



**ISLE OF MAN
FINANCIAL SERVICES AUTHORITY**

Lught-Reill Shirveishyn Argidoil Ellan Vannin

**Feedback Statement
Regulation of Crypto-Asset Activities**

FS24-03

Issue Date: 10 December 2024

Contents

Glossary.....	2
1. Background	3
2. Summary of Responses.....	3
2.1 Overview	3
2.2 Arguments for regulating crypto-asset activities	3
2.3 Arguments against regulating crypto-asset activities	4
2.4 Feedback on Options	4
2.4.1 Overview	4
2.4.2 New regulated activity for operation of a crypto-asset service provider	5
2.4.3 Extending the Class 2 (Investment Business) “investment” definition	5
2.4.4 New regulated activity for issuing and advising on crypto-assets.....	6
2.4.5 New regulated activity for issuing and managing stablecoins	6
3. Next Steps	6
Appendix – List of Groups to which this Feedback Statement has been sent	8

Glossary

Authority	Isle of Man Financial Services Authority
AML/CFT	Anti-Money Laundering and Countering the Financing of Terrorism
CASP	Crypto Asset Service Provider (also referred to as a CVC business or VASP)
CVC	Convertible Virtual Currency
DBROA15	Designated Businesses (Registration and Oversight) Act 2015
Discussion Paper	Discussion Paper on the Regulation of Crypto-Asset Activities (DP24-01)
FSA08	Financial Services Act 2008
MiCA	Markets in Crypto-Assets Regulation
VASP	Virtual Asset Service Provider (also referred to as a CVC business or CASP)

1. Background

This Feedback Statement is issued by the Isle of Man Financial Services Authority following the Discussion Paper on the Regulation of Crypto-Asset Activities (DP24-01)¹.

The purpose of the Discussion Paper was to consider recent international developments in the regulation of activities relating to crypto-assets and to obtain feedback on the potential expansion of the regulatory perimeter under the Financial Services Act 2008 ('FSA08') to include certain activities relating to crypto-assets.

The consultation ran from 13 February to 9 April 2024.

2. Summary of Responses

2.1 Overview

The Authority received 16 responses to the Discussion Paper. There was a mix of respondents, including three Convertible Virtual Currency ('CVC') businesses registered under the Designated Businesses (Registration and Oversight) Act 2015 ('DBROA15'), two local law firms, a bank licensed under the FSA08, a payment services provider licensed under the FSA08, six consumers / members of the public, the Isle of Man Chamber of Commerce and Digital Isle of Man.

In summary, ten respondents (62.5%) agreed with widening the regulatory perimeter to cover crypto-asset activities and six respondents (37.5%) disagreed. There was no clear consensus within each stakeholder category as to whether or not the sector should be regulated. For example, responses from registered CVC businesses were mixed; one strongly agreed, one slightly agreed and one strongly disagreed with regulating crypto-asset activities.

2.2 Arguments for regulating crypto-asset activities

Reasons in favour of regulating crypto-asset activities included:

- To enhance consumer protection.
- To recognise the increasing popularity and acceptance of crypto-assets within mainstream financial markets.
- To support the Isle of Man's continued development as an international financial centre and encourage economic growth.
- To protect the Isle of Man's reputation and reduce the risk of crypto-asset service providers seeking to establish in the Island to avoid regulatory requirements in other jurisdictions.
- To adopt international standards and approaches to regulation being taken elsewhere (e.g. the European Union's Markets in Crypto-Assets Regulation ('MiCA') and HM Treasury's proposals in the United Kingdom).

¹ https://consult.gov.im/financial-services-authority/regulation-of-crypto-asset-activities/supporting_documents/20240212Crypto_Discussion_Paper_for_Hub.pdf

2.3 Arguments against regulating crypto-asset activities

Reasons against regulating crypto-asset activities included:

- The current regime adequately addresses key risk, with the DBROA15 representing a good balance between ensuring compliance and nurturing development.
- Additional requirements risk stifling or damaging the local crypto-asset sector, especially if the regulatory framework is unsuitable for sector and/or results in over-regulation.
- Regulating the local crypto-asset sector could result in some firms leaving the Isle of Man and have a detrimental effect on the Isle of Man's economy.
- As the UK has not yet implemented its proposals to bring crypto-assets within the regulatory perimeter, it would be premature for the Isle of Man to change its approach at this stage.
- One consumer was very strongly against the regulation of the crypto-asset sector, but did not state reasons for this view.

