



LEGALINK
INTERNATIONAL BUT PERSONAL

ICOs and Token Sales

Regulatory Framework in Various Jurisdictions



INTRODUCTION

By Christopher Trowbridge and Robert Long
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The world's interest in cryptocurrency has soared, and along with this interest, governmental regulatory scrutiny has increased.

China and South Korea have banned initial coin offerings, and countries including Hong Kong, Singapore, and the United States have issued regulatory guidelines. Despite such bans and warnings, with bitcoin trading as high as \$19,000 USD in December 2017, up from approximately \$800 USD in December 2016, financial markets around the world have taken notice and everyone from individual retail investors in Asia to global trading giants like United States-headquartered Goldman Sachs are exploring bitcoin strategies. Clients are seeking advice on which jurisdictions will provide the most advantageous platform for pursuing cryptocurrency opportunities. Legalink member firms are uniquely positioned to work together to advise our clients on regulation involving initial coin offerings and token sales in jurisdictions around the globe.

The Legalink member firms who have contributed to this booklet represent 42 different jurisdictions spanning the globe to provide valuable insight on their respective countries' regulatory perspectives on the burgeoning and unpredictable cryptocurrency movement. "From Texas to Tokyo," businesses and organizations around the world can look to Legalink to obtain access to the best legal advice on the cryptocurrency scene.

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THE **5** QUESTIONS WE ASKED

1. Does your country allow or prohibit ICOs and Token Sales?
2. Does your country regulate ICOs and Token Sales?
3. If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?
4. If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.
5. Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

ARGENTINA

1 Does your country allow or prohibit ICOs and Token Sales?	IICOs and Token Sales are allowed in Argentina, as they are not expressly prohibited.
2 Does your country regulate ICOs and Token Sales?	Argentina does not have any specific regulation over ICOs and Token Sales, yet.
3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?	N/A
4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.	N/A

ARGENTINA

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

Notwithstanding what we inform in question 2 above, the Comisión Nacional de Valores – which function consists in watching over the transparency of stock exchange markets, see to the right pricing in such markets and protect investors – has released a press statement some days ago, about the trading of ICO's and Token Sales, warning that they are a “speculative investment with high risk” and, consequently, “only an expert investor should be trading with such securities”. We expect, therefore, that ICOs and Token Sales will be subject to regulation in Argentina shortly.

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AUSTRALIA

1 Does your country allow or prohibit ICOs and Token Sales?

ICOs are currently permitted under Australian law, but may be regulated (and require an Australian Financial Services Licence) if the characteristics of a token or business plan are similar to a Share, Debenture or Managed Investment Scheme, so the structuring of the Whitepaper is very important as well as the design of the token. The largest Australian ICOs have been [PowerLedger](#) (AUD\$30M) and [CanYa](#) (which Piper Alderman acted for in the deal) (AUD\$12M).

2 Does your country regulate ICOs and Token Sales?

The [Australian Securities and Investment Commission](#) has issued Information Sheet [INFO225](#) and has taken a largely 'hands off' position at present, but similar to the US SEC (Securities and Exchange Commission), ASIC considering token issues on a case by case basis. Depending on how the ICO is structured, it may be regulated under current securities legislation. The Australian Tax Office has recently put together a task force to investigate tax compliance by cryptocurrency traders and those who have run ICOs.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

The [Australian Securities and Investment Commission](#) will be the agency which is most likely to regulate tokens, but those involved in this area will need to be aware of the requirements of the [Australian Taxation Office](#) and the anti-money laundering entity [AUSTRAC](#).

AUSTRALIA

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

We have written an article on INFO225 which can be read [here](#).

If a token is not considered a ‘financial product’ (and ASIC [submitted](#) to a Senate inquiry in 2014 that they did not consider Bitcoin fit within the definition of a ‘financial product’) then that token will generally not be regulated by ASIC in Australia at present. Our above note on INFO225 has further information which may assist those considering an ICO in Australia.

Please contact Michael “Blockchain” Bacina ([LinkedIn](#), [Twitter](#), [Profile](#), [Medium](#), [Email](#)) or Sina “Cryptocurrency” Kassra ([LinkedIn](#), [Profile](#), [Email](#)) of our Sydney office if you have any queries. I regularly speak and write on blockchain and distributed ledger technology and Sina has a long history in corporate law focusing on fundraising. We are currently advising on upcoming ICOs and cryptocurrency related issues in compliance and tax. Please feel free to reach out to myself or Sina on LinkedIn or via email.

