



BERMUDA

COMPANIES (INITIAL COIN OFFERING) REGULATIONS 2018

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The Minister responsible for companies, in exercise of the power conferred by section 34M and section 287A of the Companies Act 1981, makes the following Regulations:

PART 1 PRELIMINARY

Citation

1 These Regulations may be cited as the Companies (Initial Coin Offering) Regulations 2018.

Interpretation

2 In these Regulations—

“Act” means the Companies Act 1981;

“AML/ATF regulated financial institution” has the meaning given in regulation 2(2) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;

“applicant” means the company that submits an application for consent;

“application for consent” means an application to the Minister under section 4A of the Act for consent to an ICO;

“appropriate measures” has the meaning given in regulation 9;

“independent professional” means a professional legal adviser or accountant being a firm or sole practitioner in independent practice who by way of business provides legal or accountancy services to other persons;

“Initial Coin Offering” or “ICO” has the meaning given in section 34A of the Act;

“participant” means a person who purchases or otherwise acquires digital assets pursuant to the Initial Coin Offering;

“project” has the meaning given in section 34A of the Act;

“proposed participant” means a person who makes an application to purchase or otherwise acquire digital assets pursuant to the Initial Coin Offering.

PART 2

MINIMUM REQUIRED INFORMATION FOR INITIAL COIN OFFERING

Application for consent

3 An application for consent shall be submitted to the Minister in such form as the Minister may direct and shall include the minimum required information set forth in this Part and the ICO offer document.

Minimum required information regarding the proposed project

4 An application for consent shall include the following minimum information relating to the Initial Coin Offering project including—

- (a) the name of the project and the names of the project managers;
- (b) the name of the applicant, including addresses, email addresses and websites and any other jurisdiction in which the applicant is registered;
- (c) the details of all persons involved with the ICO including the digital asset issuer, the owner of the platform, ICO organisers and other such information; and
- (d) confirmation as to whether any one or more of the persons referred to in paragraph (a), (b), or (c) have applied for or been granted a licence, permission or other authority under any law relating to the proposed ICO or otherwise relating to financial markets in any other country or countries and, if so, the relevant details.

Minimum required information describing the project

5 An applicant shall submit the following minimum information describing the ICO project—

- (a) information about the project organisation and project planning including the project phases and milestones and estimated time for delivery;
- (b) key features of the product or service to be developed;
- (c) the proposed market participants that the ICO seeks to target and the proposed jurisdiction or jurisdictions;
- (d) whether there are any restrictions regarding participants;
- (e) information regarding the technologies to be used and including whether distributed ledger technology or other new or existing technologies will be used (and whether this is an open source project);
- (f) the means by which the ICO will be financed;
- (g) the amount of money equivalent (in Bermuda dollars) that the ICO is intended to raise by reference to the number of digital assets;

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- (h) whether such funds have already been allocated to a specific project and how any surplus funds would be handled.

Minimum required information regarding digital asset issue

6 An applicant shall provide the following minimum information describing the digital asset issue—

- (a) whether a digital asset has been created, or will be created in the course of the ICO; and if the latter, the steps for the creation of the digital asset by reference to the technical standards;
- (b) the amount or proportion of the digital assets that will be retained by the project operator and project development team and whether there is a vesting period and, if so, details of the timeline;
- (c) the point at which, by whom and the manner in which the digital asset will be transferred to the participants;
- (d) a detailed description of the functionalities that are planned for the digital asset and a description of the point or points when the planned functionalities will apply or become active;
- (e) the rights that the participant would acquire and any obligations to be imposed on the participant and how they will be documented (specifics regarding participation and issuing conditions are required);
- (f) whether a financial institution that is subject to anti-money-laundering and anti-terrorist financing laws in Bermuda or any other jurisdiction will be engaged to meet due diligence requirements under Bermuda laws and, if so, detailed information about the relevant processes and the relevant financial institution must be provided;
- (g) whether the applicant or any other persons involved in the ICO have previously completed or attempted to complete an ICO in Bermuda, or any other jurisdiction, and if so the status of the ICO and any other project funded thereby;
- (h) whether the digital asset has been marketed by the applicant or any other party identified in regulation 4 as an investment.

