



Cayman Islands - Cryptoassets and Blockchain

(part 1)



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General legal and regulatory framework

Legal framework

What legal framework governs cryptoassets? Is there specific legislation governing cryptoassets and businesses transacting with cryptoassets?

Generally, cryptoassets themselves are not subject to any specific regulation in the Cayman Islands, but a person who conducts business in relation to cryptoassets may be regulated by various legislations as detailed below.

The Virtual Asset (Service Providers) Act (As Revised) (the VASP Act) provides the primary legal framework for the conduct of virtual assets business in the Cayman Islands and for the registration and licensing of persons providing virtual asset services. Under the VASP Act, virtual asset service means:

“the issuance of virtual assets or the business of providing one or more of the following services or operations for or on behalf of a natural or legal person or legal arrangement – (a) exchange between virtual assets and fiat currencies; (b) exchange between one or more other forms of convertible virtual assets; (c) transfer of virtual assets; (d) virtual asset custody service; or (e) participation in, and provision of, financial services related to a virtual

asset issuance or the sale of a virtual asset.”

However, it is important to note that, according to section 3(2) of the VASP Act, virtual service tokens, defined as “a digital representation of value that is not transferrable or exchangeable with a third party at any time and includes digital tokens whose sole function is to provide access to an application or service or to provide a service or function directly to its owner”, are not considered to be virtual assets and hence anyone providing services involving virtual service tokens will fall outside the scope of the registration regime and licensing regime under the VASP Act.

Furthermore, if the relevant cryptoasset is considered to be securities under the Securities Investment Business Act (As Revised) (the SIBA), the SIBA may also be applicable in regulating the carrying out of securities investment business that relates to cryptoassets.

Government policy

How would you describe the government's general approach to the regulation of cryptoassets in your jurisdiction?

The Cayman Islands government has been proactive in developing a regulatory framework that strives to align with global regulatory standards and

requirements of the Financial Action Task Force recommendations, as well as offering satisfactory consumer or investor protections, while striking a balance to provide considerable room for operation and organic growth.

Regulatory authorities

Which government authorities regulate cryptoassets and businesses transacting with cryptoassets?

The Cayman Islands Monetary Authority (CIMA) is the primary government agency that is responsible for enforcing the VASP Act and the SIBA, and has wide discretionary, supervisory and enforcement powers in relation to the regulation of virtual asset services and securities investment businesses.

Regulatory penalties

What penalties can regulators impose for violations relating to cryptoassets (eg, injunctions, fines or prison terms)?

Under the VASP Act, the Cayman Islands Monetary Authority (CIMA) has wide discretionary enforcement powers in response to various corresponding suspected or actual non-compliance circumstances, including but not limited to:

- directing the virtual asset service provider to cease and desist from carrying out a particular act or conduct;

- directing the virtual asset service provider by written notice to comply with the relevant statutory requirement(s) within such period of time and on such conditions as specified therein;
- revoking the virtual asset licence or sandbox licence or cancel the registration;
- imposing conditions upon the relevant licence or amend or revoke such conditions;
- applying to the court for any order that is necessary to protect the interests of clients or creditors of the licensee or registered person;
- at the expense of the virtual asset service provider, requiring that a licensee or registered person obtain an auditor's report to be submitted to CIMA on its anti-money laundering systems and procedures for compliance with the Anti-Money Laundering Regulations (As Revised);
- requiring the substitution of any senior officer or trustee of the virtual asset service provider appointed, or the divestment of ownership or control;
- at the expense of the licensee, appointing a person to advise the licensee on the proper conduct of its affairs and reporting the same to CIMA; and
- requiring such action to be taken by the virtual asset service provider as CIMA reasonably believes necessary.