BELARUS

1 Does your country allow or prohibit ICOs and Token Sales?

It is allowed, provided they are performed through “operators of cryptocurrencies”, that will be established on the basis of residents of High-Tech Park (special tax regime for high-tech companies). The detailed regulation will appear in March 2018.

2 Does your country regulate ICOs and Token Sales?

Yes, broad regulation was established by Decree #8 “On Digital Economy”, adopted in December, 2017. Detailed instructions will appear until the March 2018, before the Decree enters into force on 27 March 2018.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

Currently no agency is appointed to oversee.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

Please see the answer to question 1.) above.

BELARUS

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

The rules of the decree are extremely liberal, setting up totally different framework for ICOs (e.g. standard AML legislation is not applicable). The relevant state bodies have 3 months to provide detailed regulation. It is expected that it also be very liberal.

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BELGIUM

1 Does your country allow or prohibit ICOs and Token Sales?

See <https://coinidol.com/belgium-to-restrict-all-transactions-with-bitcoin/>, they do not like it.

2 Does your country regulate ICOs and Token Sales?

No, but again <https://coinidol.com/belgium-to-restrict-all-transactions-with-bitcoin/>, it is coming.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

None, but go to <https://www.belgium.be/>, <https://finance.belgium.be/en> and particularly the Belgian Financial Services and Markets Authority (www.fsma.be).

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

Authorities wish to anticipate the amended European AML regulations, see http://ec.europa.eu/justice/civil/financial-crime/applying-legislation/index_en.htm and particularly the European Securities and Markets Authority (www.esma.europa.eu)

BELGIUM

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

<https://www.companyformationbelgium.com/set-up-a-cryptocurrency-company-in-belgium>

https://www.reddit.com/r/CryptoCurrency/comments/6c2mzj/are_you_paying_taxes_on_your_cryptocurrencies/

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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BRAZIL

1 Does your country allow or prohibit ICOs and Token Sales?

ICOs and Token Sales are not prohibited in Brazil.

2 Does your country regulate ICOs and Token Sales?

Generically speaking, ICOs and Token Sales are not subject to specific laws or regulations in Brazil. However, depending on the structure and goals of the offer, it may be subject to specific regulations of Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários - "CVM"). Moreover, CVM recently issued an official note stating that certain operations with ICOs and/or their issuance might be framed as securities and exchange transactions depending on the economic context of their issuance and so, be subject to current rules applicable to these matters and, also, subject to inspection and supervision by CVM.

Besides the lack of specific regulation of ICOs and Token Sales transactions described above, there are some rules currently in force in Brazil that contain conditions applicable to overseas remittances and exchange market operations.

One example is the Decree No. 23.258/1933, that determines that all overseas remittances not executed through a financial institution authorized to operate in the foreign exchange market shall be considered as an unlawful transaction. As a matter of effect, there are several recent events of penalties being applicable by the BCB based on this Decree. Additionally, according to Law No. 7.492/1986, the overseas remittances of funds performed outside the official exchange system is considered a crime. Therefore, should the trading of cryptocurrencies virtually be framed as overseas remittance in the future, the transactions with that type of tokens would be considered as a crime.

BRAZIL

On the other hand, it is important to emphasize that brokers and companies trading cryptocurrency transactions must report to the Brazilian authorities suspicious transactions that may involve money laundering and terrorist financing transactions, as determined by a compliance-related legislation (Law No. 9.618/1998). However, as there is no specific legislation that requires a very complex KYC procedure in respect of cryptocurrency brokers, it is very unlikely that such brokers are able to check the “suspicious origin” of the money being used to purchase the cryptocurrencies.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

The expectation is that ICOs and Token Sales should be regulated by BCB and/or CVM, as the two Brazilian governmental agencies responsible for the issuance of money and for the securities and exchange regulation and oversight, respectively.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

As mentioned above in our comments to question 3, ICOs and Token Sales are not subject to specific laws or regulations in Brazil so far.

BRAZIL

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

Besides the lack of ruling regarding ICOs and Token Sales as per our comments above, the Brazilian IRS indicates that individuals holding cryptocurrencies must consider them as financial assets and, consequently, declare them in the income tax return the property over these assets as “Goods and Rights” (“Bens e Direitos”).

