



Jersey Financial  
Services Commission

# The application process for issuers of initial coin and token offerings (IC/TOs)

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# Table of contents

- Glossary.....3**
- 1 Executive summary.....4**
- 2 Background.....4**
- 3 Classification of IC/TOs in Jersey .....5**
- 4 General requirements for all IC/TO issuers.....6**
- 5 Further requirements for IC/TO issuers.....6**
- Appendix 1 .....12**

## Glossary

Term	Definition
AML/CFT/CPF	Anti-money laundering/countering the financing of terrorism/countering proliferation financing.
Authorised participant	<p>An authorised participant is an organisation that has the right to purchase from and redeem tokens with the issuer. An authorised participant must be formally approved, and accordingly on-boarded by the issuer.</p> <p>The authorised participant must be of reputable standing, and subject to regulation (as applicable) in a jurisdiction that does not feature within Appendix D2 of the JFSC's AML/CFT/CPF Handbook, unless otherwise agreed in writing by an officer of the JFSC.</p>
Coin	A virtual asset which is the native asset of a specific layer 1 blockchain e.g. Bitcoin, Ethereum
FATF	Financial Action Task Force
TCB (trust company business)	Subject to any Order under Article 4 of the FS(J) Law, has the meaning given at Article 2(3) of the FS(J) Law. Persons carrying on trust company business may also be referred to as 'Trust and company service providers' or 'TCSPs'
TCSP (trust company service provider)	As defined in the FATF glossary and refers to activities/operations specified in paragraph 23 of Part 3 of Schedule 2 to the Proceeds of Crime Law.
Token	A virtual asset that operates on an existing blockchain network instead of their own.
Tokenised RWAs (real world assets)	Blockchains allow existing real world assets to be 'tokenised'. This tokenisation process allows the conversion or replication of tangible physical assets into digital tokens.
Virtual asset	A digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes.
VASP	<p>Virtual asset service provider.</p> <p>Has the meaning given in paragraph 24 of Part 4 of Schedule 2 to the Proceeds of Crime Law.</p>
White paper	A detailed document outlining the technical, financial and strategic aspects of a tokenisation project, including the benefits, risks and implementation plan for potential investors and stakeholders.

## 1 Executive summary

- 1.1 We have updated our guidance for issuers of initial coin/token offerings (IC/TOs) to reflect evolving language and create a clear distinction between the issuance of virtual assets and tokenised real world assets. Issuance of tokenised real world assets is now covered in our separate [tokenisation of real world assets guidance note](#).
- 1.2 IC/TO issuers must comply with our IC/TO issuer requirements, which include:
  - 1.2.1 registering as a Jersey company
  - 1.2.2 adhering to anti-money laundering (AML), counter-terrorist financing (CTF) and counter-proliferation financing (CPF) regulations
  - 1.2.3 obtaining consent under the Control of Borrowing (Jersey) Order 1958 (COBO)
  - 1.2.4 maintain transparency and investor protection measures, such as appointing a Jersey-resident director and providing a detailed information memorandum
- 1.3 These updated guidelines aim to streamline the application process while ensuring robust investor protection and regulatory compliance.

## 2 Background

- 2.1 The use of virtual assets to facilitate economic transactions, raise capital and provide proof of ownership or rights continues to evolve. The abundance of innovation has been equally matched by new risks and vulnerabilities, including:
  - 2.1.1 high levels of price volatility
  - 2.1.2 loss of funds through cyber-attacks
  - 2.1.3 lost wallet keys and sending payments to wrong recipients
  - 2.1.4 scam projects
  - 2.1.5 exchange price manipulation through pump-and-dump schemes and other unethical practices
- 2.2 IC/TOs are a digital way of raising funds from the public using distributed ledger technology. The ways in which IC/TOs are structured vary from technical, functional and business perspectives.
- 2.3 We recognise the innovative potential of distributed ledger technology. However, investors who participate in IC/TOs should be aware that such an investment is likely to be highly speculative and that they risk losing their investment. This is of particular concern for retail investors, where the nature of any loss may be more severe. Retail investors may also find it more difficult to understand the nature of the investment being offered.
- 2.4 An IC/TO issuer will need to consider whether it must register under the [Proceeds of Crime \(Supervisory Bodies\) \(Jersey\) Law 2008](#) as a “virtual asset service provider” (VASP) as defined in the [Proceeds of Crime \(Jersey\) Law 1999](#). Particular analysis should be given when mapping the activities of the issuer against limb (v) of FATF’s VASP definition, this being “participation in and provision of financial services related to an issuer’s offer and/or sale of a virtual asset”.

