



Tokenisation Series - How to Guide - Getting regulatory approval to issue RWA tokens from Jersey

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KEY TAKEAWAYS

- It is possible to issue RWA tokens using a Jersey company to act as the issuer.
- The Jersey regulator has published a guidance note on the tokenisation of RWAs.
- This guidance note sets out the applicable requirements and provides increased execution certainty for applicants.

The development of Jersey's digital asset industry has seen sustained governmental and regulatory backing since 2014.

Jersey is increasingly a destination of choice for the tokenisation of real world assets ("**RWAs**").

Jersey has an excellent reputation globally for meeting high international regulatory standards. As a small jurisdiction, Jersey is able to move quickly and adapt its financial and regulatory landscape to new opportunities, and with reputable sources predicting that the tokenisation of RWAs is set to become a \$16 trillion industry by 2030¹, Jersey's positive approach is to be welcomed.

Why has the JFSC published guidance on the tokenisation of RWAs?

In response to growing momentum in this area, the Jersey Financial Services Commission (the "**JFSC**") published a guidance note on the tokenisation of RWAs (the "**GuidanceNote**") ([here](#)), with the stated objective being to introduce:

"...a proportionate regulatory framework for tokenised RWAs while maintaining a high level of investor protection, market integrity and transparency by clearly setting out [the JFSC's] regulatory expectations".

The Guidance Note provides clear parameters, streamlining the application process and bringing increased regulatory clarity and execution certainty for applicants. This 'How to Guide' summarises the key requirements to help our clients understand how to make a regulatory application in Jersey.

The JFSC has also updated its existing guidance on initial coin/token offerings originally published in 2018 ([here](#)).

What are tokenised RWAs?

The Guidance Note defines 'tokenisation' as *"the process of issuing a digital representation of an asset, typically on a blockchain"*. RWAs are tangible assets that exist outside the digital realm. This includes real estate properties, fine art, wine, machinery and commodities, as well as other traditional financial assets. The Guidance Note defines 'tokenised real world assets' as:

"...blockchain-based tokens that represent physical and traditional financial assets including (but not limited to) securities, bonds, commodities, currencies and units in a fund".

The Guidance Note defines stablecoins as *"tokens whose value is tied to and is fully collateralised by a fiat currency and/or liquid cash equivalents"* and states that, for the purpose of the Guidance Note, stablecoins will not be considered to be *"virtual assets"*. The Guidance Note includes specific guidance on stablecoins (see below for further details).

Why tokenise RWAs?

Tokenised RWAs enable fractional ownership and liquidity previously inaccessible to many investors, revolutionising the traditional finance and investment landscapes, creating market efficiencies and new possibilities for asset managers. Ultimately they offer the possibility of reshaping the way we perceive and engage with tangible assets in the digital age.

What are the key general requirements which apply to issuers of tokenised RWAs in Jersey?

An issuer must make an application for JFSC consent under the Control of Borrowing (Jersey) Order 1958 (as amended). The JFSC will also consider the features of the tokens against a list of "high risk" activities set out in its 'Sound Business Practice Policy', which may result in additional measures which the issuer is required to comply with in order to mitigate any particular high risk factors. Depending on the proposed plans of the issuer and the nature of the tokens, a consent to circulate a 'prospectus', known as a consent under the Companies (General Provisions) (Jersey) Order 2002 (as amended) may also be required.

Other key general requirements which the JFSC has identified in the Guidance Note include:

- **Incorporation:** The issuer must be incorporated as a Jersey company or Jersey limited liability company.
- **Administrator:** The issuer must be administered by an appropriately licensed Jersey corporate services provider ("**CSP**"). The identity of the CSP is key to the application. The JFSC must be satisfied that the proposed CSP has the necessary expertise, including employees with appropriate qualifications and experience to administer the issuer.
- **Directors:** The issuer must appoint and maintain a Jersey-resident director who is a natural person. This director of the issuer must also be a director of the CSP.
- **AML requirements and policies and procedures:** The issuer must satisfy the JFSC that it will:
 - develop and implement policies, procedures and controls, including in relation to conduct, customer due diligence and transaction monitoring, screening, suspicious activity reporting and record

keeping. Enhanced measures should be applied where higher risks are identified;

- monitor the implementation of these policies, procedures and controls, enhancing them as necessary; and
- apply all relevant AML requirements to persons that either purchase tokens from or redeem/sell tokens back to the issuer.
- **Information memorandum:** The issuer must prepare and submit to the JFSC an information memorandum (which may be in the form of a white paper) which complies with certain content requirements for a prospectus issued by a company under the Companies (Jersey) Law 1991 (as amended).
- **Audit:** The issuer must arrange for all smart contracts (deployed in the relevant year) to be audited and the result made public. In addition, all RWAs must be independently verified by a qualified third party, with the results to be published within three months of the issuer's financial year end.
- **Marketing:** The issuer must ensure that any marketing material (including the information memorandum) is clear, fair and not misleading.

