



ASIC

Australian Securities & Investments Commission

Initial coin offerings

This information sheet (INFO 225) gives guidance about the potential application of the *Corporations Act 2001* (Corporations Act) to businesses that are considering raising funds through an initial coin offering (ICO). This information sheet covers:

- › [What is an ICO and its legal status?](#)
- › [When could an ICO be an offer of a managed investment scheme?](#)
- › [When could an ICO be an offer of a share in a company?](#)
- › [When could an ICO be an offer of a derivative?](#)
- › [When could an ICO be an offer of a non-cash payment facility?](#)
- › [When could a platform for offering ICOs become a financial market or crowd-sourced funding platform regulated by ASIC?](#)
- › [When would laws prohibiting misleading or deceptive conduct apply to an ICO?](#)
- › [How can prospective ICO issuers obtain informal assistance from ASIC?](#)

ASIC is aware of the global interest in the use of ICOs by businesses to raise funds. A number of international regulators have issued guidance on the application of their securities and financial services laws on ICOs.

ASIC recognises that ICOs have the potential to make an important contribution to the options available to businesses to raise funds and to investment options available to investors. An ICO must be conducted in a manner that promotes investor trust and confidence, and complies with the relevant laws. Whether the Corporations Act applies to an ICO will depend on the type of ICO offering and what rights attach to the coins from the ICO itself, underlying coins or tokens used in the ICO (all referred to as '**coins**' for the purposes of this information sheet).

ASIC aims to assist businesses to understand their potential obligations under the Corporations Act by issuing the guidance contained in this information sheet. ASIC also encourages businesses to approach the [Innovation Hub](#) for informal assistance.

What is an ICO?

An initial coin offering (ICO) is a new form of funding, used by a business or individual to raise funds from various types of investors through the internet. An ICO can also be referred to as an 'initial token offering' depending on the context.

ICOs generally operate by allowing investors to use cryptocurrency (such as bitcoin) to purchase coins via the internet for a set period of time. The ICOs are often global offerings which can be created anonymously and/or accepted anonymously.

ICOs typically vary in nature and may raise funds for a variety of projects, including the development of a new cryptocurrency or distributed ledger technology (for example, blockchain) related services. Anyone with access to the internet can create or invest in an ICO.

For a discussion of distributed ledger technology see [ASIC Information Sheet 219](#).

What is the legal status of ICOs?

In Australia, the legal status of an ICO is dependent of the circumstances of the ICO, such as how the ICO is structured and operated, and the rights attached to the coin (or token) offered through the ICO.

In some cases, the ICO will only be subject to the general law and the Australian consumer laws regarding the offer of services or products. In other cases, the ICO may be subject to the Corporations Act.

This information sheet considers types of ICO offers and whether the Corporations Act might apply to them based on attributes of some typical forms of offerings.

It provides guidance on the legal status of ICOs made available to investors in Australia regardless of whether the ICO is created and offered from within Australia or offshore.

When could an ICO be a managed investment scheme?

What is a managed investment scheme?

A managed investment scheme (MIS) is defined within the Corporations Act. Basic indicators of whether an arrangement is an MIS are as follows:

- people contribute assets (such as digital currency) to obtain an interest in the scheme ('interests' in a scheme are generally a type of 'financial product' and are regulated by the Corporations Act)
- the assets are pooled together with one or more other contributors or used in a common enterprise to produce financial benefits or interests in property, and
- the contributors do not have day-to-day control over the operation of the scheme but, at times, may have voting rights or similar rights.

Application to ICOs

An assessment of what rights are attached to the coins (or tokens) issued under an ICO is the key consideration in relation to assessing the legal status of an ICO. For this purpose what is a right is to be interpreted broadly and includes rights that may arise in the future or on a contingency, and rights that are not legally enforceable. If the value of the coin is related to the management of an arrangement as described above, the issuer of the ICO is likely to be offering an MIS.

In some cases, ICO issuers may frame the entitlements received by contributors as a receipt of a purchased service. However, if the value of the digital coins acquired is affected by the pooling of funds from contributors or use of those funds under the arrangement, then the ICO is likely to fall within the requirements relating to MISs. This is often the case if what is offered through the ICO has the attributes of an investment.

If an MIS is being used there are a range of disclosure, registration and licensing obligations under the Corporations Act.

- › [More information about managed investment schemes](#)
- › [Licensing requirements for operators of managed investment schemes](#)

When could an ICO be an offer of shares?

What are shares?

A share is a collection of rights relating to a company. There are a range of types of shares that may be issued. Most shares issued by public companies are 'ordinary shares', and carry rights regarding the ownership of the company, voting rights in the decisions of the body, some entitlement to share in future profits through dividends, and a claim on the residual assets of the company if it is wound up.

Most shares issued in Australia would come with the benefit of limited liability as well.

› More information about shares

Application to ICOs

When an ICO is created in order to fund a company (or to fund an undertaking that looks like a company) then the rights attached to the coins issued by the ICO may fall within the definition of a share.

The bundle of rights referred to above may be used by ASIC to help determine if a coin is in fact a share. If the rights attached to the coin (which are generally found in the ICO's '**white paper**', a document issued by an ICO which may appear to be similar to a prospectus) are similar to rights commonly attached to a share—such as if there appears to be ownership of the body, voting rights in decisions of the body or some right to participate in profits of the body shown in the white paper—then it is likely that the coins could fall within the definition of a share.