- 2.5 We are unlikely to supervise IC/TO issuers for AML/CFT/CPF purposes that do not meet the definition of a VASP<sup>i</sup>. Instead, we place some conditions on IC/TO issuers through the powers conferred on us in the island's statutory instrument governing the raising of capital: the [Control of Borrowing \(Jersey\) Order 1958 \(COBO\)](#). Under COBO, our consent is required to establish a Jersey company (a **COBO consent**). In granting such COBO consent we may choose to impose certain conditions on the company to which the COBO consent is granted. As a general policy, Jersey-based IC/TO issuers are required to be incorporated as a Jersey company and administered through a trust company service provider (**TCSP**) licensed by us under the Financial Services (Jersey) Law 1998 to carry on trust company business (**TCB**).
- 2.6 To date, we have been reviewing applications by IC/TO issuers for COBO consents on a case-by-case basis. Based on our experience, and having consulted with the Government of Jersey, we have updated this guidance note to clarify the COBO consent process that we expect to adopt for future IC/TO issuers (see sections 4 and 5 of this guidance). The Government of Jersey endorses the approach set out in this note.
- 2.7 An IC/TO issuer will need to comply with the JFSC IC/TO issuer requirements set out in sections 4 and 5 of this guidance.
- 2.8 This guidance should be applied exclusively to the issuance of virtual assets and should not be used when issuing tokenised real world assets.
- 2.9 This guidance and the JFSC IC/TO issuer requirements will be reviewed and updated periodically where appropriate.

### 3 Classification of IC/TOs in Jersey

- 3.1 In reviewing IC/TO issuer applications, we will focus on the economic function and purpose of the virtual assets to be issued. The key factors are the underlying purpose of the virtual assets and whether they are tradeable or transferable. For the purposes of COBO, virtual assets issued pursuant to an IC/TO will be classified as either a "security" or not.
- 3.1.1 **Security token/coin:** The definition of "security" in COBO is quite wide ranging. A security token/coin would typically have characteristics usually associated with an equity or debt security in the traditional capital markets sense, including one or more of the following characteristics (whether contractual or implied):
- 3.1.1.1 a right to participate in the profits/earnings of the IC/TO issuer or a related entity
  - 3.1.1.2 a claim on the issuer or a related party's assets
  - 3.1.1.3 a general commitment from the IC/TO issuer to redeem tokens in the future
  - 3.1.1.4 a right to participate in the operation or management of the IC/TO issuer or a related party
  - 3.1.1.5 expectation of a return on the amount paid for the tokens/coins
- For the avoidance of doubt, a utility token/coin (see below) will not be regarded as a "security" solely by reason of being traded on a secondary market (for example, via a virtual asset exchange).
- 3.1.2 **Non-security token/coin:** A token/coin which is deemed not to be a "security" will typically be either:

- 3.1.2.1 **A utility token/coin** - this confers on the holder merely a usage right or the right to access a product or service. Such a token/coin has no economic rights attached to it - there is no expectation of a return
- 3.1.2.2 **A cryptocurrency token/coin** - this is designed to behave like a currency, being a store of value and medium of exchange, and referred to in some jurisdictions as a payment token/coin

3.2 As set out below, we will apply general requirements to all IC/TO issuers irrespective of whether the token/coin is a “security” for Jersey regulatory purposes. We reserve the right to consider each application on a case-by-case basis, however, we may consider relaxing certain conditions for non-security tokens/coins in certain circumstances.

