



# THE RISE OF NEW WORLD PAYMENTS: HOW BEST TO REGULATE?



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Here in the Isle of Man, sitting in the middle of the Irish Sea, we have a thriving international financial presence, yet we are self-regulated and independent from the UK. Recently, the Isle of Man government has been promoting certain cryptocurrency elements of the financial and financial technology ('Fintech') sectors, highlighting the benefits to companies in looking to relocate and use the Isle of Man to assist with their growth plans.

In June 2014 the Department of Economic Development announced that the Isle of Man intended to take specific actions aimed at helping protect businesses and customers utilising digital currencies. It intended to provide an environment for high-quality businesses in this rapidly emerging field who wish to operate here, thus demonstrating the Isle of Man's commitment to keeping abreast with market developments while maintaining international duties and responsibilities. At the time, then Minister for Economic Development, John Shimmin, welcomed the move to create a framework for the regulation of digital currencies but urged for there to be innovation and for a regulatory environment that is both effective and pragmatic.

More recently, in November 2015, it was announced that Jonathan Mills had been appointed as the Isle of Man's new Director of e-Business. Mr Mills acknowledged that the Isle of Man is already established as a global centre for e-Gaming and has a growing reputation in the ICT sector, particularly in respect of blockchain technologies and digital currencies.

## FINANCIAL SERVICES AND NEW WORLD PAYMENTS LEGISLATION

Within the Isle of Man, the Financial Services Act 2008 is the main piece of legislation covering financial services. In line with the Financial Services Act and its secondary legislation, currency exchanges and/or arranging deals in investments are activities that need to be licenced. However, cryptocurrency exchanges (or "digital" exchanges) are considered to fall outside of

this regime on the basis that crypto/digital currency is not considered to be a currency, per se, but more akin to property. As such a view has been taken that it falls outside of the financial services regulations.

The Isle of Man government has, however, taken a committed stance to ensure that "falling outside the financial services regulation" does not mean being unregulated. It is alive to its responsibilities both to consumers and to businesses, both on the Island and internationally, and for this reason the government has, effective as at the beginning of November 2015, adopted the Designated Businesses (Registration and Oversight) Act 2015 (the "Act").

The Act sets out a list of designated non-financial businesses and professions ("Dedicated Businesses") to which it applies. These businesses and professions include those affecting lawyers, accountants, auditors and tax advisers. For the first time, however, it also captures crypto/digital currency exchanges.

The Act provides that Designated Businesses (including cryptocurrency exchanges) must register under the Act, behave in accordance with the terms of registration and also comply with AML/CFT legislation (see below). The Isle of Man Financial Services Authority (the "Authority", itself being newly formed and having had transferred to it the functions of the previous Financial Supervision Commission) then has the responsibility of assessing compliance with "AML/CFT legislation" and conducting investigations into potential criminal liability arising from any breach.

"AML/CFT legislation" is, in essence, anti-money laundering legislation, anti-terrorism and crime legislation and the Isle of Man Proceeds of Crime Act



2008. So, in other words, the Isle of Man as a jurisdiction will now insist on cryptocurrency exchanges having to comply with established anti-money laundering and anti-terrorism requirements.

The Authority has the power to register an applicant absolutely, conditionally or not at all and it must refuse to register an applicant if it is not satisfied that the applicant is a fit and proper person. Furthermore, the Act is a piece of legislation that has teeth. Not content to wait for whistle-blowers, the Act empowers the Authority with far-reaching oversight abilities, including:

- The compulsory submission of a registered person's annual returns and statements of compliance with AML/CFT legislation;
- The ability of the Authority to carry out inspections and investigations at a registered person's premises;
- The ability to inspect books, records and documents, and to investigate transactions of registered persons;
- The power of entry and access, during reasonable hours, to enable the above measures and to take possession of accounts and documents as it sees fit; and
- The ability to exercise these powers not just against registered Designated Businesses but also against those whom the Authority suspects of carrying on a designated business without having registered it.

In the event that the information above is not forthcoming then the court has the ability to give the Authority extra powers and may, in certain cases, even issue a search warrant.

It will be interesting to see how this move will be perceived by the international markets. As recently as two years ago the European Banking Authority warned of the risks in dealing with virtual currencies, even going so far as to recommend that national supervisory authorities (such as the Authority) discourage credit, payment and e-money institutions from buying, holding or selling virtual currencies. It also acknowledged that putting in place a comprehensive

regulatory approach would be "highly resource-intensive" and "may take considerable time to develop".

Perhaps, therefore, by adopting what Manx legislators believe to be the world's first regulatory framework to assist digital currencies in becoming a genuine new world payment, the Isle of Man has taken a savvy initiative. Certainly institutions seem to be warming towards cryptocurrency, cryptocurrency exchanges and the technology that powers them: Goldman Sachs has filed a patent application for its own cryptocurrency settlement system, Barclays has sought a partnership with a bitcoin exchange following research in its London offices; Citigroup has been testing its own "Citicoins" in its laboratories and, excitingly, there has been the creation of R3, a global consortium of some of the largest names in banking who are working on ways to use blockchain (the technology behind cryptocurrencies) in the financial markets.

## TURNING TO THE FUTURE

The landscape at the moment points to cryptocurrency exchanges within the Isle of Man not needing to hold a financial services licence, but continuing to need to be registered to conduct designated business and to ensure that anti-money laundering measures and the like are being adhered to. The results can be already seen, with high quality clusters and an eco-system being formed in the Isle of Man around this technology.

Other jurisdictions are also welcoming cryptocurrency business. However, this new legislation positions the Isle of Man well in an age of increased use of, and interest in, digital currencies. It reinforces the Island's status as a jurisdiction that welcomes well-controlled and compliant businesses. It also clearly demonstrates the will and ability to regulate matters effectively and to ensure that internationally recognised procedures are maintained and scrutinised. Finally, it ensures to the greatest extent possible that those operating outside of the law will be prosecuted and punished and that the Isle of Man endures as the well-regulated, yet innovative, territory that it is.



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