Minimum required information regarding any proposed transfer following digital asset issue

7 An applicant shall include with his application the following minimum information—

- (a) whether the digital asset can be traded or transferred between persons with or without an intermediary or other third party custodian and information about compatible wallets and technical standards;
- (b) whether the digital asset will already be functional at the time of transfer and, if so, to what extent;

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- (c) whether it is intended that the digital asset may be used in exchange for goods or services of the applicant or third parties;
- (d) whether there are plans for the project operator or issuer to buy back the digital assets and the terms of the repurchase.

Minimum required information regarding compliance issues

8 An applicant for consent shall submit the following minimum required information regarding compliance features which it intends to include in its systems—

- (a) a description of the technical standards or software, blockchain or other distributed ledger technology that will be used to identify participants in the ICO;
- (b) a description of the procedures or protocol that will be used to confirm the identities of the participants in the ICO; and
- (c) a description of the measures that will be established to enable an audit and production of a compliance statement at the close of the Initial Coin Offering confirming compliance with these Regulations and other relevant provisions of Part IIIA of the Act.

PART 3

COMPLIANCE MEASURES

Meaning of “appropriate measures”

9 For the purposes of these Regulations, appropriate measures include the following—

- (a) identifying any participant and verifying the participant’s identity on the basis of documents, data or information obtained from a reliable and independent source;
- (b) in the case of a legal entity or legal arrangement, identifying the participant and verifying the identity of the relevant natural person carrying out the transaction or proposed transaction;
- (c) in the case of a person purporting to act on behalf of a participant, verifying that the person is in fact so authorised and identifying and verifying the identity of that person; and
- (d) conducting enhanced due diligence whenever necessary in accordance with regulation 12.

Verification of identity and timing of verification

10 (1) A company shall, in relation to an Initial Coin Offering, ensure that it applies appropriate measures relating to identification and verification of the participants in the Initial Coin Offering.

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(2) Subject to paragraph (3), a company must verify the identity of a participant before the issuance of a digital asset to the participant with respect to the ICO.

- (3) Such verification may be completed after the issue of a digital asset if—
- (a) the rights and functionalities are such that the digital asset can only be used for services and products provided by the ICO issuer;
 - (b) this is necessary not to interrupt the normal conduct of business;
 - (c) there is little risk of money laundering or terrorist financing occurring, provided that the verification is completed as soon as practicable after the digital asset is issued;
 - (d) any money laundering or terrorist financing risks that may arise are effectively managed; and
 - (e) it appears that a participant, or any person purporting to act on behalf of the participant, is not or does not appear to be anonymous or fictitious.

Requirement to cease transactions, etc.

11 (1) Where in relation to any participant or proposed participant in an ICO, a company is unable to apply appropriate measures in accordance with the provisions of these Regulations, the company—

- (a) shall not open any account or carry out a transaction for the person;
- (b) shall not issue a digital asset to the person;
- (c) in the case of a participant in an ICO, shall not permit that participant to undertake any further transactions of any nature, until such time as the company has been able to apply the measures; and
- (d) shall terminate any existing business relationship with the person.

(2) In the event that an existing business relationship is terminated in accordance with paragraph (1)(d), details regarding the termination shall be included in any final audit or other compliance report required by the Registrar.

Enhanced due diligence

12 (1) A company must apply on a risk-sensitive basis enhanced due diligence to business relationships with existing participants or proposed participants in its ICO—

- (a) in accordance with paragraph (2);
- (b) in instances where a person or a transaction is from or in a country that has been identified as having a higher risk by the Financial Action Task Force;
- (c) in instances where a person or a transaction is from or in a country that represents a higher risk of money laundering, corruption, terrorist financing or being subject to international sanctions;

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- (d) in any other situation which by its nature may present a higher risk of money laundering or terrorist financing;
 - (e) in instances where the company suspects money laundering or terrorist financing; or
 - (f) in instances where the company doubts the veracity or adequacy of documents, data or information previously obtained for the purpose of identification or verification.
- (2) Where any of the circumstances in paragraph (1) exist, a company must take specific and adequate measures to compensate for the potential risk, for example by applying one or more of the following measures—
- (a) ensuring that the participant's identity is established by additional documents, data or information;
 - (b) employing supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by an AML/ATF regulated financial institution (or equivalent institution) which is subject to equivalent regulations;
 - (c) ensuring that the first payment is carried out through an account opened in the participant's name with a banking institution;
 - (d) monitoring the participant's activity.

