



Questions & Answers in respect of persons seeking to issue Convertible Virtual Currency (such as via an Initial Coin Offering) in or from the Isle of Man

This frequently asked questions (“FAQ”) document aims to provide some advice for persons who wish to issue cryptocurrency, in the relevant legislation in this area and also the role of the Isle of Man Financial Services Authority (“the IOMFSA”) in relation to this sector.

Please read in conjunction with the [AML/CFT Sector Guidance](#) for virtual currency business published by the IOMFSA.

1. Where does the business of issuing Convertible Virtual Currency (“CVC”) (such as via an Initial Coin Offering “ICO”) fit in Isle of Man legislation?

[Schedule 4 to the Proceeds of Crime Act 2008](#) (“POCA”) sets out those businesses in the Isle of Man which are considered to be “Business in the Regulated Sector” and therefore subject to the requirements of the [Anti-Money Laundering and Countering the Financing of Terrorism Code 2019](#) (“AML/CFT Code”).

In 2015 this schedule was amended¹ to include convertible virtual currency which is defined as:

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 (emphasis added)

Therefore, issuing CVC (which could be via an ICO or other concept), in or from the Island falls under the above definition and so is classed as “Business in the Regulated Sector”. This means it is subject to the requirements of the AML/CFT Code, and would also have other obligations placed on it which are covered below in more detail.

2. What are the different types of CVC business?

By way of a breakdown of activity in the Isle of Man, the three key types of registered CVCs typically undertake the following types of activity:

¹ Proceeds of Crime (Business in the Regulated Sector) Order 2015

- **Administering, managing, lending, buying, selling, exchanging or otherwise trading** – allowing customers to exchange fiat currency for CVC and vice versa as well as trading between different CVCs.
- **Issuing, transmitting and transferring (“ICO”)** – the issuance of a token or coin, often to raise funds for a particular product or software/service (typically blockchain). The coin purchased at the time of the ICO usually brings with it a benefit to the purchaser once the ICO is complete, also the coin may be discounted at various times throughout the ICO (bigger discount early and for higher amounts purchased). However, sometimes a token or coin may not be purchased.
- **Providing safe custody or storage of CVCs** - customers can store or hold their coins or tokens to pay for goods or services, typically referred to as a “wallet”.

3. What does this mean for businesses that fall within the “Business in the Regulated Sector” list under Schedule 4 to the Proceeds of Crime Act 2008?

“Business in the Regulated Sector” for the purposes of the Proceeds of Crime Act 2008 means that additional legislation in relation to the prevention of financial crime applies to those businesses (for example the AML/CFT Code).

Many of the business sectors in Schedule 4 to POCA are fully regulated by the Isle of Man Financial Services Authority (“IOMFSA”),s 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.

Designated businesses, including CVCs, are registerable with the IOMFSA under the [Designated Businesses \(Registration and Oversight\) Act 2015](#) (“DBRO”).² This means there is a registration requirement for these businesses and the IOMFSA has the power to oversee these businesses only in respect of AML/CFT compliance.

Oversight of registered entities does not extend to areas that would be considered in relation to a regulated entity such as conduct of business, corporate governance, solvency or client money regulation /protection of client assets.

Please note that a registration of a designated business is not a tacit approval of the business and its activities. The IOMFSA’s remit only focuses on designated businesses’ compliance with the AML/CFT Code.

² Schedule 1 to the DBRO sets out those business activities from Schedule 4 of POCA that are classed as designated businesses.

4. What is the role of the Isle of Man Financial Services Authority in relation to CVCs?

The IOMFSA registers, and oversees, any businesses that are included within the remit of the DBRO. There is a process to be completed in order to become registered as a designated business. The IOMFSA has published a [registration policy](#) which outlines what it expects of an applicant in terms of fitness and propriety.

In summary the IOMFSA in assessing fitness and propriety considers:

- the applicant's integrity;
- the integrity of the applicant's controllers (such as shareholders) and directors;
- the integrity and competence of the Money Laundering Reporting Officer ("MLRO") and, where appointed, the Deputy MLRO and Compliance Officer³; and
- the nature and scale of the designated business the applicant proposes to carry on.

The IOMFSA has powers under the DBRO to oversee compliance with financial crime legislation (which includes the AML/CFT Code). It would usually do this by way of an onsite inspection and/or periodic returns. The DBRO includes powers to inspect the accounts, books and records of the business and take copies of those records.

5. What obligations are placed upon CVCs?

The DBRO imposes a number of obligations on the CVC 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 IOMFSA upon request.

The AML/CFT obligations imposed on the business are detailed in the AML/CFT Code, and include requiring businesses to:

- 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;
- assess the money laundering / financing of terrorism risks facing it, as well as the risks posed by its customers;
- monitor the transactions and activity of the customers on an ongoing basis;
- keep records of all customers and transactions;
- have appropriate procedures in place to report a suspicion.

In order for the IOMFSA to be able to successfully undertake its statutory duty of overseeing the compliance of designated businesses with the AML/CFT Code, designated businesses must have sufficient real presence to facilitate oversight.

³ A competence assessment of the MLRO, Deputy MLRO and Compliance Officer relates to their competence in AML/CFT matters only.

Given the nature of CVC business, and in order to ensure oversight can effectively take place, the IOMFSA will not register a CVC business unless the following two conditions of registration are met:

- a) the CVC business must have (and continue to have) at least 2 IoM resident directors; and;
- b) management and control of the CVC business must be in the Island.

Because of the limitation of the IOMFSA's ability to oversee CVC businesses which lack substance or real presence on the Island this is considered to pose an unacceptably high risk of Money Laundering or Financing Terrorism.

6. Can I start the pre-sale of a token or coin before being registered or while the registration is being processed?

No. The business of selling or issuing a convertible virtual currency is undertaking a designated business. No distinction is made as to whether the sale or issuance of a CVC is undertaken as a pre-sale or after a public launch. Care should also be taken to ensure that the business is not holding out as undertaking a designated business prior to its registration. It is identified a CVC undertaking a designated business prior to being registered, a civil penalty may be issued in line with Section 7 of the DBRO.

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

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 DBRO. This means it is subject to registration under that Act – rather than being subject to 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.

8. Are there any types of CVC business (including ICOs) which the IOMFSA would refuse to register?

The IOMFSA 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 IOMFSA's policy to refuse to register an applicant which engages in the CVC business of issuing a CVC (of whatever type) where the CVC issued provides no benefit to the purchaser other than the CVC itself.

Examples of this include, but are not restricted to:

- ICOs which convey —
 - limited or no rights to the income generated from a 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 CVC.

Such characteristics are generally considered by the IOMFSA to pose an unacceptably high risk that the money raised from the CVC issuance 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 IOMFSA to refuse to register this type of business.

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

There is no requirement on a registered designated business to state that it is registered under the DBRO 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 DBRO and the business must not 'hold out' that it is regulated.

10. How do I apply for registration to issue CVC (including via an ICO) on the Island?

First you need to ensure your business is of a type the IOMFSA will register, and that it has the necessary number of Island directors and is managed and controlled from the Island (see the [Designated Businesses Registration Policy](#)).

Then, 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>

The IOMFSA may ask you to complete a CVC questionnaire to provide further details about the business and its CVC activities. This will assist the IOMFSA in determining whether it is satisfied that registration is appropriate.

For further details regarding CVC businesses please see the IOMFSA's [AML/CFT Sector Guidance](#) for virtual currency businesses.

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

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.