Many respondents also highlighted that the barriers to regulating the crypto-asset sector were high, and that this presented some risks and challenges. The main barriers and risks are summarised below:

- Several respondents suggested there is a shortage of staff in the Isle of Man with relevant skills and it was difficult to attract and retain talent in crypto-asset sector businesses. Consequently, regulation may increase pressure on staffing.
- Some respondents also queried how regulation and oversight of the crypto-asset sector would be funded, especially if the size of the sector reduces in the future.

2.4 Feedback on Options

2.4.1 Overview

Of those respondents who supported regulation, there was not a clear consensus on preferred options. Some wished to see multiple regulatory options implemented. However, there was enough information to identify the most- and least-preferred options, along with reasons:

- The most preferred option was maintaining the current approach under the DBROA15 (7 respondents). Followed by a new regulated activity for the operation of a crypto-asset service provider ('CASP') (5 respondents).
- The least preferred option was extending the definition of "investment" to capture crypto-assets (7 respondents). Followed by a new regulated activity for issuing and advising on crypto-assets (4 respondents).

The six respondents not in favour of widening the regulatory perimeter indicated that maintaining the current approach under the DBROA15 was their preferred option. They considered this to address the main risk and strike the right balance, without stifling or damaging the sector. A further respondent who favoured some form of regulation in

principle, but considered the barriers and risks to be too high, preferred retention of the current regime.

Irrespective of whether or not respondents were in favour of regulation, and their preferred option for regulation, many respondents:

- Commented that any regulatory framework would need to be proportionate and tailored to the crypto-asset sector.
- Cautioned against trying to fit crypto-asset regulation into the existing regulatory framework for financial services, which may risk stifling or damaging the sector.

2.4.2 New regulated activity for operation of a crypto-asset service provider

The second most preferred option was the introduction of a new regulated activity for operation of a CASP. Reasons given included:

- It would enable the regulatory framework to be suitably proportionate and tailored to risks specific to crypto-assets.
- Alignment with MiCA in the EU would allow firms to take a common approach across different markets, mitigating any opportunity for arbitrage and allow Isle of Man-based CASPs to remain competitive in a global market.

However, respondents also noted that the barrier to this approach is the high cost of creating and maintaining a bespoke regulatory framework. In addition, one respondent indicated that this could be compounded by the small size of the sector, and that any resulting reduction in the sector size would make it difficult for the Authority to generate sufficient fees to cover the cost of regulation and supervision. Therefore, this approach would need careful consideration of the costs and benefits.

2.4.3 Extending the Class 2 (Investment Business) “investment” definition

By contrast, extending the existing definition of “investment” under Class 2 (Investment Business) regulated activity under the FSA08 to include crypto-assets was the least preferred option.

There were some strong arguments advanced against this route. The reasons given against this approach broadly revolved around the fact that, subject to certain exceptions, crypto-assets do not function like securities and therefore it would not be a suitable approach. In addition, it would go further than the approach under MiCA. Consequently, extending the definition of “investment” to capture crypto-assets could significantly harm the local industry.

2.4.4 New regulated activity for issuing and advising on crypto-assets

Two respondents indicated that a new regulated activity for issuing and advising on crypto-assets was their most preferred option, and a couple of other respondents chose it as their second or third option for implementation alongside their most preferred option(s), such as a new regulated activity for the operation of a CASP.

Reasons given in favour of regulating the issuance of crypto-assets included protecting consumers and maintaining market transparency. However, one respondent said any decision as to whether advising on crypto-assets should become a new regulated activity needs careful consideration.

2.4.5 New regulated activity for issuing and managing stablecoins

A new regulated activity for issuing and managing stablecoins was not selected as the first (or last) option by any respondent. However, some respondents did select this as their second or third option for implementation alongside other options.

