

Questions & Answers in respect of persons seeking to launch an Initial Coin Offering in or from the Island

Q. Where does the business of an Initial Coin Offering (“ICO”) fit in Isle of Man legislation?

A. In April 2015 the Proceeds of Crime (Business in the Regulated Sector) Order 2015 amended Schedule 4 to the Proceeds of Crime Act 2008 which lists all of those businesses considered by that Act to be “Business in the Regulated Sector”.

Schedule 4(1)(mm) states:

the business of issuing, transmitting, transferring, providing safe custody or storage of, administering, managing, lending, buying, selling, exchanging or otherwise trading or intermediating convertible virtual currencies, including crypto-currencies or similar concepts where the concept is accepted by persons as a means of payment for goods or services, a unit of account, a store of value or a commodity

The nature of an ICO undertaken in or from the Island falls under the business of issuing, transmitting, transferring, administering or managing a convertible virtual currency and so is classed as “business in the regulated sector”.

Q. So does this mean that all business areas listed as “Business in the Regulated Sector” under Schedule 4 to the Proceeds of Crime Act 2008 are regulated by the Isle of Man Financial Services Authority (‘FSA’)?

A. No. “Business in the regulated sector” does not necessarily mean that the business is regulated in the contemporary sense of the word.

“Business in the regulated sector” for the purposes of the Proceeds of Crime Act 2008 means that additional legislation applies to those businesses (namely the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 or “the Code”).

Many of the business sectors in Schedule 4 are fully regulated by the FSA, for example, under the Financial Services Act 2008 or the Insurance Act 2008. These businesses are subject to a wide array of regulatory controls and are subject to detailed scrutiny as required by the terms of the legislation they are regulated under.

Some businesses listed under Schedule 4 are only overseen for compliance with the Code. These businesses are called Designated Businesses. Their oversight does not extend to conduct of business, prudential and solvency regulation or protection of client assets. For the avoidance of doubt, businesses operating as virtual currency providers (including ICOs) fall under this category.

Q. If I am registered, what are my legal obligations?

A. The Designated Businesses (Registration and Oversight) Act 2015 imposes a number of obligations on the business. Some of those requirements include that it must keep all of the information submitted as part of its application for registration accurate and up to date, file an annual return and provide information or documentation to the FSA upon request.

The AML/CFT obligations imposed on the businesses are detailed in the Code. In summary it requires that the business must identify and take reasonable steps to verify the identity of their customers including the beneficial owners of the customers and any persons who are empowered to act on their customers' behalf. The Code also requires that the business must assess the risks facing it as well as the risks posed by its customers and monitor the transactions and activity of the customers on an ongoing basis.

Q. So if an ICO business is “overseen” by the FSA for AML/CFT compliance, is it therefore “licenced”, “authorised” or otherwise regulated by the FSA or hold a “cryptocurrency licence”?

A. No. The business of issuing, transmitting, transferring, providing safe custody or storage of, administering, managing, lending, buying, selling, exchanging or otherwise trading or intermediating convertible virtual currencies is a Designated Business as defined by Schedule 1 to the Designated Businesses (Registration and Oversight) Act 2015. This means it is subject to registration under that Act – not financial services regulation.

A Designated Business is not a regulated entity and must not hold out that it is anything but a registered Designated Business.

Q. Are there any types of ICOs which the FSA would refuse to register?

A. The FSA has published a registration policy which outlines what it expects of an applicant in terms of fitness and propriety.

In addition to this general registration policy, it is the FSA's policy to refuse to register an applicant which engages in an ICO under which the token provides no benefit to the purchaser other than the token itself. Examples of this include:

- ICOs where the likely reward of purchasing a token is not reasonably proportionate to the risk to the capital spent on purchasing that token;
- ICOs which convey —
 - limited or no rights to the income generated from the project;
 - limited or no rights to use the assets developed, purchased or acquired from the funds raised by the ICO;
- ICOs where there is no reasonable basis for any expected capital growth of the value of the token.

Such characteristics are generally considered by the FSA to pose an unacceptably high risk that the money raised from the ICO could be used for unanticipated and illegal purposes, as well as posing a risk to consumers. It is because of these risks that it is the policy of the FSA to refuse to register this type of business.

Q. If a Designated Business is registered with the FSA, is it required to state this on its website and other correspondence?

A. There is no requirement on a registered Designated Business to state that it is registered under the Designated Businesses (Registration and Oversight) Act 2015 to persons with whom it has communications in the course of its business. However where a business chooses to make such a reference, it should be made very clear that the business is registered under the Designated Businesses (Registration and Oversight) Act 2015 and the business must not 'hold out' that it is regulated.

Q. Where a business is "registered" with the FSA as a Designated Business, what requirements are imposed on the registered businesses?

A. As noted above, all businesses listed in Schedule 4 to the Proceeds of Crime Act 2008 are required to comply with the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 ('the Code').

The FSA has powers under the Designated Businesses (Registration and Oversight) Act 2015 to oversee compliance with the Anti-Money Laundering and Countering the Financing of Terrorism legislation (which includes the Code, including powers to inspect the accounts, books and records of the business and take copies of those records.

Further details about potential legal or regulatory obligations and how they impact your business should be sought from an independent legal practitioner prior to making an application for registration. No designated business must be undertaken without a registration.

Q. How do I apply for registration to launch my ICO on the Island?

To begin the process you need to create an account on the application system, to do this you can go through the link below:

<https://www.iomfsa.im/designated-business/registration-forms/>

This page provides a high level outline of how to go about registering. At the bottom of the page is a link to the registration system itself, once you create an account you will be able to complete the application forms.

There is a detailed user guide which takes you through step-by-step how to use the system and how to complete the forms:

<https://www.iomfsa.im/media/1423/dnfbpuserguide.pdf>

Q. Does being registered under the Designated Businesses (Registration and Oversight) Act 2015 mean I can get a bank account and banking services in the Isle of Man?

A. No. Whether a bank will offer services to your business is a commercial decision for the bank to make and is a matter between your business and the bank.