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BULGARIA

1 Does your country allow or prohibit ICOs and Token Sales?

Bulgarian legislation does not prohibit Bitcoins or respectively ICOs. According to the official statements of the Bulgarian National Bank and the Finance Supervision Commission, which were given further to an explicit request of Sofia City court under a specific court case, Bitcoin and the other cryptocurrency do not represent a legally defined payment instrument in the country. Thus the Bulgarian legislation does not regulate Bitcoin and the other cryptocurrency as well as ICOs and Token Sales. There is no specific registration or license regime.

2 Does your country regulate ICOs and Token Sales?

The activity connected to the acquiring, exchange, sale, etc. of Bitcoin and respectively ICOs are not legally regulated by the Bulgarian legislation.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

This question is not applicable, as there is no official regulation.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

Not applicable as there is no regulation.

BULGARIA

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

In the recent years there is a certain interest in the country in ICOs and issues related to cryptocurrency. Due to the fact that there is no regulation in this business sphere, the participants are very careful and cautious.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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CHILE

1 Does your country allow or prohibit ICOs and Token Sales?

Chile does not prohibit ICOs and Token Sales, although it does not expressly allow these either.

2 Does your country regulate ICOs and Token Sales?

Chile does not regulate ICOs nor Token Sales. We note though that it may be arguable that cryptocurrencies fall under the concept of security given the broad definition of “security” contained in Article 3 of Law N° 18,045 on Securities Market. If that would be the case, ICOs would be regulated by the rules of the Securities Market Law, including the security, the relevant markets, traders, issuers, agents, etc. However, the relevant authority for the Securities Market has not issued an opinion on that regard and would not be practically prepared to enforce such interpretation of the law - so it is not currently feasible from a practical point of view to subject ICOs and token sales to the same regulatory framework applicable for other conventional securities.

Our Central Bank stated that cryptocurrencies do not have an specific legal/regulatory treatment and consequently, the activity of offering and trading of these currencies would be out of the regulatory powers of the Central Bank. However, trading entities performing foreign exchange activities as a result of token sales would be subject to the applicable foreign exchange regulation. Likewise, if for any reason tokens are treated as “securities”.

Finally, we note that Law N° 19,913 on Money Laundering Prevention mandates that certain entities should report suspicious activities to the Financial Analysis Office (“UAF” for its initials in Spanish). Currently, several traders of cryptocurrency in Chile are registered as reporting entities with the “UAF” not because of token sales but in their capacity as “foreign exchange offices” or “other entities entitled to receive foreign currency”. The UAF Chief Director has expressed his concerns that

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the UAF is only entitled to investigate these regulated activities and not what he calls “the heart of the business” consisting in the purchase and sale of cryptocurrency.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

As previously mentioned, ICOs and Token Sales are not expressly regulated in Chile and consequently, there are no government agencies responsible for regulating them.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

Not applicable.

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

In Chile we are experiencing an increasing demand for cryptocurrencies, although the actual activity is in terms of trade of tokens issued by companies abroad. As a consequence of the latter, there are several trading companies in Chile and investment funds investing in this kind of assets – but not initial offerings in our country yet.

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CHINA

1 Does your country allow or prohibit ICOs and Token Sales?

China recently prohibits ICO and Token Sales.

2 Does your country regulate ICOs and Token Sales?

China has imposed certain interim regulatory measures on ICO and Token Sales, currently prohibiting ICO. China may allow ICO in a regulated manner in the future.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

A For Bitcoin, the following five government agencies were involved when they first issued a Notice regarding Safeguarding Against Bitcoin Risk in 2013: People's Bank of China, Ministry of Industry and Information Technology, China Banking Regulatory Commission, China Securities Regulatory Commission, China Insurance Regulatory Commission.

B For Token Sales: the following seven government agencies were involved in the issuance of the Circular on Preventing Token Fundraising Risks in September 2017: People's Bank of China, Network Security and Information Leadership Office, Ministry of Industry and Information Technology, State Administration for Industry and Commerce, China Banking Regulatory Commission, China Securities Regulatory Commission, China Insurance Regulatory Commission.

