, Bermuda offers a wide range of corporate, trust and group structures which implement bankruptcy remoteness, however Bermuda companies with a segregated accounts structure and/or incorporated segregated accounts structure (segregated accounts companies or **SACs** and incorporated segregated accounts companies or **ISACs**<sup>3</sup>), which were introduced as bankruptcy remote by design, have proved a particularly flexible yet robust type of vehicle for achieving bankruptcy remoteness – and have been used by a number of industries, most notably the insurance and re-insurance sectors (which typically seek to place unique risks in limited recourse structures) and investment funds, with more recent adoption by the digital asset business industry.

In the context of SACs and ISACs bankruptcy remoteness has several elements, including:

- *Segregation of assets and liabilities* - assets in a segregated account or incorporated segregated account form part of a separate fund, which is distinct from the general account of the company (and any liability linked to a segregated account or incorporated segregated account shall be a liability only of that account);
- *Sole entitlement of “account owners”* – legislation provides that the sole party entitled to assets in a segregated account is the person who is expressly identified in the records of the SAC or ISAC (i.e. any such person designated)- and for such person(s) as account owner, the separate fund shall be held exclusively for the benefit of the account owner(s);

- *Limitation of recourse by all other creditors (other than account owners)* – assets of the segregated account or incorporated segregated account are not available to be used to meet liabilities to and are protected from the general shareholders or interest holders of the SAC or ISAC and also from creditors of the company who do not have claims linked to the respective segregated account or incorporated segregated account.

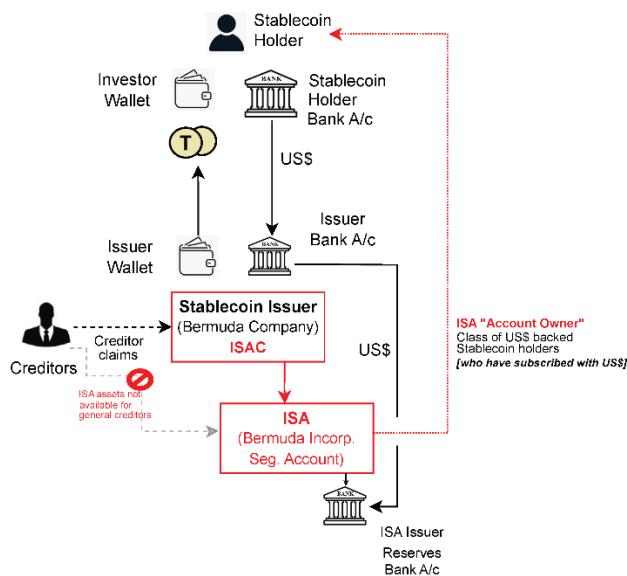
The main difference between SACs and ISACs is that with ISACs each incorporated segregated account has legal personality (with its own memorandum, bye-laws and directors) – and thus incorporated segregated accounts can enter into contracts (whilst asset segregation is maintained).

Managers of SACs and ISACs must keep the assets and liabilities of the SAC and ISAC separate and separately identifiable from the assets and liabilities of any segregated account or incorporated segregated account.

### Use of SACs and ISAC to hold linked or reserve assets for stablecoin and RWA structures

Below are set out two examples of hypothetical segregated structures employed for stablecoin and RWA reserve asset structures. In both cases the examples involve an ISAC, whereby the incorporated segregated account (ISA) in which the reserve assets are held has legal personality (and thus the ISA can itself enter into agreements – such as with Custodian Banks and so on).

#### ISAC Stablecoin Issuer with reserves held in the ISA



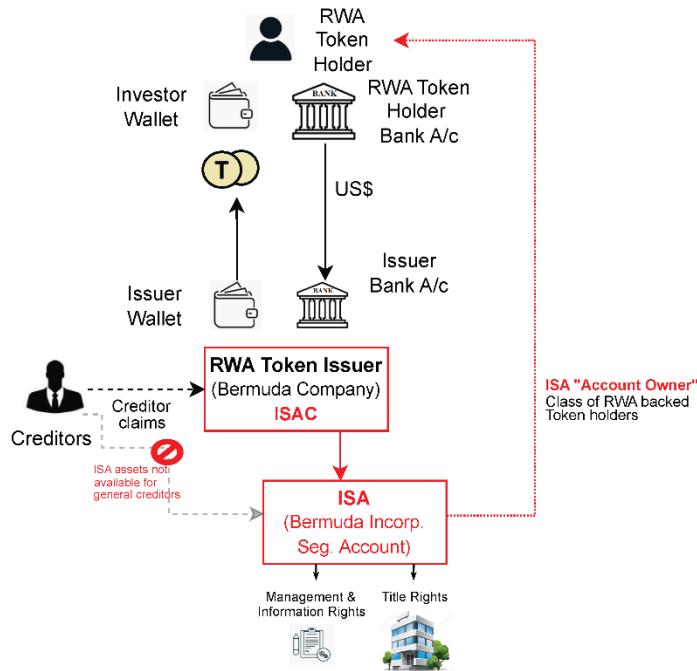
In this example stablecoin holders subscribe with fiat currency for stablecoin tokens and fiat currency issuance proceeds are received by the Issuer (ISAC).