Under the SIBA, CIMA has wide discretionary enforcement powers in



response to various corresponding suspected or actual non-compliance circumstances, including but not limited to:

- directing the licensee or registered person to cease or refrain from committing a particular act or pursuing a particular course of conduct and to perform such acts as, in the opinion of CIMA, are necessary to remedy or ameliorate the situation;
- directing the licensee or registered person by written notice to comply with the relevant statutory requirement(s) within such period of time and on such conditions as specified therein;
- revoking the relevant licence or cancel the registration;
- imposing conditions or further conditions upon the relevant licence or registration or amend or revoke such conditions;
- applying to the court for any order that is necessary to protect the interests of clients or creditors of the licensee or registered person;
- at the expense of the licensee or registered person, requiring that a licensee or registered person obtain an auditor's report to be submitted to CIMA on its anti-money laundering systems and procedures for compliance with the Anti-Money Laundering Regulations (As Revised);
- requiring the substitution of any

senior officer or trustee of the licensee or registered person appointed, or the divestment of ownership or control;

- at the expense of the licensee or registered person, appointing a person to advise the licensee or registered person on the proper conduct of its affairs and reporting the same to CIMA; and
- requiring such action to be taken by the licensee or registered person as CIMA reasonably believes necessary.

Court jurisdiction

Which courts have jurisdiction over disputes involving cryptoassets?

Generally, the main court of first instance for disputes involving cryptoassets is the Grand Court of the Cayman Islands (the Grand Court), but certain disputes having a subject matter of CI\$20,000 or below may be given jurisdiction to the Summary Court of the Cayman Islands. Any appeal from the Grand Court is dealt with by the Court of Appeal of the Cayman Islands (the Court of Appeal), and any further appeal from the Court of Appeal is heard by His Majesty's Judicial Committee of the Privy Council in London, UK.

Legal status of cryptocurrency

Is it legal to own or possess cryptocurrency, use cryptocurrency in commercial transactions and exchange cryptocurrency for local fiat currency in the Cayman Islands?

In general, there is no legal prohibition on owning or possessing cryptocurrency, using cryptocurrency in commercial transactions and exchanging cryptocurrency for local fiat currency in the Cayman Islands. However, if the exchange of cryptocurrency for local fiat currency is carried out in the course of business of the relevant person, that person might be considered as a virtual asset service provider under the VASP Act and hence may be legally required to register with CIMA before it may conduct such business.

At the same time, if the relevant cryptocurrency qualifies as securities under the SIBA and the use of such cryptocurrency in commercial transactions is carried on in the course of business of the relevant person, and such use of cryptocurrency qualifies as one of the regulated activities of securities investment business under the SIBA, that person might have to be licensed or registered with CIMA before it may conduct such business.

Fiat currencies

What fiat currencies are commonly used in the Cayman Islands?

The official currency of the Cayman Islands is the Cayman Islands dollar, but the United States dollar is also accepted in the Cayman Islands.

Industry associations

What are the leading industry associations addressing legal and policy issues relating to cryptoassets?

By way of example, Cayman Finance is one of the industry associations that have been proactive in reporting news and issues relating to cryptassets.

The Blockchain Association of the Cayman Islands (BACI) is the jurisdiction's independent, not-for-profit industry body championing the growth of blockchain, digital-asset and Web3 innovation across Cayman and beyond. Founded in 2019 and run by practitioners "on the ground", BACI brings together technology entrepreneurs, financial services experts, professional advisers, blockchain enthusiasts, regulators and educators to advance one shared goal: *positioning Cayman as the premier global hub for compliant, cutting-edge blockchain business.*



Cryptoassets for investment and financing

Regulatory threshold

What attributes do the regulators consider in determining whether a cryptoasset is subject to regulation under the laws in the Cayman Islands?

A person will be regulated by the Virtual Asset (Service Providers) Act (As Revised) (the VASP Act) if it provides certain virtual asset service that involves virtual assets, and a cryptocurrency shall be considered as a virtual asset under the VASP Act if it is “a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes but does not include a digital representation of fiat currencies”.