CHINA

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

China currently does not have a regulatory framework that would allow ICO or Token Sales. Rather, China prohibits ICO and Token Sales. The main regulatory prohibitions are as follows:

A ICO is considered an activity of illegal token fundraising without approval. “Token Fundraising” refers to a process where fundraisers distribute so-called “cryptocurrencies” to investors who make financial contributions in form of cryptocurrencies such as bitcoin and ether. In essence, such fundraising unapproved and illegal public financing activity, which implicates financial crimes such as the illegal distribution of financial tokens, the illegal issuance of securities, and illegal fundraising, financial fraud and pyramid sales. The taken or “cryptocurrencies” that are distributed during token fundraising are not issued by the monetary authority, have no legal properties like legal and mandatory clearing and settlement, have no equal legal standing as lawful currency, and cannot circulate in the market as currency.

B All organizations and individuals are prohibited from engaging in illegal token fundraising activities.

C All fundraising activities through token issuance should stop immediately from the announcement date of the Circular.

D Organizations and individuals which have already raised money through token fundraising should refund or make other settlement arrangements.

E Starting from the Announcement date of the Circular, all so-called token trading platform should not engage in the exchange between any lawful currency and tokens and “virtual currencies”, should not trade or trade as central counterparties the tokens or “virtual currencies”, and

CHINA

should not provide pricing and information agency or other services for tokens or “virtual currencies”.

F For token trading platforms not in compliance with the Circular, financial administration authority will request telecommunication authority to close down its website platform and mobile APP according to the law, request cybersecurity authority to remove its mobile App from app stores, and request commercial and industrial authority to revoke its business license according to the law.

G All financial institutions and non-banking payment institutions should not do any business related to token trading and ICO. Financial institutions and non-banking payment institutions should not provide products or services such as account opening, registration, trading, clearing and settlement for token fundraising and “virtual currency”, and should not underwrite insurance policies associated with tokens and “virtual currencies” or include tokens and “virtual currencies” in their insurance liability scope.

H Investor education and industry self-regulation should be enhanced. For illegal financial activities conducted in name of “coin”, the public must improve their risk prevention awareness and identification capacity. Financial industry organizations should understand regulatory policies well and urge member entities to voluntarily resist token trading and the illegal financial activities relating to “virtual currencies”.

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

Despite prohibition on ICO and Token Sales, China still emphasizes digital currency. The government aims to utilize Fintech innovation involving digital currency and set up a lawful digital currency system and complete a lawful digital current distribution and circulation system.

CHINA

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COLOMBIA

1 Does your country allow or prohibit ICOs and Token Sales?

Colombian regulation does not prohibit cryptocurrencies and/or ICOs. Nevertheless, there have been a series of concepts and statements both from the Colombian Central Bank and the Financial Superintendence warning the public of the different risks associated with cryptocurrencies.

2 Does your country regulate ICOs and Token Sales?

No, ICOs and Token Sales are not regulated in Colombia yet. Nevertheless, based on official statements from the Colombian Central Bank and the Financial Superintendence, cryptocurrencies cannot be considered as a security, as currencies, or as a defined payment instrument in Colombia, to the extent that (i) they are not backed by central banks, and (ii) they lack high liquidity in the market. Therefore, as said before, to date, Colombian legal system does not regulate ICO's and Token Sales.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

Although it is not regulated, the Financial Superintendence is the Colombian agency reviewing its evolution and discussing regulatory issues on cryptocurrencies, ICOs and Token Sales.

Additionally, the Colombian Central Bank has formed a task force with other entities (as the Financial Superintendence) to study cryptocurrency markets and evaluate the convenience of regulating certain aspects related to them.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

Not applicable.

COLOMBIA

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

The Colombian Financial Superintendence has informed all financial entities under its supervision that they cannot hold, invest, act as intermediaries or allow the use of platforms that operate with cryptocurrencies. Therefore, it has defined that cryptocurrencies are not a valid investment for supervised entities, and they cannot advise or administer any operation with such assets.

To the extent that this agency has defined cryptocurrencies as non-financial assets, it has also informed the public that each person is responsible to assess the risks derived from any operation carried out with cryptocurrencies.