The Issuer then transfers the issuance proceeds to the ISA Reserves vehicle, which holds the fiat currency.

The ISA Reserves are held for the benefit of stablecoin holders, as "account owners" by the ISA in a custodian bank account.

The ISAC and the Creditors are not able to claim against the ISA assets which are held exclusively for the account owners.

### ISAC RWA-backed token Issuer with real world asset held in the ISA



In this example RWA Token holders subscribe with fiat currency for RWA token(s) and fiat currency issuance proceeds are received by the Issuer (ISAC).

The Issuer (ISAC) retains the issuance proceeds (to be paid on to the original asset owner/originator), while the RWA Token entitles the holder to a title interest in the real world asset held by the ISA.

The ISA real world asset is held for the benefit of RWA Token holders, as "account owners" by the ISA. The ISA is also party to management agreements and receives information in respect of the underlying asset.

The ISAC and the Creditors are not able to claim against the ISA assets which are held exclusively for the account owners.

Any operational or other monies held by the ISAC in its general account are held separately from the ISA accounts.

### Establishing ISAC-ISA structures

To establish an ISAC-ISA structure in respect of business and assets carried on outside of Bermuda, managers will need to establish an exempted Bermudian company subject to the Bermuda Companies Act 1981, and then apply to the Minister of Finance for registration as an ISAC. A company already registered as an insurer or mutual fund in Bermuda may apply to the Registrar of Companies (ROC) without any restriction or approval. Also a company which has been conferred with the right to operate segregated accounts by Private Act needs only to notify the ROC in writing. Establishment will require the assistance of a licensed Bermudian corporate service provider.

The ISAC will need to appoint and retain an incorporated segregated account representative who shall be a person based in Bermuda and approved by the Minister – whose duty will be to report the occurrence of certain events including failure to comply with provisions of the ISAC Act (whose duties are similar to those of the resident representative of an exempted company under the Bermuda Companies Act 1981).

Record-keeping is of great importance and the ISAC shall maintain records of both the general account and incorporated segregated accounts to identify segregated assets and to record transactions entered into by the ISAC and the incorporated segregated account. Record-keeping duties under the Companies Act 1981 will also be applicable.

Each ISA must have its own board of directors, separate from the ISAC board (although there may be common directors). An application fee and annual fee are payable to the Registrar of Companies in respect of each incorporated segregated account.

## Conclusion

The unique features of Bermudian segregated structures offer a flexible vehicle for structuring holdings and operations involving digital assets – including those which reference fiat currency reserves and real world assets.

When coupled with Bermuda's digital asset business licensing regime, it should make for a compelling offer for business founders and investors to structure and establish digital asset businesses in Bermuda.

## References

1. FSI Insights on policy implementation No 57 - Stablecoins: regulatory responses to their promise of stability, Juan Carlos Crisanto, Johannes Ehrentraud and Denise Garcia Ocampo, April 2024, <https://www.bis.org/fsi/publ/insights57.pdf>
2. Bermuda Monetary Authority, Digital Asset Business Single Currency Pegged Stablecoins (SCPS) Guidance May 2024, <https://www.bma.bm/viewPDF/documents/2024-05-10-12-41-02-Digital-Asset-Business-Single-Currency-Pegged-Stablecoins-Consultation-Guidance.pdf>
3. Pursuant to the Segregated Accounts Companies Act 2000 and Incorporated Segregated Accounts Companies Act 2019 respectively.

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If you have any queries on the revised IBA regime and its applicability, then please do not hesitate to contact the BeesMont team members below who are able to assist with your queries or your usual contact at BeesMont.

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