What other application and ongoing regulatory requirements does a Jersey issuer have to meet?

Other requirements include the following:

- **Verification requirements in relation to underlying RWAs:** The underlying RWAs must be independently verified by an appropriately qualified third party annually, and the results (confirming that the tokens are 100% collateralised and ring-fenced) must be made available to the public.
- **Custodian:** The underlying RWAs must be held by a professional custodian with accountability in an equivalent jurisdiction.
- **No lending:** The underlying RWAs must be ring-fenced and not lent out for additional yield unless expressly agreed by the JFSC - acceptable circumstances may include a stablecoin issuer holding highly liquid cash equivalents.
- **Disclosure of NAV:** Appropriate disclosures displayed publicly by the issuer including the performance of the token against the value of the underlying RWAs.
- **Distribution of assets upon cessation of activity:** Where the issuer or custodian ceases business activity, details of how the underlying RWAs will be distributed (or otherwise realised) to the token holders must be provided (often this information will be included in the information memorandum or white paper).
- **Distribution of income, dividends or other distributions:** Where relevant, details of how any income, dividends or other distributions will be allocated to the token holders eg setting out whether the mechanism is a smart contract or manual transfer to those wallets holding the token.
- **Rights:** Details of any additional rights that the token holders are granted eg voting rights.

- **Disclosure of risks:** A documentation of the key risks and mitigants including considerations around which blockchain the token is to be issued on and the liquidity of the tokens in secondary markets. This is usually satisfied by a 'risk warnings' section in the information memorandum or white paper.
- **Change of CSP or specified counterparties:** The issuer must seek prior approval from the JFSC to change the CSP, the Jersey-resident director or other specified counterparties.
- **Defaults/delays in redemption to be reported to the JFSC:** The JFSC must be notified promptly if the issuer defaults on any tokens issued, or if the issuer is unable to redeem tokens within a reasonable period.

The JFSC may ask for additional information in connection with any application and so applicants should regard the above requirements as non-exhaustive.

How do you make a tokenised RWA application to the JFSC?

The JFSC is due to publish an application form shortly which an issuer will be required to complete. It is likely to cover the points set out above, together with a number of additional points including:

- a description of the features of the tokens, including details of the proposed issuance and redemption process;
- details of target investor type and investor protections;
- a detailed Jersey legal and regulatory analysis – this will include considering: (i) whether the tokens will require any regulatory licences under the Financial Services (Jersey) Law 1998 (as amended); (ii) the investment fund / AIFMD position; and (iii) whether registration is required under Jersey's AML legislation; and
- identity of any service providers – the JFSC will wish to satisfy itself as to the identity and credentials of the proposed service providers (including the custodian) and so it is important for the issuer to have finalised this ahead of filing the application.

In addition, the issuer's information memorandum or white paper will need to be filed with the application and so must be in near final form, together with a memorandum of compliance showing how the required Jersey content requirements have been satisfied.

In our experience, the JFSC will also require:

- a beneficial ownership structure chart (and may also ask for an organisational structure chart showing additional information about the issuer and proposed structure); and
- a draft investor warnings and acknowledgement document – depending on the Jersey legal and regulatory analysis, various prescribed form investment warnings may be required to be acknowledged and so the JFSC will usually request sight of the warnings which will be provided to token holders.

Stablecoins

Stablecoins are subject to the requirements set out above, together with the following additional requirements:

- **Collateral:** Details of the assets being held as collateral ie cash and cash equivalents. This should include clear information on the short-term liquidity of those assets.
- **Custody:** The collateral custody arrangements eg whether there are multiple custodians to reduce any concentration risk.
- **Purchasers:** Information as to whom the issuer will directly sell the stablecoin tokens ie authorised participants, and who can redeem their tokens for fiat.
- **De minimis threshold:** Details of any de minimis threshold for issuance and/or redemption of the stablecoins.

Why use Walkers?

Walkers is proud to have a market leading practice in this area. We worked on Jersey's first tokenisation platform ([here](#)) and we continue to work with a number of clients at the cutting edge of the tokenisation space to help them benefit from our Jersey legal and regulatory expertise in this area.

Indeed, we worked closely with the JFSC on the development of the Guidance Note. The JFSC often works closely with key stakeholders when writing new guidance, and in this case Walkers worked with the JFSC, together with other key stakeholders such as the Jersey Funds Association and Jersey Finance to provide its input prior to the publication of the Guidance Note.

Footnote:

1. See Boston Consulting Group and ADDX report: <https://web-assets.bcg.com/1e/a2/5b5f2b7e42dfad2cb3113a291222/on-chain-asset-tokenization.pdf>