



ASIC
Australian Securities &
Investments Commission

Treasury Issues Paper: Initial Coin Offerings

Submission by the Australian Securities and Investments Commission

Introduction

ASIC welcomes Treasury's review of initial coin offerings ('ICOs'). ASIC has seen significant interest from consumers, investors, entities, advisors, service providers and intermediaries on ICOs and crypto-assets, and related business proposals. ICOs raise a range of regulatory issues and areas of risk.

ASIC has undertaken significant work, including engaging with stakeholders, identifying concerns about misleading and deceptive conduct and providing guidance. This engagement has included addressing interest from consumers, investors, entities, advisers, service providers and intermediaries – over the past year, we have engaged with more than 200 businesses or people on ICOs and crypto-assets either through our Innovation Hub or related business units. We have participated in numerous conferences and meet-ups to communicate our key messages on ICOs.

ASIC is also working and sharing information with other domestic and international regulators as they clarify how ICOs and crypto-assets are regulated across taxation, anti-money laundering, payment systems and financial services to ensure shared learning and, where possible, consistency across these areas.

As Treasury notes in the issues paper, ASIC has published guidance on ICOs and crypto-assets in Information Sheet 225 *Initial coin offerings and crypto-currency* (INFO 225). INFO 225 gives guidance about the potential application of the *Corporations Act 2001* (the Act) to entities that are considering raising funds through an ICO and other crypto-assets or digital token businesses. ASIC published INFO 225 in September 2017, with updates in May 2018. A forthcoming update to INFO 225 will make additional observations based on ASIC's recent experiences with ICOs. This reflects the rapidly evolving ICO market and our response on a number of important regulatory issues raised with respect to crypto-assets more broadly.

ASIC's Observations

ASIC has had mixed experiences with ICOs and token generation events. We have been clear that, regardless of the structure of any financial offering, people can't make misleading or deceptive statements about the product. In our experience, ICOs are highly speculative investments, and while there are genuine businesses using this structure, many have turned out to be scams.

INFO 225 explains that where a token offered through an ICO is a financial product, additional laws will apply, above and beyond the prohibitions on misleading statements or conduct. It also explains that the legal status of an ICO is dependent on the circumstances of the ICO, such as how it is structured and operated as well as the rights attached to the coins or tokens issued through the ICO, and not what the offeror calls it.

In several cases where we have seen ICOs operating in breach of the Australian legal requirements, we have contacted the relevant entities and taken further action, resulting in many operators stopping their ICO or proposing alternative structures.

Where the ICO involves the issue of securities by a corporation there are concerns that the ICO may not be able to comply with their obligations under the Act, particularly with respect to the register, title and transfer requirements. Chapter 2C of the Act requires that registers of members (shareholders), option holders and debenture holders be kept in a particular form and contain specific information that goes beyond a bare record of transactions between wallet addresses on a blockchain. Part 7.11 contemplates the use of paper share certificates, and paper transfer forms for shares and debentures in a variety of circumstances, rather than electronic registers that are the basis of ICOs and their subsequent on-sale and transfers. This potentially impedes the efficient application of this technology when issuers of securities seek to comply with the provisions of the Act.

[Regulatory Framework for ICOs in Australia](#)

ASIC has been clear that for ICOs, regardless of the structure, there is one law that will always apply – you can't make misleading or deceptive statements about the product. This is a key focus for ASIC. Australian law prohibiting misleading or deceptive conduct will apply in this space, regardless of whether there is a financial product involved.

While it is a matter for Government to determine the appropriate regulatory framework for ICOs, ASIC has not observed any major gaps in its ability to enforce financial services law with respect to ICOs. While we believe that the current regulatory framework for ICOs and token generation events remains sound, there are opportunities for law reform to make slight adjustments to the Act so that it is technology neutral, such as to the register requirements in Chapter 2C and transfer requirements in Part 7.11 to make clear paper-based transfers and registers do not need to be maintained.

While ICOs are highly speculative investments, they may involve similar risks to other existing financial products. Therefore we believe the existing laws can continue to be applied to ICOs in a technologically-neutral manner. However as the crypto-asset market evolves, there may be further opportunities to modify the regulatory framework.