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What Guidance for Cayman Companies Undertaking an ICO?

As at the date of this publication, there is still no specific regulation in the Cayman Islands addressing ICOs and blockchain technology. However, several of the existing laws and regulations are applicable to blockchain start-up companies and their pre-ICO and ICO operations. Also, a recent series of statements have been made by the Cayman regulatory authority, which generally encourage the blockchain ecosystem development. The Cayman Islands Monetary Authority (“CIMA”) itself has unofficially commented that cryptocurrencies, ICOs and FinTech generally are here to stayⁱ and that although the Cayman Islands Securities Investment Business Law (2015 Revision) (SIBL) does not include cryptocurrencies or tokens in its list of securitiesⁱⁱ, CIMA may be issuing further guidance to issuers and promoters as they increasingly look to access “real money”ⁱⁱⁱ through the offshore funds industry.

As things currently stand, ICO founder teams and promoters looking at the Cayman Islands for incorporation of their company or companies should be aware of the following best practices:

1. **Have a Real Project.** Setting up a Cayman Islands exempt company for your ICO (the “Company”) is not complicated and it usually only takes a few business days. However, a successful project requires more than a legal entity. Based on your business model and strategy, the legal vehicle which may be best suited for your purposes may also be different: for example, a Foundation Company instead of a regular exempt company may work best if your purpose is to create a stand-alone blockchain ecosystem, not “owned” by a particular person or group of persons. Generally, the ICO founder team should be prepared to answer the following questions:

What are the key features of the service/platform to be developed?

Which market participants (investors) will the ICO target? Are there any restrictions regarding investors? Are the founders planning to bring in pre-ICO investors on a private placement basis (through SAFT agreements or otherwise)?

What is the project timeline (ICO phases, milestones, etc.)?

What technologies will be used (new or existing, open source project vs. blockchain patent envisaged, etc.)

Which cryptocurrencies will be accepted? Will the ICO have a floor or a cap?

Have the funds already been allocated to a specific project? How will surplus funds be handled?



Will a token be created in the course of the ICO?

Which functionalities are planned for the token? What rights will be attached?

At which point, by whom and in which manner will the token be transferred to the investors?

How can the token be transferred (compatible wallets, technical standards)?

Is the token already functional at the time of transfer? If yes, to what extent?

How and where can the token be acquired or sold after the ICO (secondary market platforms)?

Will it be possible to use the tokens to buy goods or services or make payments to third parties?

Are there plans for the Company to buy back tokens?

Which service providers will be involved with the ICO?

- 2. Be Aware of Your AML/KYC Compliance Obligations.** The Cayman Islands have stringent anti-money laundering (“**AML**”) and know-you-customer (“**KYC**”) compliance requirements and these apply to the Company which is domiciled in Cayman. For ICOs, the matter should be taken very seriously because of added risks in the cryptocurrency space. Founder teams we have worked with on successful ICO launches have carefully considered the issues and risks related to investor screening and often looked to specialized third party service providers to pre-screen investors for regulatory and AML compliance.

This publication is not intended to be a substitute for specific legal advice or a legal opinion. For more information on the formation of Cayman exempt companies, Foundation Companies, exempt limited partnerships, or LLCs for the purposes of an ICO, please contact us at enquiries@hcs offshore.com.

ⁱ Quote from Ms. Heather Smith, Head of Investments & Securities Division of the Cayman Islands Monetary Authority (CIMA), during the Opalesque 2018 Cayman Roundtable.

ⁱⁱ Schedule 1 of Cayman Islands Securities Investment Business Law (2015 Revision) (SIBL) exclusively refers to shares (including stock of any kind in the share capital of a company, interests in a limited partnership, or units of participation in a unit trust), instruments creating or acknowledging indebtedness such as debentures, debenture stock, loan stock, bonds, certificates of deposit and any other instruments creating or acknowledging indebtedness, instruments giving entitlements to securities, certificates representing certain securities, options, futures and contracts for differences.

ⁱⁱⁱ Quote from Ms. Smith during the Opalesque 2018 Cayman Roundtable, see FN vii above.