Meanwhile, a person will be regulated by the Securities Investment Business Act (SIBA) if it is engaged in certain securities investment business, which

involves securities (e.g., advising on securities, dealing in securities, arranging deals in securities, or managing securities), and a cryptocurrency would be considered as securities under the SIBA if it is an asset, right or interest specified in Schedule 1 to the SIBA, which is stated in paragraph 14 of Schedule 1 to the SIBA as including, in particular, virtual assets that “can be sold, traded or exchanged immediately or at any time in the future that — (a) represent or can be converted into any of the securities listed in paragraphs 1 to 13 of this Schedule; or (b) represent a derivative of any of the securities listed in paragraphs 1 to 13 of this Schedule”. Whereas paragraphs 1 to 13 of Schedule 1 to the SIBA include the broad categories of shares, instruments creating or acknowledging indebtedness, instruments giving entitlements to securities, certificates representing certain securities, options, futures and contracts for differences.

Investor classification

How are investors in cryptoassets classified and treated differently (eg, ordinary (retail), institutional, sophisticated, accredited)?

The applicability and regulations of the VASP Act generally depend on the business activities of a relevant person, instead of the type of investors.

Under the SIBA, however, where the securities investment business is carried out exclusively for one or more sophisticated persons and high net worth person, an exemption will be offered to that relevant person, who is required to only register with CIMA instead of obtaining a full licence from CIMA. The regulatory burden and requirements applicable to a relevant person carrying on securities investment business exclusively for sophisticated persons and for high net worth persons is substantial but not as great as that applicable to a relevant person required to obtain a full licence from CIMA.

Further, in the context of Cayman Islands funds that invest in cryptoassets, it is worth noting that any regulation that typically applies to funds marketed or whose securities are offered to investors situated in certain geographical locations, e.g. Japan and any European Union member state, shall continue to apply.

Initial coin offerings

What rules and restrictions govern the conduct of, and investment in, initial coin offerings (ICOs)?

If the coin or token falls within the definition of a virtual asset under the VASP Act, the ICO might constitute an issuance of virtual assets, which is one of the virtual asset services regulated under the VASP Act, rendering the need to register with CIMA and to obtain advance approval before the issuance. The act of investing in ICOs will likely not be regulated by the VASP Act unless, for example, such act constitutes 'participation in, and provision of, financial services related to a virtual asset issuance or the sale of a virtual asset'.

At the same time, by making reference to the SIBA and the Electronic Transactions Act (As Revised) of the Cayman Islands, CIMA may qualify coins/tokens issued on blockchain through ICOs as stock or debt (under the SIBA) if the rights attached to the coins/tokens (as represented in the white paper published in connection with the relevant ICO) resemble rights normally attached to equity interests or debt. Therefore, all persons engaging, in the course of business, in the conduct of, or investment in, ICOs may be subject to the registration or licensing requirements under the SIBA.



In certain other circumstances, a registration with or a license from CIMA may also be required in connection with an ICO, such as: (1) under the Money Services Act (As Revised), if the coins/tokens issued could give access to money transmission or currency exchange services; (2) under the Mutual Funds Act (As Revised) or the Private Funds Act (As Revised), if under proposed new amendments to these two pieces of legislation, the issuer of the coins/tokens is essentially a collective investment scheme (e.g. a tokenised mutual fund or a tokenised private fund) and the coins or tokens are digital equity tokens or digital investment tokens.

Irrespective of whether coins/tokens issued qualify as securities or otherwise, existing anti-money laundering (AML) and know-your-customer (KYC) requirements under Cayman Islands laws will apply if the ICO is used as a money-raising event. Under the Proceeds of Crime Act (As Revised) (the Proceeds of Crime Act) and the Anti-Money Laundering Regulations (As Revised) (the AML Regulations), persons engaged in certain types of financial business are required to implement client identification and verification, record-keeping, and internal reporting and control procedures. In addition, it is an offence for a financial service provider to form a business relationship, or to carry out as a one-off transaction, with an applicant for business without maintaining the AML policies and procedures.