The Authority notes that crypto-asset activities currently fall within the regulatory perimeter under the Isle of Man's FSA08 if they meet the definition of a security or electronic money:

- Security tokens: Firms carrying on specified activities in relation to crypto-assets that constitute securities (broadly, tokens that provide rights and obligations akin to specified investments, like a share or debt instrument) must hold a Class 2 (Investment Business) licence under the FSA08, unless an exclusion or exemption applies. There are currently no crypto-asset businesses with a Class 2 licence.
- E-money tokens: Firms carrying on activities in relation to crypto-assets that meet the definition of electronic-money (broadly, stablecoins that are pegged to a currency, such as US Dollars or Pounds Sterling, or other assets, and are used for the payment of goods or services with third parties other than the issuer could meet this definition) must hold a Class 8 (Money Transmission Services) licence under the FSA08, unless an exclusion or exemption applies. There is currently one firm which issues stablecoins that holds a Class 8 licence.

3. Next Steps

The responses to the Discussion Paper are inconclusive, with different views as to whether the sector should be regulated or not and, if it should, the best approach. In addition, several respondents highlighted some significant challenges and barriers to regulation. The cost of implementing, maintaining and supervising a bespoke regulatory regime would be significant and needs to be considered in the context of the size of the crypto-asset sector in the Isle of Man.

The MiCA is due to apply to crypto-asset service providers operating within the EU from 30 December 2024, except for provisions in relation to stablecoins, which took effect from 30 June 2024. Crypto-asset service providers outside the EU that wish to actively promote and/or advertise services to clients in the EU will need to obtain full authorisation, and in order to become a CASP under MiCA must have a registered office in an EU member state where at least part of their crypto-asset services are carried out. They must also have an effective place

of management in the EU and at least one director must be an EU resident. There is a reverse solicitation exemption under MiCA, however it is very narrowly framed and the provision of crypto-asset services or activities by a third-country firm is strictly limited to cases where they are initiated at the exclusive initiative of a client. Therefore, any firm in the Isle of Man that promotes its services within the EU would be subject to regulation under MiCA.

The UK Government has stated its intention to adopt a phased approach to the regulation of the crypto-assets sector, starting with certain activities in connection with stablecoins backed by a fiat currency (e.g. US Dollars or Pounds Sterling) that are used as a means of payment. However, at the time of publication of this Feedback Statement, the secondary legislation to implement the proposed changes to the UK's regulatory perimeter had not been laid under the UK's Financial Services and Markets Act 2000 and the proposals may potentially be subject to change.

The Authority is conscious that any future regulatory changes in the Isle of Man may need to be aligned with the frameworks in other key jurisdictions such as the UK to avoid compliance challenges and mitigate other risks. Making changes at this stage are therefore considered to be premature.

Consequently, the Authority has decided to maintain the current approach under the DBROA15, but to keep the matter under review. The Authority will continue to monitor developments in international standards and regulatory frameworks in other jurisdictions. Any future proposals to change the regulatory perimeter would be subject to further consultation.

In case of any query, please contact —

Ms Sarah Galovics

Isle of Man Financial Services Authority

PO Box 58, Finch Hill House, Bucks Road, Douglas, Isle of Man, IM99 1DT

Email: Policy@iomfsa.im

Telephone: +44 1624 646000

Appendix – List of Groups to which this Feedback Statement has been sent

- Alliance of Isle of Man Compliance Professionals
- Association of Chartered Certified Accountants (Isle of Man branch)
- Association of Corporate Service Providers
- Chartered Governance Institute (Isle of Man branch)
- Chartered Institute for Securities and Investment (Isle of Man branch)
- The Department for Enterprise
- Digital Isle of Man
- Finance Isle of Man
- Financial Intelligence Unit
- Financial Planners & Insurance Brokers Association
- Gambling Supervision Commission
- Institute of Directors (Isle of Man branch)
- Insurance Institute of the Isle of Man
- Isle of Man Association of Pension Scheme Providers
- Isle of Man Bankers Association
- Isle of Man Captives Association
- Isle of Man Chamber of Commerce
- Isle of Man Law Society
- Isle of Man Society of Chartered Accountants
- Isle of Man Wealth & Fund Services Association
- London Institute of Banking and Finance (Isle of Man branch)
- Manx Actuarial Society
- Manx Insurance Association
- Society of Trust and Estate Practitioners (Isle of Man branch)
- The Treasury