

1 **## Do you agree crypto-asset activities should be regulated? Please indicate whether you:**

- 2 1. Strongly Agree
- 3 2. Slightly Agree
- 4 3. Neither Agree nor Disagree
- 5 4. Slightly Disagree
- 6 5. Strongly Disagree

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8 **\*\*4. Slightly Disagree\***

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10 **## Please explain the reasons for your answer:**

11 **\*\* There are several weighing factors here - this is not intended as a criticism of the IOMFSA, but it is helpful to establish the "target" oversight/regulation model and the one which will actually transpire in practice. There are also two separate considerations - (1) the regulation and oversight of Isle of Man resident crypto-asset businesses, and (2) the protection of Isle of Man customers engaging with non-Isle of Man (and Isle of Man) crypto-asset businesses. (1) is much easier to regulate and control than (2), because Isle of Man customers can use a regulated (or unregulated) crypto-asset business (such as a crypto exchange) anywhere in the world. From a Regulatory perspective, this is challenging because the ability of the IOMFSA to guard against this and take enforcement action against a crypto-asset business based abroad with Isle of Man customers is likely to be limited. Another key challenge of regulating is that remuneration in the crypto sector - fuelled by some of the early meteoric gains in various cryptocurrencies - is high. This means that - a point which the regulator has already acknowledged in other sectors, as has the IOMGSC - that attraction and retention of individuals with good knowledge in this sector is difficult for them. Businesses in the sector also know this, and deliberately poach the top staff. This leaves the IOMFSA, which is constrained by salary bands and other requirements it must adhere to as part of the Isle of Man Government, in a difficult spot. It is likely any regulatory team will have a revolving door of staff, which means creating, implementing, optimising and enforcing a robust bespoke regulatory regime will be difficult.\*\***

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13 **\*\* In principle we believe some sort of regulation is appropriate, as this follows the direction of regulatory travel elsewhere in the world whilst attempting to protect the Isle of Man's reputation as a legitimate place to do business. However, we have concerns over the resources to support any regulatory activity and the risk therefore of poor regulation and/or oversight, or of over-regulating versus the actual risks which could choke the industry in its relative infancy. On balance therefore, our response of "slightly disagree" is intended to indicate a "no" to any new custom regulation for this sector, but to keep the existing DBROA15 currently in place, and potentially to explore a "light overhead" regulatory framework as discussed below. In highlighting the general travel of regulatory activity in the Discussion Paper, we agree the Isle of Man doesn't want to repeat the "grey markets" phase of eGaming which is what zero regulation might encourage. That being said, MiCA and many similar frameworks are regulations which adopt the "place of supply" concept, so an Isle of Man crypto business wanting to sell into the EU likely has to comply with MiCA in any case. It is hard to make the case that the IOMFSA should attempt to regulate/oversee this or create a bespoke localised version. \*\***

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15 **\*\* The regulatory framework which we believe should be adopted is a "passport" or "permit" (conceptually similar to GDPR equivalence) such that the Isle of Man can obtain many of the benefits and protections without overdoing the Policy and subsequent impact on Isle of Man Government resources. As mentioned in the Discussion Paper, this is a rapidly moving sector and arguably its already too late to try and formulate a bold "regulatory stance" on it. Creating one now may be unhelpful to Isle of Man PLC's marketing and it's hard to see regulation having the same effect as in eGaming where it was seen a major positive to acquire an Isle of Man licence; it is too late in the crypto-asset cycle for that to be effective as jurisdictions such as Dubai have set their stance on this. We believe the best solution at this stage is some type of licence or sublicense or approval if the business can demonstrate that it complies with MiCA (as enforced by the EU) or another equivalent legislation, but the business is based on the Isle of Man. This should provide oversight of Isle of Man businesses to protect the Isle of Man's international reputation.\*\***

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17 **## Please rank the options presented for the potential regulation of crypto-asset activities in your order of preference with (1) being the most preferable and (5) being the least preferable:**

- 18 > Maintain current approach under the DBROA15 (i.e. no change) **\*\*1\*\***
- 19 > Extend existing 'investment' definition to include crypto-assets **\*\*4\*\***
- 20 > New regulated activity for the operation of a crypto-asset service provider **\*\*2\*\***
- 21 > New regulated activity for issuing and advising on crypto-assets **\*\*5\*\***

22 > New regulated activity for issuing and managing stablecoins \*\*3\*\*

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24 **## Please explain your ranking of the options:**

