

Bermuda Tables Initial Coin Offering (ICO) Legislation 百慕大发布首次代币发行（ICO）法例草案

On 13 April 2018, amendments were tabled in Bermuda's House of Assembly to the *Companies Act, 1981* ("Companies Act") and *Limited Liability Company Act, 2016* ("LLC Act") to provide a legislative framework for initial coin offerings ("ICOs"). By implementing this new legislation, the Bermuda Government is laying the foundation for the Island to become a leading global blockchain and ICO centre. The *Companies and Limited Liability Company (Initial Coin Offering) Amendment Act, 2018* (the "ICO Act") will be debated in a later sitting of the House.

The ICO Act regulates offerings of 'digital assets', which are meant to capture all of the various categories of digital coins and tokens (whether they be utility, securitized, equity or otherwise) being issued as ICOs and via token sales. The purpose of the ICO Act is to only regulate those ICOs and token sales which are public crowdfunding or similar type projects. It is not intended to regulate either private sales or those which are engaged in the business of pure virtual currency issuances. In due course, a proposed Virtual Currency Business Act and a separate regime will regulate such businesses as well as those operating digital asset exchanges, e-wallets and similar structures.

ICO as a Restricted Business Activity

Under the new ICO Act (which contains largely the same amendments to both the Companies Act and the LLC Act), an ICO will be treated as a restricted business activity that will require the consent of Bermuda's Minister of Finance prior to an offering being made to the public (an "ICO offering"). It is intended that a FinTech Advisory Committee will be appointed to assist with initial reviews of applications and to ensure that they meet certain minimum criteria regulations.

2018年4月13日，百慕大众议院就1981年《公司法案》（下称“公司法案”）和2016年《有限责任公司法案》（下称“LLC法案”）提交了修正案，从而为首次代币发行（下称“ICO”）提供法律框架。通过实施这项新法例，百慕大政府将为成为全球领先的区块链和ICO中心奠定基础。众议院将在稍后召开的会议上就2018年《公司和有限责任公司（首次代币发行）修正案》（下称“ICO法案”）进行讨论。

ICO法案规管“数字资产”的发行。数字资产指的是通过ICO及代币销售发行的各类数字货币和代币（不论是实用型、证券型、股权型或是其他类型）。ICO法案仅用于监管公众筹或类似性质之项目的ICO和代币销售，不监管私人销售或从事纯虚拟货币发行业务的实体。稍后将提议颁布《虚拟货币业务法案》及设立独立体系，以监管此类业务及经营数字资产交易所、电子钱包和类似平台的实体。

ICO 是一种受限制的商业活动

根据新的ICO法案（其中对公司法案和LLC法案的修订大致相同），ICO将被视为一种受限制的商业活动，在向公众发行（即“ICO发行”）之前需要经过百慕大财政部长的批准。另外，拟设立金融科技咨询委员会，以协助对申请作初步审核，并确保申请符合最低标准的规定。

A company wishing to launch an ICO can incorporate within the typical timeframe of 24 to 48 hours using Bermuda's usual incorporation procedures. However, it will not be able to commence its ICO offering without first obtaining the Minister's approval. As part of that process, the applicant must provide a copy of the draft ICO offering document and any other documents required by the Minister. Note that the Minister may, if he deems necessary, impose appropriate conditions on the applicant or on its ICO.

The minimum criteria which should be included in the application for consent are matters such as:

- Details about the founder(s), promoter, and any other persons connected to the business and the underlying digital assets offered for sale;
- Details regarding licenses, permissions or other authority regarding financial markets in any other jurisdiction;
- Details regarding the development and implementation of any product, service or other project related to the ICO, including timelines for completion;
- Details about the target market and any restrictions regarding participants;
- The amount of money intended to be raised via the ICO and intended purpose/use for the funds;
- Details regarding the underlying digital asset including accompanying rights, features, functionality, documentation of participants and intended transferability;
- Details regarding the technology to be used; the ability of the technical platform to enable the collection, and confirmation and storage of purchaser identity information; and
- Details regarding compliance and auditing of ICO transactions.