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CYPRUS

1 Does your country allow or prohibit ICOs and Token Sales?	Cyprus does not prohibit ICOs or Token sales.
2 Does your country regulate ICOs and Token Sales?	There is no regulation in Cyprus.
3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?	Not applicable as there is no regulation.
4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.	Not applicable as there is no regulation.
5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.	The responsible officer at the Central Bank of Cyprus advised us that the Central Bank has issued a circular to all commercial banks requesting that they do not offer services to businesses involved in Bit Coin or Crypto or Virtual Currency trading of any kind. This is being adhered to by all local and international banks on Cyprus thereby effectively rendering Cyprus a “no go area” for such activities.

CYPRUS

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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CZECH REPUBLIC

1 Does your country allow or prohibit ICOs and Token Sales?	There is no regulation of ICOs and Token sales so far in the Czech Republic. The Czech Central Bank has no position on ICOs and Tokens, thus, no regulation applies.
2 Does your country regulate ICOs and Token Sales?	As mentioned above, no.
3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?	Agencies governing and regulating financial activity is the Czech National Bank, Ministry of Finance, and the General Directorate of Finance. These would be responsible for regulation, if there is any.
4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.	There is no will at this moment to regulate cryptocurrencies by the Czech National Bank or any other authorities in the Czech Republic.
5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.	n/a
6 Please identify a point of contact at your firm for cryptocurrency-related matters.	Adam Felix - adam.felix@akf.cz André Vojtek

DENMARK

1 Does your country allow or prohibit ICOs and Token Sales?

ICOs or tokens sale are not prohibited in Denmark. ICOs are currently not regulated by the laws regulating the financial markets, but depending on how the actual ICO is designed and organized it may trigger existing rules about securities, stock offering etc. Furthermore again depending on the actual structure of the ICO tax law, anti-money laundering law may come in to play.

2 Does your country regulate ICOs and Token Sales?

Finanstilsynet (the Danish FSA) are currently permitting ICOs and has issued an information sheet informing that ICO and token sales are not regulated by the current legislation about finance business. Finanstilsynet is however monitoring the development of the market.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

Finanstilsynet will be the agency which is most likely to regulate token sale.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

NA, see item 1

DENMARK

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

Finanstilsynet has also issued an information sheet about bitcoins and has informed that bitcoins do not fall under the present legislation and therefore are not regulated by law. Consequently a company dealing with bitcoins does not need a license from Finanstilsynet.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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ESTONIA

1 Does your country allow or prohibit ICOs and Token Sales?

Not prohibited, not expressly allowed either, meaning allowed.

2 Does your country regulate ICOs and Token Sales?

Not specifically, but depending on the nature of coin/token it can fall under existing regulation of payment intermediary, securities offering, maybe even banking etc.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

No specific regulations exist, but if falls under existing regulation, then Financial Supervisory Authority or in some cases Police (money laundry intelligence unit).

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework.

For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

No specific regulation.

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

FSA has published a document describing their understanding of ICO and ITOs.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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FRANCE

1 Does your country allow or prohibit ICOs and Token Sales?

ICOs and Token Sales are not regulated in France yet. Hence, they are not prohibited. Several ICOs have already been carried out in France, involving increasing amounts. As an example, the French startup DomRaider launched an ICO in September 2017. The Autorité des Marchés Financiers (“AMF”), a French independent public authority in charge of regulating and policing financial markets, has expressed concerns about the growing influence of ICOs and more generally fundraising operations involving the issuing of tokens, using cryptocurrencies and the Blockchain technology. The issues raised by ICOs are, according to the AMF, the lack of regulation, the risks associated with the quality of information documents, possible capital losses, volatility or market risk, scams or money laundering, and risks associated with fundraiser’s projects. On 26 October 2017, the AMF published a discussion paper on ICOs, in order to gather opinions, comments and feedback from operators, industry professionals and potential investors on matters pertaining to ICOs. On the basis of such discussion, the AMF will then examine which solutions could be introduced under existing law and “explore different avenues for regulating these operations in line with best practices”. Participants are invited to submit their responses and feedback by 22 December 2017 (see attached document).

2 Does your country regulate ICOs and Token Sales?

ICOs and Token Sales are not regulated in France yet (see above).

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

The Autorité des Marchés Financiers (“AMF”) is the authority that is responsible for regulating them. The AMF is in the process of elaborating specific regulations for these new financial instruments (see question 1 above).

