



FCA Cryptoasset registrations

Guide 1: Requirement to register

Guidance is provided for firms and is not intended as legal advice.

The FCA are the anti-money laundering (“AML”) and counter-terrorist financing (“CTF”) supervisor of UK cryptoasset businesses under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“MLR”). Firms proposing to conduct cryptoasset activities in the UK must register with the FCA beforehand. Cryptoasset firms are sometimes referred to as Virtual Asset Service Providers (“VASP”).

Individuals and businesses have to register with the FCA for AML and CTF purposes, if they are carrying on cryptoasset activities that are:

- (i) within scope of the MLR
- (ii) if this activity is in the course of business; and
- (iii) if the activity is carried on in the United Kingdom.

The FCA recommend that legal advice is sought regarding whether your business requires registration before engaging in the application process. This is always advisable before committing resources to preparing an application. You may want to read the following two guides which, whilst having been prepared in the context of authorised payments firms, describe an approach that is equally applicable for cryptoasset businesses:

- ⇒ ***Applications for Authorisation: Guide 1 - Permissions***
- ⇒ ***Applications for Authorisation: Guide 2 - Service development***

A cryptoasset registration is different from authorisation as an Electronic Money Institution (“EMI”) or Payment Institution (“PI”). An EMI or PI wishing to undertake cryptoasset activities in the UK will still need to register with the FCA (i.e. in addition to applying to become authorised / maintaining its authorisation as an EMI or PI). There is, however, an element of overlap in the information that is required to be submitted to the FCA; a cryptoasset application for registration can therefore draw upon materials already prepared for an EMI / PI application for authorisation.

An application can be made by a corporate entity, partnership or sole trader.

As mentioned above, an application for registration is required where you are carrying on cryptoasset activities that are: (i) within scope of the MLR; (ii) if the activity is in the course of business; and (iii) carried on in the United Kingdom - each of these are described below. The



FCA have also provided a flowchart to assist in deciding whether an application for registration is required – see end of this guide.

Cryptoasset activities within the scope of the MLR

The application will need to include a description of the cryptoasset activities that the applicant firm intends to provide. Cryptoasset activities comprise:

- **The exchange of fiat currency for cryptoassets** - Exchanging fiat currency (government-issued currency) for a cryptoasset or vice versa.
- **Providing custodian wallets for storing cryptoassets on behalf of customers** - A business that looks after the customer's tokens in its IT systems or servers and may administer or transfer the token on behalf of the customer.
- **The exchange of one cryptoasset for another** - Exchanging one cryptoasset for another cryptoasset.
- **Operating cryptoasset ATMs** - Physical kiosks that allow users to exchange cryptoassets and fiat currencies.
- **Facilitating the peer-to-peer exchange of cryptoassets** - A business that provides an online marketplace which facilitates the exchange of fiat currencies and cryptoassets (both fiat-to-crypto and crypto-to-crypto) between prospective buyers and sellers; and
- **Participation in Initial Coin Offerings** - A business that sells a cryptoasset, promoted or sold a new type of cryptoasset, or one that will become usable in the future, in exchange for fiat currency.

As with all applications, the 'service description' should be thoroughly considered and clearly stated in order to determine the specific activities that the firm will be applying for, as well as to implement appropriate arrangements and allocate sufficient resources – see the previously referenced guides.

What is in the course of business?

The FCA will assess whether an activity is being carried on by way of business in the UK on a case-by-case basis considering factors, including:

- **Commercial element:** whether the applicant advertises, acts or holds itself out in such a way that suggests that they are providing services by way of business related to cryptoasset services. The boundary of service provision will need to be clearly defined, e.g. whether the applicant firm is involved in cryptoasset activities itself or is partnering with third-party cryptoasset firms.
- **Commercial benefit:** whether the applicant receives direct or indirect benefit from this service.
- **Relevance to other business:** the significance of the cryptoasset asset activity in relation to the applicants' other business activities - it is possible that cryptoasset activities form only part of the overall business activities of the applicant? The FCA will consider matters to assess the significance of the cryptoasset asset service in relation to other services provided by the business.
- **Regularity / frequency:** whether the frequency of carrying on a cryptoasset service suggests that it is being carried on as a business.



The above factors that are considered by the FCA are cumulative and subject to an element of interpretation; the ultimate decision regarding whether an activity is being carried out in the course of business may therefore not be clear cut. Businesses may want to pro-actively seek registration in order to have clarity over their service provision. Legal advice should certainly be sought when deciding on the most appropriate course of action.

Business carried on in the United Kingdom

The FCA refer to “*carrying on in-scope cryptoasset activity by way of business in the UK*”.

What constitutes a UK presence? The FCA assess individual cases on their own merits, considering the nature and business model that is being undertaken and factors including:

- Whether the business has a UK office, registered office or head office. The FCA will consider the type of activity that is carried on from the office(s) and if the activity means that it is carrying on business in the UK.
- The presence of a UK ATM will be considered business carried on in the UK (requiring the operator to be registered).
- The presence of UK staff may indicate a UK presence, especially a UK-based Money Laundering Reporting Officer (“MLRO”).
- It is unlikely that the FCA would consider a business with no UK office or other activity in the UK, beyond simply having a client in the UK, to be carrying on business in the UK.

The FCA provide an example of a cryptoasset exchange, registered in a jurisdiction other than the UK, which has no offices or agents in the UK, but does allow UK customers to open trading accounts and permits them to buy/sell/hold cryptoassets. In this instance the FCA state that they would not automatically consider this to be a business carried on from the UK.

FCA Flowchart – Do I need to register?