Filing Requirements

The ICO offering document must also be filed with the Bermuda Registrar of Companies. The offering document must include a certification by counsel or an officer of the applicant that it includes certain minimum requirements (similar to the minimum requirements which apply to the offering of securities to the public pursuant to the Companies Act). These include matters such as:

- Details regarding the promoter including business lines and company officers;
- The business or proposed business of the company;

有意进行ICO的公司可根据百慕大的惯常注册程序在24至48小时内完成注册。但是，在未获得财政部长批准的情况下，ICO将无法进行。作为发行流程的一部分，申请人必须提供一份草拟ICO发行文件及财政部长要求的其他文件。需要留意的是，财政部长（若其认为必要）可对申请人或其ICO施加适当的条件。

寻求批准的申请中须包含的最低标准涉及以下事项：

- 创始人、发起人及与业务相关的任何其他人士，以及将提呈发售的相关数字资产的详细信息；
- 任何其他司法管辖区的与金融市场相关之牌照、许可或其他授权的详细信息；
- 任何与ICO相关的产品、服务或其他项目的开发和实施的详细信息，包括完成进度表；
- 目标市场的详细信息，及对参与者的任何限制；
- 计划通过ICO募集的金额，以及筹集资金的预期目的/用途；
- 相关数字资产的详细信息，包括其附带权利、特征、功能、参与者的证明文件以及预期的可转让性；
- 将使用技术的详细信息，及技术平台收集、确认和存储购买者身份信息的能力；及
- ICO交易的合规和审计详情。

申请要求

ICO发行文件亦必须呈交予百慕大公司注册处处长。发行文件必须包含申请人的法律顾问或高级管理人员提供的证明，其中包含有关下列事项的若干最低要求（类似于《公司法案》中有关向公众发行证券的最低要求）：

- 发起人的详细信息，包括其业务范围和公司人员；
- 公司目前或拟进行的业务；

- The amount of money intended to be raised pursuant to the ICO;
 - Disclosure as to the allocation of the amounts to be raised amongst the classes of any issuance (pre-sale, post ICO);
 - Rights and restrictions in relation to the digital asset issued;
 - Proposed timeline for any project to be completed with funds raised via the ICO;
 - Information regarding the opening and closing of the ICO offer period;
 - All commissions payable on the sale of the digital assets that are being offered;
 - Relevant risk warnings; and
 - Statements on how personal information will be used.
- 计划透过ICO募集的金额；
 - 各类发行（预售、ICO后交易）所募集资金的分配情况披露；
 - 与发行的数字资产有关的权利和限制；
 - 将使用ICO募集资金的任何项目的计划时间安排；
 - 有关ICO开始和结束时间的信息；
 - 出售发行中的数字资产时所应支付的所有佣金；
 - 相关风险警告；及
 - 关于如何使用个人信息的声明。

Requirements in General

A general risk statement is required to be included in the offering document which outlines substantial project risks, impacts to the purchasers in the event that the project fails and any disclaimers of warranties or guarantees that may impact the participants. The participants are also provided with a cooling off period during which they may withdraw from the ICO offering.

In the event that information in the offering document becomes inaccurate in any material respect, there is an obligation that the offering document is updated as soon as reasonably practicable, and that supplementary particulars are filed with the Registrar. There are penalties for publication of untrue statements or mis-statements that are not corrected.

Conyers is the leading Bermuda firm in the blockchain and digital assets arena, with experience advising on ICOs. Our dedicated team of lawyers can assist clients looking to establish entities involving digital assets and blockchain technology.

For additional information, please contact your usual Conyers Dill & Pearman representative.

一般要求

发行文件须包含一般风险声明，概述重大项目风险、若项目失败可能对购买者产生的影响以及可能影响参与者的任何保证或担保免责声明。此外，参与者有一段冷静期，在此期间可退出ICO。

若发行文件中的信息在任何重大方面不准确，则必须尽快更正，并将更正细节提交予注册处处长。对于发表不实或虚假声明，且未有进行更正的行为，将予以处罚。

康德明是区块链和数字资产领域中的领先百慕大律师事务所，在为ICO提供法律意见方面拥有丰富的经验。我们的专业律师团队可为寻求建立涉及数字资产和区块链技术实体的客户提供协助。

有关其他资料，请联络阁下于康德明律师事务所的日常联络人。

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

本文并非法律意见，其内容亦非详尽无遗，只可作为概览及一般参考资料。感谢您的垂阅!

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Conyers Dill & Pearman is a leading international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. Conyers has over 130 lawyers in eight offices worldwide and is affiliated with the Conyers Client Services group of companies which provide corporate administration, secretarial, trust and management services.

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