Ogier

New tokenisation guidance published by the Jersey Financial Services Commission

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Ogier has welcomed the publication of new guidance on the tokenisation of real world assets**, published by the Jersey Financial Services Commission on 28 August.**

The Commission (**JFSC**) has also updated its guidance on initial coin / token offerings (**IC / TO**s), which was originally published in July 2018, to reflect evolving language and create a clear distinction between the issuance of virtual assets and tokenised real-world assets (**RWA**s).

This development marks a significant step in recognising the evolving landscape of digital assets and their integration into the financial system. It reflects Jersey's commitment to staying at the forefront of legal and regulatory advancements in the rapidly changing world of blockchain technology.

In this article, partners Alexander Curry and Matt McManus, managing associate Tom Hall and associate Michael Ogilvy Watson provide an overview of the new guidance.

Spotlight on the New Guidance

What does tokenisation mean?

Tokenisation refers to the process of issuing a digital representation of an asset, typically on a blockchain (see section 2.1 of new guidance). This process is increasingly being applied to RWAs, that is physical assets and more traditional financial assets, allowing for fractional ownership and improved liquidity. Tokenisation makes these assets more accessible to a broader range of investors (section 2.3).

Tokenisation can transform asset ownership and investment by enhancing market efficiency and inclusivity. Tokenisation is influencing traditional finance and investment sectors with various assets such as real estate, fine art, commodities, securities, and intellectual property rights being tokenised (section 2.4).

What real-world assets can be tokenised?

The assets that can be tokenised include, but are not limited to:

- securities
- bonds

- commodities
- currencies
- units in a fund (section 2.2)

This broad range of assets highlights the versatility of tokenisation in representing physical and traditional financial assets as digital tokens on a blockchain. Specifically, stablecoins (meaning tokens where value is tied to a fiat currency – being a national currency that is not pegged to the price of a commodity such as gold) are not considered virtual assets and the issuance of stablecoins should therefore comply with the new guidance (section 7.1).

Who does the new guidance apply to?

The guidance applies to issuers. An issuer, in the context of tokenisation of RWAs, refers to an entity that issues digital representations of assets, typically on a blockchain (section 2.1). These entities would need to comply with the IC / TOs guidance issued by the JFSC.

Does an issuer need to be based in Jersey?

Yes, an issuer needs to be based in Jersey and registered as a Jersey company or limited liability company (section 5.1).

What legal and regulatory obligations is an issuer subject to?

The issuer is responsible for meeting specific regulatory and operational requirements which are set out in the new guidance.

Among other obligations, an issuer must (section 5.1):

- be administered through a trust and company service provider that is licensed by the JFSC to carry out trust company business (**TCB**)
- appoint and maintain a Jersey-resident director on the board of the issuer, who is a natural person and a "principal person" of the TCB appointed by the issuer
- adhere to Jersey's anti-money laundering, counter-terrorist financing and counter-proliferation financing (**AML** / **CFT** / **CPF**) regime
- obtain consent to operate under the Control of Borrowing (Jersey) Order 1958
- maintain and monitor the implementation of appropriate investor protection measures. Initial coins / token offerings would be expected to consider whether they are required to register as virtual asset service providers under Schedule 2 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, which would bring them under the regulatory purview of the JFSC for AML / CFT / CPF supervisory purposes
- independently verify underlying assets using a qualified third party and publish those results within three months of the issuer's financial year end
- prepare and submit an information memorandum to the JFSC in compliance with the requirements for prospectuses issued by a company or limited liability company

What does this mean for trust company business?

Before a TCB is appointed by the issuer, and on an ongoing basis, the TCB must ensure it has the appropriate level of knowledge, skills, and experience to carry out the necessary steps and provide the agreed services to the issuer, taking into account the activities carried on by the issuer (section 8.3 and 8.4).

This includes being able to assess the issuer's approach to:

- customer interests
- the adequacy of its financial and non-financial resources
- the effectiveness of its corporate governance arrangements
- its systems for managing and controlling its business effectively (section 8.3)

For most TCBs, they will already have appropriate policies, procedures and controls in place pursuant to their existing regulatory obligations, including those set out in the JFSC's Code of Practice for TCBs.

However, given that the use of coins / tokens by clients as an investment vehicle is a relatively new concept, this is likely to require upskilling (in the form of training) by TCBs to ensure their staff have sufficient knowledge, skill and experience to manage these investments in the best interests of their clients and in compliance with their obligations under the new guidance.

The TCB is also responsible for ensuring that the issuer's arrangements for the protection of client assets and money are adequate and effective.

What does this mean for funds and their functionaries?

The new guidance does not concern funds specifically. However, the tokenisation of units in a fund will be subject to any existing Jersey funds regulatory regime which applies. This means that when tokenising units in a fund, issuers must consider the underlying regulatory framework applicable to the fund and its functionaries –whether this be the Jersey Private Fund regime or a more regulated structure – and in turn whether those functionaries rely on an exemption or are themselves regulated.

Under the IC / TO guidance any application must be accompanied by analysis prepared by the issuer's legal advisers covering, among other things, relevant Jersey legal and regulatory aspects of the structure (section 4.2).

More generally, an issuer of a tokenised RWA should consider the appropriate regulations which apply to the service and / or activities of the underlying business. Issuers should consider the relevant sections of the JFSC's separate guidance on Securities Issues by Jersey Companies.

How Ogier can help

If you have any questions about the new guidance, please do not hesitate to contact any of the authors of this briefing.