



Bermuda Tables Initial Coin Offering (ICO) Legislation

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On 13 April 2018, amendments were tabled in Bermuda's House of Assembly to the *Companies Act, 1981* ("Companies Act") and *Limited Liability Company Act, 2016* ("LLC Act") to provide a legislative framework for initial coin offerings ("ICOs"). By implementing this new legislation, the Bermuda Government is laying the foundation for the Island to become a leading global blockchain and ICO centre. The *Companies and Limited Liability Company (Initial Coin Offering) Amendment Act, 2018* (the "ICO Act") will be debated in a later sitting of the House.

The ICO Act regulates offerings of 'digital assets', which are meant to capture all of the various categories of digital coins and tokens (whether they be utility, securitized, equity or otherwise) being issued as ICOs and via token sales. The purpose of the ICO Act is to only regulate those ICOs and token sales which are public crowdfunding or similar type projects. It is not intended to regulate either private sales or those which are engaged in the business of pure virtual currency issuances. In due course, a proposed Virtual Currency Business Act and a separate regime will regulate such businesses as well as those operating digital asset exchanges, e-wallets and similar structures.

ICO as a Restricted Business Activity

Under the new ICO Act (which contains largely the same amendments to both the Companies Act and the LLC Act), an ICO will be treated as a restricted business activity that will require the consent of Bermuda's Minister of Finance prior to an offering being made to the public (an "ICO offering"). It is intended that a FinTech Advisory Committee will be appointed to assist with initial reviews of applications and to ensure that they meet certain minimum criteria regulations.

A company wishing to launch an ICO can incorporate within the typical timeframe of 24 to 48 hours using Bermuda's usual incorporation procedures. However, it will not be able to commence its ICO offering without first obtaining the Minister's approval. As part of that process, the applicant must provide a copy of the draft ICO offering document and any other documents required by the Minister. Note that the Minister may, if he deems necessary, impose appropriate conditions on the applicant or on its ICO.

The minimum criteria which should be included in the application for consent are matters such as:

- Details about the founder(s), promoter, and any other persons connected to the business and the underlying digital assets offered for sale;
- Details regarding licenses, permissions or other authority regarding financial markets in any other jurisdiction;
- Details regarding the development and implementation of any product, service or other project related to the ICO, including timelines for completion;
- Details about the target market and any restrictions regarding participants;
- The amount of money intended to be raised via the ICO and intended purpose/use for the funds;

- Details regarding the underlying digital asset including accompanying rights, features, functionality, documentation of participants and intended transferability;
- Details regarding the technology to be used; the ability of the technical platform to enable the collection, and confirmation and storage of purchaser identity information; and
- Details regarding compliance and auditing of ICO transactions.

Filing Requirements

The ICO offering document must also be filed with the Bermuda Registrar of Companies. The offering document must include a certification by counsel or an officer of the applicant that it includes certain minimum requirements (similar to the minimum requirements which apply to the offering of securities to the public pursuant to the Companies Act). These include matters such as:

- Details regarding the promoter including business lines and company officers;
- The business or proposed business of the company;
- The amount of money intended to be raised pursuant to the ICO;
- Disclosure as to the allocation of the amounts to be raised amongst the classes of any issuance (pre-sale, post ICO);
- Rights and restrictions in relation to the digital asset issued;
- Proposed timeline for any project to be completed with funds raised via the ICO;
- Information regarding the opening and closing of the ICO offer period;
- All commissions payable on the sale of the digital assets that are being offered;
- Relevant risk warnings; and
- Statements on how personal information will be used.

Requirements in General

A general risk statement is required to be included in the offering document which outlines substantial project risks, impacts to the purchasers in the event that the project fails and any disclaimers of warranties or guarantees that may impact the participants. The participants are also provided with a cooling off period during which they may withdraw from the ICO offering.

In the event that information in the offering document becomes inaccurate in any material respect, there is an obligation that the offering document is updated as soon as reasonably practicable, and that supplementary particulars are filed with the Registrar. There are penalties for publication of untrue statements or mis-statements that are not corrected.

Conyers is the leading Bermuda firm in the blockchain and digital assets arena, with experience advising on ICOs. Our dedicated team of lawyers can assist clients looking to establish entities involving digital assets and blockchain technology.

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