## 4 General requirements for all IC/TO issuers

- 4.1 To ensure consistency and to provide a streamlined COBO application process, the following set of requirements will apply to all Jersey IC/TO issuers.
- 4.2 The issuer will need to:
  - 4.2.1 be incorporated as a Jersey company or Jersey limited liability company (**LLC**) with its registered office being provided by the TCB appointed by the issuer
  - 4.2.2 receive our consent under the COBO before it undertakes any activity
  - 4.2.3 consider the need to register under Schedule 2 as per 2.4 above
  - 4.2.4 comply with our Sound Business Policy
  - 4.2.5 apply relevant AML/CFT/CPF requirements to persons that either purchase virtual assets from, or sell virtual assets back to, the issuer of those virtual assets, and perform enhanced measures where higher AML/CFT/CPF risks are identified, to effectively manage and mitigate those higher risks
  - 4.2.6 be administered through a TCSP licensed by the JFSC under the [Financial Services \(Jersey\) Law 1998](#) (FS(J) Law), to carry out TCB
  - 4.2.7 appoint and maintain a Jersey-resident director on the governing body of the issuer, who is a natural person and also a principal person of the TCB appointed by the issuer
  - 4.2.8 be subject to an ongoing audit requirement
  - 4.2.9 have procedures and processes in place to (i) mitigate and manage the risk of retail investors investing inappropriately in the IC/TO, and (ii) to ensure retail investors understand the risks involved
  - 4.2.10 prepare and submit to us an information memorandum (which may be in the form of a white paper) which complies with certain content requirements required of a prospectus issued by a company under the Companies (Jersey) Law 1991 or the Limited Liability Companies (Jersey) Law 2018
  - 4.2.11 ensure that any marketing material (including the information memorandum) is clear, fair and not misleading

## 5 Further requirements for IC/TO issuers

- 5.1 To ensure consistency and to provide a streamlined application process, the following application and ongoing requirements will apply to all Jersey-based issuers of IC/TOs<sup>ii</sup>.
- 5.2 These requirements relate only to the consent granted under COBO. In some cases the IC/TO or issuer may be subject to other laws or regulations in Jersey. Therefore, IC/TO issuers or potential IC/TO issuers need to consider all aspects of Jersey law and regulation that might apply.

### Jersey company

- 5.3 The issuer needs to be incorporated as a Jersey company or Jersey LLC and not any other vehicle.

### Prior consent and consent for material changes

- 5.4 The issuer needs to receive our COBO consent before it undertakes any activity. As the issuer is to be incorporated as a Jersey company or Jersey LLC, consent will be required under Article 2 or 11A (and also, where the token/coin is a security, Article 4 or 4A of COBO).
- 5.5 Application for consent is to be accompanied by analysis prepared by the issuer's legal advisers (**the proposal**) outlining:
  - 5.5.1 proposed activity including relevant timelines
  - 5.5.2 details of the issuer and the IC/TO
  - 5.5.3 rationale for the IC/TO, amount to be raised and use of proceeds
  - 5.5.4 summary of the features of the tokens/coins
  - 5.5.5 summary of purchase and redemption processes
  - 5.5.6 service providers to the issuer
  - 5.5.7 the relationship between issuer and holder of tokens/coins
  - 5.5.8 management of underlying assets and security rights over such assets for holders of the tokens/coins
  - 5.5.9 how the activity will be wound up/dissolved and whether and how the assets are to be distributed to the holders of the tokens/coins
  - 5.5.10 Jersey legal and regulatory analysis (including consideration of relevant legislation or other regulatory laws)<sup>iii</sup>
- 5.6 Following grant of the COBO consent the issuer must seek our prior consent to any material change to the matters contained in the proposal.

### AML/CFT/CPF requirements

- 5.7 The issuer shall maintain and adopt systems, controls, policies and procedures for customer take-on and redemption, profiling and transaction monitoring at enhanced levels ensuring internal and external reporting of suspicions of money laundering and terrorist financing activity.
- 5.8 The issuer shall be required, pursuant to the relevant condition of the COBO consent granted to the issuer, to undertake the following AML/CFT/CPF checks on (i) the purchasers of the tokens/coins who purchase tokens/coins directly from the issuer, and ii) the holders of tokens/coins issued by the issuer in the event they are sold back to the issuer. In such circumstances, the issuer will be required to obtain information:

- 5.8.1 to establish and obtain evidence to verify identity
  - 5.8.2 to establish and, depending on the level of risk, obtain evidence to verify the source of funds and source of wealth
- 5.9 Where the AML/CFT/CPF checks are not undertaken to the satisfaction of the TCB appointed by the issuer, the tokens/coins must not be issued to/purchased from the person.
- 5.10 The above measures are in addition to the existing obligations on a TCB appointed by the issuer to comply with the relevant Jersey AML/CFT/CPF requirements with regard to the issuer as its customer.

