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As part of Jersey’s constant and continuous effort to evolve its offering and illustrate its commitment to ongoing developments in fintech, the Jersey Financial Services Commission (the “JFSC”) has issued a guidance note in connection with the Island’s approach to ICO activity. Jersey has adopted an innovative and balanced approach, enabling ICOs to be launched in Jersey with a number of controls in place to help reduce some of the associated risks.

Jersey’s approach

ICOs are a digital way of raising funds from the public using distributed ledger technology. Most ICOs are unlikely to be regulated by the JFSC. Instead the JFSC will place some conditions on an issuer of an ICO regulated in Jersey (the “Issuer”) which are implemented through a consent granted under the Control of Borrowing (Jersey) Order 1958 (“COBO Consent”), which any Jersey entity wishing to make an ICO must obtain (the “ICO Issuer Requirements”). The JFSC does also reserve the right to impose additional conditions on the Issuer.

The JFSC will focus on the purpose and economic function of the virtual currencies or token (the “Token”) to be issued. Tokens will be either classified as a “security” or not.

A security token would normally have the characteristics of an equity or debt security issued on the capital markets and a non-security token would typically be (i) a “utility token”, the holder of which merely has a usage right or the right to access a product or service (there are no economic rights attached to the token/no expectation of any return) or (ii) a “cryptocurrency token” which is designed to have the characteristics and behave like a currency – it is a store of value and medium of exchange.

The regulatory burden may differ depending on the classification of the Token.

Requirements in Jersey for all ICO Issuers

In order to maintain a streamlined application process, the following requirements apply to all Jersey ICO issuers:

1. to be incorporated as a Jersey company with its registered office being provided by an appointed Trust and Company Service Provider (“TCSP”) licensed by the JFSC under the Financial Services (Jersey) Law 1988 (the “FS(J)L”) to carry on trust company business;
2. receive COBO Consent from the JFSC prior to undertaking any activity. The application is to be accompanied by an analysis prepared by the Issuer’s legal advisers, detailing:
 - the Issuer’s proposed activity and timelines;
 - details of the Issuer and the ICO;
 - the rationale for the ICO, issue amount and the use of proceeds;
 - a summary of the features of the Tokens;
 - a summary of the purchase and redemption process;
 - the service providers to the Issuer;
 - the relationship between the Issuer and the holder(s) of the Tokens;



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- the management of the underlying assets and security rights over such assets for holders of the Tokens;
- how the activity will be wound up/dissolved and assets distributed to the holders of the Tokens; and
- an analysis of the Jersey legal and regulatory requirements which the Issuer will be subject to;

3. comply with the JFSC’s Sound Business Practice Policy (Table 2). This means that 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 financing terrorism activity.’ In practice, the Issuer will be required, in respect of those who purchase Tokens directly from the Issuer and those who hold Tokens and wish to sell the Tokens back to the Issuer, to obtain information to:

- establish and obtain evidence to verify identity; and
- establish and ,depending on the level of risk, obtain evidence to verify the source of funds and source of wealth.

These requirements are additional to the existing requirements of a TCSP in relation to AML/CFT regulations;

4. appoint and maintain a TCSP and a Jersey resident director who is a natural person and also a principal person of that business pursuant to the FS(J)L;

5. seek prior approval of the JFSC before changing the TCSP, Jersey resident director or specified counter parties of the Issuer specified in the COBO Consent;

6. have its annual accounts audited irrespective of its status (i.e. whether it is a public or private company);

7. must have procedures and processes in place to:

- mitigate and manage the risk to retail investors investing inappropriately in ICOs; and
- ensure retail investors understand the risks involved.

In this instance, while the Issuer may be able to agree alternative procedures with the JFSC (for example, minimum investment amounts), the usual process will be to present the investor with prescribed risk warning wording and the investor will have to confirm that he or she is willing to proceed with the purchase. The risk warning wording and process for active confirmation must be presented together prominently in a form that does not contain any other information.

Marketing materials

The Issuer must ensure that all marketing materials (which includes, for example, speeches and press statements) are clear, fair and not misleading; specifically, any written marketing material must include prescribed wording explaining the status of the Issuer or the Tokens.



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Issuing a prospectus or information memorandum

If the Issuer is intending to issue Tokens, the Issuer must prepare and submit to the JFSC a draft of any proposed prospectus or information memorandum (which may be the ‘White Paper’) and which must contain prescribed risk warnings as well as certain information required pursuant to the Companies (General Provisions)(Jersey) Order 2002 (the “GPO Requirements”).

A company may seek derogation, on a case by case basis, from the GPO Requirements.

On-going reporting requirements

The directors of the Issuer will be required to:

- advise the JFSC promptly if the Issuer defaults on any Tokens issued; and
- upon submitting the Issuer’s annual return, the directors of the Issuer will be required to provide confirmation that there has been no breaches of the COBO Consent.

Why use Voisin?

Voisin’s capital markets and structured finance team is highly experienced and has advised on many complex and innovative transactions.

Our focused, proactive and friendly team provides efficient, seamless and prompt advice and boasts a portfolio of clients which includes some of the world’s leading financial institutions. Our close relationship with local regulatory authorities, listing authorities, service providers and advisers worldwide enables us to work as part of any team.

We are passionate about our work and strive for excellence in everything we do.

For further information or specific advice, please contact [Chris Le Quesne](#) or [Kate Anderson](#).

This note is intended to provide a brief rather than a comprehensive guide to the subject under consideration. It does not purport to give legal or financial advice that may be acted or relied upon. Specific professional advice should always be taken in respect of any individual matter.