



Initial Coin Offerings in the Cayman Islands

Stuarts Walker Hersant Humphries or “Stuarts” is a client-oriented offshore legal practice offering fully integrated offshore corporate and commercial legal advice from experienced attorneys.

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Initial Coin/Token Offerings (“**ICOs**”) are an extremely popular means of fundraising for new projects and utilise blockchain technology to do so.

Whilst no specific legislation has been passed by the Cayman Islands Government in connection with ICOs and cryptocurrencies, it would be incorrect to say that ICOs are “unregulated”. The fact is that some of the existing legislation in the Cayman Islands can, and in certain circumstances will, be applicable. We have listed the most relevant legal considerations when structuring an ICO in the Cayman Islands below.

The Securities Investment Business Law (2015 Revision) (“**SIBL**”)

SIBL is the Cayman Islands’ primary legislation relating to the regulation of investments in ‘securities’ and associated businesses. Essentially, no person shall carry on (or purport to carry on) securities investments business unless that person is the holder of an appropriate licence or is excluded from the requirement to hold a licence. The term ‘securities’ is defined in SIBL by reference to a list of particular types of security (including shares, stock, partnership interests, instruments acknowledging indebtedness, options, futures etc.) and does not specifically refer to a cryptocurrency or token.

As the definitions of ‘securities’ and ‘securities investment business’ are linked (i.e. securities investment business includes dealing in, managing and advising on securities), it is generally accepted that an ICO should fall outside of SIBL. As always, this depends on the particular circumstances of the ICO and so specialist advice should be taken on this point at the outset.

Mutual Funds Law (2015 Revision) (“**MFL**”)

In circumstances where the ICO is related to an investment fund (tokenized or otherwise) or some other form of investment vehicle, the possible application of the MFL should be considered. The MFL should not therefore be a concern where the ICO is not intended to be an investment fund or engage in investment fund activity. However, where the ICO is related to an investment fund or investment fund activity, specific legal advice should be taken in connection with their structure and, crucially, the rights attaching to the tokens.



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Anti-Money Laundering (“AML”) Laws and Regulations

The Cayman Islands has established a comprehensive and robust AML regime which is comprised of the following specific laws and regulations:

- The Proceeds of Crime Law (2018 Revision) (the “**PCL**”);
- The Anti-Money Laundering Regulations (2018 Revision) (the “**AML Regulations**”); and
- The Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands (the “**Guidance Notes**”).

The AML Regulations are perhaps of potentially the greatest practical significance to an ICO by virtue of their wide application and the requirements for compliance. The AML Regulations require an ICO issuer to establish written AML procedures, conduct identification verification checks and also appoint specific officers (Compliance Officer, Money Laundering Reporting Officer and Deputy Money Laundering Reporting Officer) among other things. It is therefore imperative that legal advice be sought as to how compliance with the AML Regulations is achieved.

Money Services Law (2010 Revision) (the “**MSL**”)

The MSL regulates ‘money services business’ in the Cayman Islands. This would include businesses which provide currency exchange and money transmission services. In order for an entity to conduct money services business, it would need to be appropriately licensed by the Cayman Islands Monetary Authority. It is, in our view, generally unlikely that the MSL will apply to an ICO although it will of course depend on the specifics of the offering. Again, specific legal advice should be sought on this point before an ICO is commenced.

Automatic Exchange of Information (“**AEOI**”)

The Cayman Islands has entered into a Model 1B (i.e. non-reciprocal) intergovernmental agreement with the United States in connection with the implementation of the Foreign Account Tax Compliance Act (“**FATCA**”) and has also entered into a Multilateral Competent Authority Agreement to implement the Organization for Economic Cooperation and Development’s Global Standard for Automatic Exchange of Financial Account Information - Common Reporting Standard (the “**CRS**”). A detailed summary of the implications of FATCA and CRS is beyond the scope of this note but let it suffice to say that an entity which is considered a ‘financial institution’ under these regimes would be under an obligation to identify and report on its account holders. Prospective ICO issuers should seek specific legal advice as to their status under FATCA and CRS to ensure that they are operating in compliance with such laws.

Electronic Transactions Law (2003 Revision) (the “**ET Law**”)

The ET Law is the Cayman Islands’ primary legislation relating to the conclusion of transactions/contracts electronically. Given the nature of ICOs, the ET Law is therefore of potentially critical significance when establishing the terms and conditions of the ICO (whether in the form of purchase agreements or otherwise) and how contracts are concluded. All terms and conditions governing the ICO, as well as the ICO mechanics generally, should be considered in the context of the ET Law to ensure compliance.

How can we help?

We have worked on several dozen ICOs and are well placed to provide advice on a prospective ICO.

This publication is for general guidance. Specialist advice should be sought about specific circumstances. If you would like further information please contact Stuarts Walker Hersant Humphries



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