### **TCB and Jersey-resident director on the issuer's governing body**

- 5.11 The issuer must appoint and at all times maintain a TCB.
- 5.12 The issuer must appoint and at all times maintain on its governing body a Jersey-resident director. The Jersey-resident director must be an officer<sup>iv</sup> of the TCB appointed by the issuer, who is a natural person and also a principal person of that business pursuant to the Financial Services (Jersey) Law 1998.
- 5.13 The issuer must seek the prior approval of the JFSC before changing the TCB, the Jersey-resident director or specified counterparties of the issuer as set out in the COBO consent.
- 5.14 Prior to a TCB being appointed by the issuer, and on an ongoing basis, the TCB must take appropriate steps to satisfy itself as to:
- 5.14.1 the honesty and integrity of the issuer and the persons associated with it
  - 5.14.2 the issuer's approach to acting in the best interests and needs of each and all its customers
  - 5.14.3 the adequacy of the issuer's financial and non-financial resources
  - 5.14.4 how the issuer will manage and control its business effectively, and ensure that it will conduct its business with due skill, care and diligence
  - 5.14.5 the effectiveness of the issuer's arrangements in place for the protection of client assets and money when it is responsible for them
  - 5.14.6 the effectiveness of the issuer's corporate governance arrangements
  - 5.14.7 how the issuer ensures that that all systems and security access protocols are maintained to appropriate high standards
  - 5.14.8 what systems the issuer has in place to prevent, detect and disclose financial crime risks such as money laundering, terrorist financing and proliferation financing
  - 5.14.9 the issuer's marketing strategy, including the types of persons to whom the IC/TO will be marketed, how it will be marketed, and the jurisdictions in which it will be sold or marketed (including consideration of any relevant laws or restrictions that may apply in other jurisdictions)
  - 5.14.10 the resilience of the issuer and the adequacy of contingency plans for the orderly and solvent wind down of its business
- 5.15 The TCB must ensure that it has the appropriate level of knowledge, skills and experience to appropriately carry out the above steps and to provide the agreed services to the issuer, taking into account the activities carried on by the issuer. Compliance with this will be considered as part of our supervisory approach to the TCB sector.

## Procedures and processes in place to mitigate and manage the risk of retail investors investing inappropriately in IC/TOs, and to ensure retail investors understand the risks involved

- 5.16 The issuer of the IC/TO must take appropriate steps to mitigate and manage the risks of retail investors investing inappropriately in IC/TOs.
- 5.17 The issuer will be required to establish a process to ensure that the initial purchaser actively confirms that they are aware of and understand the risks of their investment. This will take the form of, as part of the virtual asset purchase process, the client being presented with the risk warning below and being required to confirm that they wish to proceed with the purchase. The risk warning and process for active confirmation must be presented together, with appropriate prominence, and in a form that does not contain any other information. The virtual asset should not be able to be directly sold to a person until they have actively confirmed their understanding of, and acceptance of, the risk warning.
- 5.18 Any regulated asset manager or authorised participant selling virtual assets on behalf of the issuer is obliged to bring risk warnings to the attention of any customer.

**Risk warning:** “Token sales or coin offerings are typically a highly speculative form of investment. Investors should be prepared for the possibility of losing their investment completely. Investment in token sales or coin offerings is not necessarily subject to existing capital market regulations and protections.

I understand these risks and wish to proceed to purchase tokens or coins from [ISSUER NAME].”

