



## **Guidance: Token / Cryptoasset Activity and Regulation:**

### **Frequently Asked Questions**

These frequently asked questions are based on common enquiries received by the IOMFSA in respect of whether potential activities may impact the regulatory perimeter.

#### **1. What is a Collective Investment Scheme?**

A Collective Investment Scheme (“CIS”) is often also referred to as a Fund. It is a product that invests in assets of any type (they are often investments like equities, but could be anything else, such as property, or even wine, cars, etc). The assets are owned by the CIS, and they are managed for the CIS by a fund manager. Investors’ contributions (including money) are pooled together with that of other investors, and their investment is split into ‘units’.

Tokens can be used to reflect the ‘units’ held by an investor.

The legal definition of a CIS can be found in section 1 of the [Collective Investment Schemes Act 2008](#), which is further added to by the [Collective Investment Schemes \(Definition\) Order 2017](#). Readers should ensure they read the legislation and take appropriate legal advice. The legislation can be partially summarised as follows:

- CISs comprise arrangements with respect to property of any description, including money; where
- those arrangements:
  - o have the purpose or effect of enabling participants to participate in or receive profits or income arising from the acquisition, holding, management, or disposal of that property;
  - o have either or both of the following characteristics:
    - participant contributions and the profits/income are pooled together; and / or
    - the property is managed as a whole by or on behalf of the CIS;
  - o do not provide participants with day to day control over the management of the property (regardless of whether they have the right to be consulted or to give directions).

The [Collective Investment Schemes \(Definition\) Order 2017](#) sets out, amongst other things, when arrangements of particular types are not CISs. The IOMFSA considers the substance of arrangements (not their description) in determining whether they are a CIS.

While the specific circumstances will determine whether or not arrangements constitute a CIS, it is unlikely that a company directly issuing its own equity or debt to raise funds for itself to develop or deliver a product or service would constitute a CIS.

## **2. Does a licence issued by the IOMFSA enable my business to do business in other jurisdictions?**

A licence to conduct regulated activity in or from the Isle of Man does not provide the licensed entity with any rights to operate in other jurisdictions. An Isle of Man entity is not, of course, limited to only doing business with Isle of Man persons, but if it wishes to operate further afield it needs to ensure that it meets the regulatory requirements (including obtaining licences, if necessary) in any jurisdictions in which it wants to undertake business.

## **3. Can my business run a token exchange for cryptocurrencies (such as Bitcoin or Ether) from the Isle of Man?**

Yes. Provided the exchange would not be handling tokenised securities (as described in the guidance note [here](#)) it would not require a licence from the IOMFSA. However, the exchange would need to be registered with the IOMFSA under the [Designated Business \(Registration and Oversight\) Act 2015](#) and comply with the [Anti-Money Laundering and Countering the Financing of Terrorism Code 2019](#). Further details can be found [here](#).

If the exchange would be handling tokenised securities: see question 4.

## **4. Can my business run a token exchange providing a primary and/or secondary market for tokenised securities from the Isle of Man?**

In general, no, this is not possible. Such an exchange could only be operated under an Isle of Man crowdfunding platform. Those operating crowdfunding platforms on the Island are required to hold a financial services licence with class 6 permissions.

Because such tokens are investments, strong regulation is in place in order to protect consumers. Crowdfunding platforms have important requirements including limits on the amounts that certain categories of investors are able to invest via the platform, and restrictions preventing the platform from facilitating real-time, continuous or automated trading. More information on the licensing of class 6 crowdfunding platform operators can be found [here](#). In particular, we recommend reviewing the standard licence conditions for a crowdfunding platform operator, which can be found [here](#).

The Isle of Man does not currently have the legislative framework or regulatory apparatus in place to enable it to licence or supervise a securities exchange in compliance with the IOSCO principles.

## **5. If my business develops software that allows others to issue or exchange tokens does that require licensing or registration as a Designated Business?**

No. Developing software and licensing it to other entities is not a financial services regulated activity. Neither would it in itself require registration as a Designated Business.

**6. Would my business need to register as a Designated Business if we're simply making or receiving payments for goods or services in cryptocurrencies, such as Bitcoin or Ether?**

Retailers accepting cryptocurrencies as a payment for their goods or services are not in the business of providing convertible virtual currency services as defined by the Designated Businesses (Registration & Oversight) Act 2015. Therefore merely making or receiving payments for goods or services in cryptocurrencies would not in itself require a business to obtain a financial services licence, nor to register as a Designated Business.