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**\*\* Trying to bring too many businesses into the regulatory sphere is unlikely to be helpful (e.g. advising on crypto-assets). The Isle of Man is unlikely to have the authority to effectively police other jurisdictions approaching Isle of Man customers with bespoke regulation (e.g. in the way that the US, EU, China can because of the size of their customer base) and therefore the only plausible regulation would only affect Isle of Man resident businesses. The crypto-asset sector is geographically agnostic and fairly footloose, and so if the primary goal of any proposed regulation is to protect Isle of Man customers (as opposed to regulating Isle of Man businesses) it can only realistically be achieved by investigation of a "place of supply" type requirement. The Isle of Man isn't large enough a market for many/any crypto exchanges to make special consideration for, in the same way it is becoming increasingly difficult to get services and products delivered from the US, EU, and UK, and so we believe the most viable approach is to adopt an existing framework which is large enough that businesses will already want to be in compliance with it, (again, such as the customer aspects of the EU's MiCA). The most likely outcome of a bespoke regulatory approach would be that Isle of Man customers would no longer be able to access regulated (or unregulated) cryptocurrency services provided by companies elsewhere in the world, and if the regulation makes it difficult to set up a crypto-asset business on the Isle of Man, it's hard to see the outcome being that the risk to Isle of Man customers is less - as they can just use a crypto-asset service provider (such as a crypto exchange) elsewhere in the world. From a Regulatory perspective, the challenge is that Isle of Man customers can use a regulated (or unregulated) crypto exchange anywhere in the world and preventing foreign businesses from offering this and enforcing it is virtually impossible. We do not believe that bringing in a custom Isle of Man "place of supply" regulation would be realistic or therefore effective because of this lack of scale.\*\***

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**\*\* The more likely outcome, at a time of economic challenges, is that it may mean that the number of potential crypto-asset businesses on the island will be minimal, and it could even cause existing crypto-asset businesses to relocate. There are many other territories making it welcoming for crypto-asset businesses, and the corporate tax "marketing angle" is under threat for any successful business with the OECD Pillars 1 and 2 and related legislation in the pipeline. There are also known existing challenges finding enough workers with the right skillsets here to staff a crypto-asset business, making the Isle of Man even less attractive. For that reason, we believe that focusing on the AML side of regulation is the right approach, potentially combined with some form of light approval/sublicensing regime for Isle of Man businesses in this sector. \*\***

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**## Are there any other options for the potential regulation of crypto-asset activities that you think should be considered?**

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**\*\* As set out above, we believe the most feasible approach is some sort of "passport" type licence scheme if a business has already demonstrated it meets the criteria to comply with MiCA or another recognised set of regulatory standards. This means the development of the regulation requires much less Isle of Man resource, but it still allows the IOMFSA to demonstrate it is protecting Isle of Man PLC's reputation for any businesses established locally. Consideration would need to be given to the approach for a business that DOESN'T comply with any of MiCA or similar though, and how that would be dealt with / enforced. \*\***

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**## If you believe crypto-asset activities should be regulated, what kind of information would you like to see in a future Consultation Paper on the subject?**

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**\*\* If the Isle of Man does regulate, we believe this regulation should focus on ICOs and the areas of highest risk to Isle of Man customers, rather than core cryptocurrencies and well-regulated centralised exchanges. By their very nature, decentralised exchanges are very difficult to regulate and oversee and we believe it would be inadvisable to attempt this. As set out in our response, we also do not believe in creating custom Isle of Man regulation for a sector that is so geo-agnostic as this is unlikely to be (a) effective or (b) a sensible use of resources. Fundamentally, to apply a completely different set of parameters to the levels currently applied to both Financial Services and eGaming would not only be greatly inconsistent but may expose all regulated activities to an unacceptable level of jurisdictional regulatory risk.\*\***

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**## Do you have any additional comments in relation to the regulation of crypto-asset activities?**

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**\*\* Our key concern is that if we regulate - especially if we regulate heavily - in this sector, any potential new businesses will be dissuaded. For this reason, a sensible balance needs to be struck. The economy is incredibly fragile - the Isle of**

Man is still grappling with many issues and as recent news articles have highlighted, 20% of the Isle of Man's economically active population work for the Government in some way or other. We could waste lots of time and money trying to regulate heavily and end up with minimal or no licences granted. We believe in a compromise solution which prevents a rogue business forming on the Isle of Man and harming its international reputation by using existing frameworks. If custom regulation is brought in, we strongly believe this should be based on volume/value of activity (in a similar way to PSD2 and other equivalent legislation, and below a certain threshold, requirements are minimal). This approach would also create an opportunity to fund the IOMFSA's activities as the licenceholder(s) would fund it (as set out in the Discussion Paper). We believe strongly that the existing DBROA15 requirements should remain in order to mitigate the Anti-Bribery and Corruption risks.\*\*

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\*\* Our members are happy to provide further input and guidance if needed. \*\*