### Audited annual accounts

- 5.19 The issuer of the IC/TO is to have its annual accounts audited and filed with the Registrar in accordance with either:
- 5.19.1 Article 108 of the Companies (Jersey) Law 1991, irrespective of its status (whether public or private company)
  - 5.19.2 Regulation 9 of the Limited Liability Companies (General Provisions) (Jersey) Regulations 2022, irrespective of whether it has circulated a prospectus or not

### Change of counterparties

- 5.20 There shall be no change in counterparties of the issuer without prior approval.

### Marketing materials

- 5.21 All marketing materials (including speeches and press statements) provided by the issuer must be clear, fair and not misleading.
- 5.22 The issuer is prohibited from directly or indirectly stating or implying any of the following:
- 5.22.1 that we regulate the issuer, or the coins or tokens issued by the issuer - where the issuer meets the definition of a VASP, it should be noted that the scope of the regulatory oversight is limited to AML/CFT/CPF
  - 5.22.2 that the JFSC has, in any other way, considered or provided any level of assurance relating to the conduct or financial standing of the issuer, the tokens/coins issued by it, or any project being carried on by the issuer

- 5.23 All written marketing materials (including press statements) referring to the regulatory treatment of the issuer or the tokens/coins offered must either explain the regulatory treatment in the following manner or use the wording provided in Appendix 1:

“Anyone issuing an IC/TO through a Jersey company will require a specific consent from the Jersey Company Registry, part of the Jersey Financial Services Commission. While this consent does not give the IC/TO or the issuer a ‘regulated’ status, it mandates a set of conditions designed to ensure that the issuer meets specific standards in terms of governance, investor disclosure and AML/CFT/CPF compliance.”

### Prospectus/information memorandum

- 5.24 Prior to the issuance of any tokens/coins, the issuer of the IC/TO must provide us with a copy, marked “DRAFT”, of any proposed prospectus or information memorandum (which may be in the form of a white paper) for confirmation of “no objection”. This prospectus or information memorandum must contain the information required under the Schedule to the Companies (General Provisions) (Jersey) Order 2002 or the Schedule to the Limited Liability Companies (General Provisions) (Jersey) Regulations 2022 and contain clear risk warnings highlighting that the IC/TO is unregulated (where this is the case) and that it may result in substantial risks for investors.
- 5.25 The risk warning must clearly state that: a) IC/TOs are typically a highly speculative form of investment; b) investors should be prepared for the possibility of losing their investment completely; and c) investment in token sales or coin offerings may not be subject to existing capital market regulations and protections.
- 5.26 The IC/TO issuer must not publish the prospectus or information memorandum referred to in paragraph 5.24 above until we have issued confirmation of “no objection”.
- 5.27 The IC/TO issuer must not regard, or cause any third party to consider, any confirmation of “no objection” issued by us, pursuant to paragraphs 5.24-5.26 above, as us providing it agreement and/or consent or endorsement of any marketing material issued by the IC/TO.
- 5.28 The IC/TO issuers must not issue any coins or tokens until we have issued our COBO consent in respect of the matters identified in the paragraphs above.
- 5.29 The IC/TO issuer must ensure that a reference (if any) to the COBO consent in any prospectus or other invitation for subscription refers to our consent having been granted under COBO and shall include the following statement: “The Jersey Financial Services Commission is protected by the Control of Borrowing (Jersey) Law 1947, as amended, against liability arising from the discharge of its functions under that Law”.

### Ongoing reporting requirements

- 5.30 Where relevant the governing body of the issuer shall advise us promptly if:
- 5.30.1 it defaults on any tokens/coins issued
  - 5.30.2 an issuer is unable to redeem tokens/coins within a reasonable period of time - this may happen where a token or coin is held by someone who cannot comply with AML/CTF/CPF requirements
- 5.31 At the same time as submitting the issuer’s annual confirmation statement, the governing body of the issuer shall provide a separate confirmation in the following format: “The directors/LLC manager(s), having taken reasonable steps to ascertain the position, confirm that

to the best of their knowledge there have been no breaches of the Article 2/11A Control of Borrowing (Jersey) Order 1958 consent and its conditions and, where relevant, the Company's/LLC's Article 4/4A Control of Borrowing (Jersey) Order 1958 consent and its conditions, other than those (if any) previously disclosed to the Jersey Financial Services Commission".