Security token offerings

What rules and restrictions govern the conduct of, and investment in, security token offerings (STOs)?

Certain pieces of legislation and regulations shall similarly apply to STOs so long as the security token being offered falls within the corresponding scope.

Stablecoins

What rules and restrictions govern the issue of, and investment in, stablecoins?

Generally, stablecoins fall within the definition of a virtual asset under the VASP Act, and therefore the issuance of stablecoins will typically constitute an issuance of virtual assets under the VASP Act, which would require the issuer to register with CIMA and to obtain advance approval before the issuance. On the other hand, the VASP Act does not regulate the making of an investment in stablecoins unless, for example, such act constitutes 'participation in, and provision of, financial services related to a virtual asset issuance or the sale of a virtual asset'.

If stablecoins fall within one of the broad categories of securities under the SIBA, the issue of, or investment in, stablecoins in the course of a person's business may constitute a securities investment business that mandates

that relevant person to register with or be licensed by CIMA.

Airdrops

Are cryptoassets distributed by airdrop treated differently than other types of offering mechanisms?

Yes, airdrop of cryptoassets might be treated differently by the VASP Act than other types of offering mechanisms as previously mentioned. According to the VASP Act, issuance of virtual assets means “the sale of newly created virtual assets to the public in or from within the Islands in exchange for fiat currency, other virtual assets or other consideration but does not include the sale of virtual service tokens”. However, since an airdrop typically does not involve any consideration, it is likely that an airdrop of cryptoassets would not constitute as an issuance of virtual assets or any other virtual asset services regulated by the VASP Act.

Advertising and marketing

What laws and regulations govern the advertising and marketing of cryptoassets used for investment and financing?

The VASP Act generally does not regulate or restrict the mere acts of advertising and marketing of cryptoassets used for investment and financing because these activities do not fall within any virtual asset services regulated by the

VASP Act, except to the extent such activities constitute “participation in, and provision of, financial services related to a virtual asset service or the sale of a virtual asset”. However, it is worth noting that the Virtual Asset (Service Providers) Regulations, 2020 (the VASP Regulations) differentiates an issuance of virtual assets, which is one of the virtual asset services regulated by the VASP Act, from a private sale, which does not require any registration or licensing with CIMA under the VASP Act. A private sale is defined as “a sale, or offer for sale, which is not advertised and is made available to a limited number of persons or entities who are selected prior to the sale by way of a private agreement”, whereas the VASP Regulations stipulates that CIMA will determine whether a sale of virtual assets qualifies as an issuance of virtual assets by assessing, among other things, whether such sale or offer for sale will be advertised to persons or entities in the Cayman Islands. Furthermore, when granting a sandbox licence under the VASP Act, CIMA may also impose restrictions on the sandbox licensee's advertising.

Similarly, the SIBA generally does not regulate or restrict the mere acts of advertising and marketing of cryptoassets used for investment and financing because these activities do not fall within any regulated activities of securities investment business regulated by the SIBA, unless it involves the marketing of the shares, trust units or

partnership interests of an EU Connected Fund (as defined in the SIBA) to investors or potential investors in a European Union member state.

Trading restrictions

Are investors in an ICO/STO/stablecoin subject to any restrictions on their trading after the initial offering?

No, generally investors in an ICO, STO or stablecoin are not subject to any legal restrictions on their trading after the initial offering.

Crowdfunding

How are crowdfunding and cryptoasset offerings treated differently under the law?

Crowdfunding and cryptoasset offerings are generally not treated differently under laws of the Cayman Islands. So long as the crowdfunding or cryptoasset offering is conducted in the course of one's business and falls within the relevant regulated business activity under the VASP Act and/or the SIBA, such fundraising exercise would be subject to the corresponding registration or licensing requirements.

Transfer agents and share registrars

What laws and regulations govern cryptoasset transfer agents and share registrars?