Reliance on third parties

- 13 (1) A company may rely on a person who falls within paragraph (2) to apply any measures required by these Regulations, provided that—
- (a) the other person consents to being relied on; and
 - (b) notwithstanding the company's reliance on the other person, the company—
 - (i) must obtain information sufficient to identify participants;
 - (ii) must satisfy itself that reliance is appropriate given the level of risk for the jurisdiction in which the party to be relied upon is usually resident; and
 - (iii) will remain liable for any failure to apply such measures.
- (2) The persons are—
- (a) an AML/ATF regulated financial institution;
 - (b) an independent professional supervised for the purposes of these Regulations by a designated professional body in accordance with section 4 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;

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- (c) a person who carries on business in a country or territory other than Bermuda who is—
 - (i) an institution that carries on business corresponding to the business of an AML/ATF regulated financial institution or independent professional;
 - (ii) in the case of an independent professional, subject to mandatory professional registration recognised by law;
 - (iii) subject to requirements equivalent to those laid down in these Regulations; and
 - (iv) supervised for compliance with requirements equivalent to supervision by his supervisory authority.

Record-keeping

14 (1) A company must keep the records specified in paragraph (2) for at least the period specified in paragraph (3).

(2) In respect of a business relationship or an occasional transaction, the records are—

- (a) a copy of, or the references to, the evidence of the person's identity obtained pursuant to these Regulations, together with the results of any analysis or enhanced due diligence undertaken in relation to that person; and
- (b) the records of transactions, provided that such records must be sufficient to permit the reconstruction of individual transactions.

(3) In this regulation, the period is—

- (a) in the case of records in paragraph 2(a), for the duration of the business relationship and five years beginning on the date on which the business relationship ends or five years beginning on the date the occasional transaction is completed;
- (b) in the case of records in paragraph 2(b), five years beginning on the date the transaction is completed.

(4) A company who is relied on by another person must keep the records specified in paragraph (2)(a) for five years beginning on the date on which he is relied on for the purposes of these Regulations in relation to any business relationship or occasional transaction.

(5) But in any case where a company has been notified in writing by a police officer that particular records are or may be relevant to an investigation which is being carried out, the company must keep the records pending the outcome of the investigation.

(6) For the avoidance of doubt, all documents and findings related to the investigations of—

- (a) complex transactions;

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- (b) unusually large transactions; or
- (c) unusual patterns of transactions,

must be recorded and kept for a minimum period of five years and shall be made available to competent authorities upon request.

(7) A person referred to in regulation 13(2)(a) or (b) who is relied on must, if requested by the person relying on him within the period referred to in paragraph (4)—

- (a) make available to the person who is relying on him as soon as reasonably practicable after the request but not later than five business days thereafter any information about the participant which he obtained when applying appropriate due diligence measures; and
- (b) without delay forward to the person who is relying on him, copies of any identification and verification data and other relevant documents on the identity of the participant which he obtained when applying those measures.

(8) A company who relies on a person referred to in regulation 13(2)(c) (a “third party”) to apply appropriate measures must take steps to ensure that the third party will, if requested by the company, within the period referred to in paragraph (4)—

- (a) as soon as reasonably practicable make available to him any information about the participant; and
- (b) as soon as reasonably practicable forward to him copies of any identification and verification data and other relevant documents on the identity of the participant,

which the third party obtained when applying those measures.

(9) For the purposes of this regulation, a person relies on another person where he does so in accordance with regulation 13(1).

Audit of ICO

15 A company must—

- (a) carry out an internal compliance review with respect to the conduct of its ICO and financial operations (including financial expenditures, if any) connected therewith and prepare a compliance report; and
- (b) file with the compliance report with the Registrar in such form as the Registrar may determine,

within 90 days of completion of the ICO.

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PART 4
MISCELLANEOUS

Class of digital assets

16 For the purposes of an ICO, “class” means digital assets having the same rights, features and attributes.

Meaning of “promoter”

17 A person is not a promoter for purposes of an ICO solely by virtue of his provision of professional services to the company in relation to the ICO.

Security of digital assets, etc.

18 The company shall ensure that appropriate mechanisms are in place in respect of the security of digital assets issued to recipients, confidentiality, disclosure of information and connected matters and that applicable Bermuda laws are complied with in these respects.

Made this 6th day of July 2018

Acting Minister of Finance

[Operative Date: 10 July 2018]