## Appendix 1

Statement which may be included in marketing materials:

### 1 Jersey treatment of issuer

- 1.1 There are currently no conduct and prudential regulations in Jersey specifically governing initial coin and token offerings (**IC/TOs**). However, the JFSC is aware of the desire of IC/TO promoters to use a Jersey-incorporated issuer because of Jersey's reputation as a well-regulated and reputable jurisdiction.
- 1.2 Accordingly, the JFSC has established certain conditions that any issuer of an IC/TO registered in Jersey is required to satisfy. These are implemented through a consent granted under the Control of Borrowing (Jersey) Order 1958 (a **COBO Consent**), which any Jersey entity wishing to issue an IC/TO must obtain.
- 1.3 The conditions require the issuer of the IC/TO to take certain measures to manage, among other things, financial crime and investor risks. The conditions reflect the guiding principles pursuant to which the JFSC discharges its functions as the island's financial services regulator (**the Guiding Principles**) which are to have regard to:
  - 1.3.1 the reduction of the risk to the public of financial loss due to dishonesty, incompetence, malpractice or the financial unsoundness of financial service providers
  - 1.3.2 the protection and enhancement of Jersey's reputation and integrity in commercial and financial matters
  - 1.3.3 the best economic interests of Jersey
  - 1.3.4 the need to counter financial crime both in Jersey and elsewhere
- 1.4 While the JFSC has established certain conditions that issuers of IC/TOs are required to satisfy, it does not specifically regulate or supervise the IC/TOs or the issuers unless the issuer's activity meets the definition of a VASP.
- 1.5 The COBO Consent imposes on the issuer certain requirements which reflect the Guiding Principles, including to:
  - 1.5.1 acknowledge that IC/TOs are a "sensitive activity" falling within the JFSC's Sound Business Policy. Accordingly, the issuer must maintain and adopt systems, controls, policies and procedures for the customer take-on, profiling and transaction monitoring at enhanced levels ensuring reporting of suspicions of money-laundering and financing of terrorism activity
  - 1.5.2 apply relevant AML/CFT/CPF requirements to persons that either purchase tokens from, or sell tokens back to, the issuer of those tokens
  - 1.5.3 appoint and maintain a TCB
  - 1.5.4 appoint and maintain a Jersey-resident director on the governing body of the issuer; where the Jersey-resident director is a natural person and also a principal person of the TCB appointed by the issuer
  - 1.5.5 obtain the JFSC's prior approval to any change to the TCB appointed by the issuer, the Jersey-resident director of the issuer or counterparties of the issuer as set out in the COBO Consent
  - 1.5.6 prepare and file annual audited accounts with the Jersey Companies Registry

- 1.5.7 have procedures and processes in place to (i) mitigate and manage the risk of retail investors investing inappropriately in the IC/TO, and (ii) to ensure retail investors understand the risks involved
- 1.5.8 prepare and submit to the JFSC an information memorandum (which may be in the form of a white paper) which complies with certain content requirements required of a prospectus issued by a company under the Companies (Jersey) Law 1991 or the Limited Liability Companies (Jersey) Law 2018
- 1.5.9 ensure that any marketing material (including the information memorandum) is clear, fair and not misleading

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<sup>i</sup> There is a potential that the structure of some IC/TOs may result in the issuer being regulated by the JFSC for conduct, prudential or AML/CFT/CPF purposes. This guidance refers only to the treatment of IC/TOs under the Control of Borrowing (Jersey) Order 1958, and therefore issuers or potential issuers need to consider aspects of the wider legislative framework that may apply.

<sup>ii</sup> The JFSC reserves the right to impose additional conditions on the issuer.

<sup>iii</sup> including, but not limited to COBO, Financial Services (Jersey) Law 1998, Banking Business (Jersey) Law 1991, Collective Investment Funds (Jersey) Law 1988, Alternative Investment Funds (Jersey) Regulations 2012, Companies (Jersey) Law 1991, the Limited Liability Companies (Jersey) Law 2018, the Proceeds of Crime (Jersey) Law 1999) and Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.

<sup>iv</sup> A natural person

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