Where it appears that an issuer of an ICO is actually making an offer of a share, the issuer will need to prepare a prospectus. Such offers of shares are often described as initial public offers (IPOs).

By law, a prospectus must contain all information that investors reasonably require to make an informed investment decision.

Importantly, though an ICO may appear to be similar to an IPO, the ICO may not offer the same protections. Where a prospectus for an IPO does not contain all the required information, or includes misleading or deceptive statements, investors may be able to withdraw their investment before the shares are issued. No such protection exists for ICOs made without a prospectus.

For more details about the information a prospectus should contain see [Regulatory Guide 228](#).

When could an ICO be an offer of a derivative?

What is a derivative?

Section 761D of the Corporations Act provides a complex definition of a derivative. For the purpose of this information sheet a 'derivative' is a product that derives its value from another 'thing' which is commonly referred to as the 'underlying instrument' or 'reference asset'. The underlying instrument may be, among other things, a share, a share price index, a pair of currencies or a commodity (including a cryptocurrency).

Two examples of derivatives are options and futures. An option is a contract between two parties. The buyer has the right, but not the obligation, to buy (or sell) an asset, at a set price, on or before a specified future date. Futures are contracts to buy or sell a particular asset (or cash equivalent) on a specified future date. This may involve the use of intermediaries, who themselves may need to be licensed.

Application to ICOs

If an ICO produced a coin that is priced based on factors such as a financial product or underlying market or asset price moving in a certain direction before a time or event which resulted in a payment being required as part of the rights or obligations attached to the coin, this may be a derivative.

We are aware this is an area that smart contracts are suggested to be utilised by traditional financial services business to increase efficiency by digitalising this step.

For more information on the licensing of derivatives see our [licensing pages](#).

Trading of coins on a financial market?

What is a market?

A financial market is a facility through which offers to acquire or dispose of financial products are regularly made. Anyone who operates a financial market in Australia must obtain a licence to do so or otherwise be exempted by the Minister.

Application to ICOs

In the event that the ICO (or underlying) coin is found to be a financial product (whether it is a managed investment scheme, share or derivative), then any platform that enables investors to buy (or be issued) or sell these coins may involve the operation of a financial market.

To operate in Australia, the platform operator may need to hold an Australian market licence unless covered by an exemption.

- › More information on markets
- › More information on market licence exemptions

Relationship between ICOs and crowd-sourced funding?

ICOs are sometimes referred to by industry as a form of crowd funding. Crowd funding using an ICO is not the same as the 'crowd-sourced funding' (CSF) that will be regulated by the Corporations Act from 29 September 2017. Care should be taken to ensure the public is not misled about the application of the CSF laws to an ICO.

Under the new laws CSF will be a financial service, often including a platform or market, where start-ups and small businesses raise funds, generally from a large number of investors that invest small amounts of money. There will be specific rules for the CSF regime which reduce the regulatory requirements for public fundraising while maintaining appropriate investor protection measures.

The rules require that a provider of CSF services must hold an Australian financial services licence with authorisation to provide this service.

- › More information about the CSF regime

When could the coin issued under an ICO be a non-cash payment facility?

What is a non-cash payment facility?

A non-cash payment (NCP) facility is an arrangement through which a person makes payments, or causes payments to be made, other than by physical delivery of currency.

This type of facility can be a financial product for which an AFS licence is required if payments can be made to more than one person. An intermediary that arranges for issue of a NCP facility may need an AFS licence, or to act on behalf of an AFS licensee.

Application to ICOs

Coins offered under an ICO are unlikely to be NCP facilities, though they may be a form of value that is used to make a payment (instead of physical currency). An ICO may involve a NCP facility if it includes an arrangement that allows:

- payments to be made to a number of payees in this form, or
- payments to be started in this form and converted to fiat currency to enable completion of the payment.

For general information on NCP facilities, including the low-value exemption that can apply see [Regulatory Guide 185](#).

Misleading or deceptive conduct

What is misleading or deceptive conduct?

Australian law prohibits misleading or deceptive conduct in a range of circumstances, including in trade or commerce, in connection with financial services, and in relation to a financial product. Care should be taken to ensure promotional communications about an ICO do not mislead or deceive potential investors, and do not contain false information.

[Regulatory Guide 234 Advertising financial products and services \(including credit\)](#): Good practice guidance contains guidance to help businesses comply with their legal obligations to not make false or misleading statements or engage in misleading or deceptive conduct.

Where can I get informal assistance and more information?

ASIC's Innovation Hub

ASIC's Innovation Hub was established to assist innovative businesses.

Individuals or entities that may be considering an ICO and are not sure whether they may be subject to obligations under the Corporations Act are advised to [contact the Innovation Hub](#) to request informal assistance.

ASIC can see the benefits and risks of the ICOs and would be willing to engage those in the area.

More information

- › [ASIC's role and the laws we administer](#)
- › [Australian financial services licences](#)
- › [ASIC's Innovation Hub](#)
- › [Investing in initial coin offerings - ASIC's MoneySmart website](#)

This is **Information Sheet 225 (INFO 225)**, issued in September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Last updated: 04/10/2017 11:31