If the provision of transfer agency and share registrar services of the crypto-asset transfer agents and share registrars involves cryptoassets that qualify as a virtual asset under the VASP Act, such business may constitute providing a virtual asset service in the sense of 'participation in, and provision of, financial services related to a virtual asset issuance or the sale of a virtual asset', thereby subjecting them to the registration or licensing requirements of the VASP Act.

Anti-money laundering and know-your-customer compliance

What anti-money laundering (AML) and know-your-customer (KYC) requirements and guidelines apply to the offering of cryptoassets?

In terms of the AML Regulations, assuming an offering of cryptoassets refers to the general issuance of cryptoassets for fundraising purpose, if such offering of cryptoassets qualifies as securities issues or issuing and managing means of payment under the Proceeds of Crime Act, the relevant offeror will be required to comply with the requirements under the AML Regulations, which include, among other things, implementing client identification and verification, record-keeping, and internal reporting and control procedures. However, if the offering of cryptoassets does not qualify as securities issues or issuing

and managing means of payment under the Proceeds of Crime Act, it is unlikely that such offering shall be subject to any AML requirements of the AML Regulations, because such offering will not fall within any of the relevant financial businesses under the Proceeds of Crime Act, especially when the definition of virtual asset services therein does not include issuance of virtual assets. On the other hand, assuming an offering of cryptoassets refers to anything other than the general issuance of cryptoassets for fundraising purposes, it will be subject to the relevant AML requirements of the AML Regulations if such activity is considered to fall within any of the relevant financial businesses under the Proceeds of Crime Act.

In terms of the VASP Act, assuming that the offering of cryptoassets constitutes as a “virtual asset service”, when CIMA is making a decision to grant a virtual asset service licence or a sandbox licence, to register an applicant or to waive a requirement to licence or register under the VASP Act, it will consider, among other things, (1) the procedures that the applicant has in place to combat money laundering, terrorist financing and proliferation financing, as well as (2) the applicant's ability to comply with the VASP Act and the relevant requirements of the AML Regulations.

The VASP Act also sets out the following AML-related factors that CIMA will take into account when determining whether to approve an issuance of virtual assets by a licensee or registered person under the VASP Act:

- whether the virtual asset interferes with the functions of CIMA relating to AML, combating of terrorist financing and anti-proliferation financing; and
- the AML processes utilised by or available to the virtual asset issuer.

In terms of the general ongoing AML requirements in the context of an offering of cryptoassets, virtual asset service providers who carry out virtual asset services (including issuance of virtual assets) and thus are regulated by the VASP Act are required to comply with the following:

- at CIMA's request, to provide an independent auditor's report on the AML systems and procedures for compliance with the AML Regulations;
- to comply with the AML Regulations and other laws relating to the combating of money laundering, terrorist financing and proliferation financing;
- for the purpose of ensuring compliance with the AML Regulations, to put in place AML systems and procedures;

- to designate an employee as the officer with responsibility for the procedures for combating money laundering, terrorist financing and proliferation financing; and
- to obtain prior approval from CIMA before appointing a senior officer or trustee or an AML compliance officer, who is required to be a fit and proper person.

Furthermore, according to the VASP Act, CIMA may impose additional requirements specific to the relevant issuance of virtual assets on a virtual asset service provider to ensure compliance with the AML Regulations.

Under the VASP Act, CIMA also has the power to examine the affairs or business of any virtual asset service provider by way of the receipt of regular

returns, on-site inspections, auditor's reports or in such other manner as CIMA may determine, for the purpose of, inter alia, confirming that the AML Regulations are being complied with.

Sanctions and Financial Action Task Force compliance

What laws and regulations apply in the context of cryptoassets to enforce government sanctions, anti-terrorism financing principles, and Financial Action Task Force (FATF) standards?

In the context of cryptoassets, both the AML Regulations and the VASP Act were enacted with an aim to ensure that government sanctions are enforced and anti-terrorism financing principles and FATF standards are observed.

This publication is not intended to be a substitute for specific legal advice or a legal opinion.
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