FRANCE

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

Pending the enactment of future regulations, ICOs may possibly, depending on their nature and the way they are structured, fall under existing regulations. It should therefore be ascertained, on a case-by-case basis, whether ICOs or Token sales fall, in particular, under the regulations governing the public offer of financial securities (which would trigger the obligation to draft a prospectus and have it approved by the AMF). This could possibly be the case where tokens are issued by joint stock companies and if they provide the same economic and governance rights as those usually attached to shares or preference shares.

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

See question 1 above and the AMF's discussion paper on ICOs

http://www.amf-france.org/en_US/Publications/Consultations-publiques/Archives?docId=workspace%3A%2F%2FSpacesStore%2Fa2b267b3-2d94-4c24-acad-7fe3351dfc8a.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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GERMANY

1 Does your country allow or prohibit ICOs and Token Sales?

We currently observe an increasing importance of virtual currencies in the German market. Bitcoins and other digital currencies have become very popular among investors and Start-ups who benefit from the crowdfunding element of ICOs to raise capital.

Nonetheless, ICOs and Token Sales have not been subject to legislative procedures yet. So far they are neither allowed, nor prohibited under German law.

2 Does your country regulate ICOs and Token Sales?

There is no specific set of rules, dealing specifically with ICOs and Token Sales. In particular stock corporation law is not applicable. However, during the ICO procedure the generated tokens are sold in a public bidding process (token sale).

Nonetheless, the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht - BaFin) has classified Bitcoins and comparable virtual currencies as “units of account” and thus as financial instruments within the meaning of section 1 para. 11 sentence 1 of the German Banking Act (Kreditwesengesetz - KWG). BaFin has also declared that it will decide on a case-by-case basis whether the offeror is required to obtain authorization pursuant to the German Banking Act (Kreditwesengesetz - KWG), Investment Code (Kapitalanlagegesetzbuch - KAGB), Payment Services Supervision Act (Zahlungsdiensteaufsichtsgesetz - ZAG) or the Insurance Supervision Act (Versicherungsaufsichtsgesetz - VAG) based on the specific contractual terms of each ICO. The application of the prospectus requirements according to the German Investment Products Act (Vermögensanlagengesetz - VermAnlG) or the Securities Trading Act (Wertpapierhandelsgesetz - WpHG) may also be reviewed and decided on a case-by-case basis. There is no general restriction to sell ICOs or Tokens only to certain types of investors.

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3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

The Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin) is the responsible authority to monitor ICOs and Token Sales.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

Please see the answer to question 2.) above.

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

Recently, BaFin has published two consumer warnings regarding the potential risks of ICOs. Those warnings emphasized the lack of regulation, insufficient information and transparency, technical complexity and the risk of fraud and specifically point out that ICOs bear high risks for consumers that may even result in total loss.

Shortly thereafter, the European Securities and Markets Authority (ESMA) addressed the same issue, focusing not only on the risks for investors arising from ICOs, but also on the rules applicable to offerors. According to the ESMA, investors may be obliged to comply with the rules, laid down by the The Markets in Financial Instruments Directive, the Alternative Investment Fund Managers Directive, the Fourth Anti-Money Laundering Directive and the Prospectus Directive.

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Notwithstanding those issues, ICOs are still not in the focus of the national legislator. In consideration of the multitude of challenges resulting from ICOs and the unambiguous warning of the lack of regulation from the German and European authorities, we expect nevertheless legislative procedures to set up binding rules in order to establish a clear legal framework for ICOs.

It remains to be seen how the difficulties arising out of ICOs and Token Sales will be addressed in the foreseeable future.

For further information see:

https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Meldung/2017/meldung_171109_ICOs_en.html

https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Fachartikel/2017/fa_bj_1711_ICO_en.html

https://www.esma.europa.eu/sites/default/files/library/esma50-157-829_ico_statement_investors.pdf

https://www.esma.europa.eu/sites/default/files/library/esma50-157-828_ico_statement_firms.pdf

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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HONG KONG

1 Does your country allow or prohibit ICOs and Token Sales?

ICOs and Token sales are allowed in Hong Kong, that is the Hong Kong Special Administrative Region of China, which is of course separate (in terms of its legal and regulatory regime) from the People's Republic of China, which banned ICOs on 4 September 2017.

2 Does your country regulate ICOs and Token Sales?

The regulatory position of ICOs and Token Sales in Hong Kong, as in other jurisdictions, is something of a legal grey area. Hong Kong's securities regulator, the Securities and Futures Commission (the SFC), issued a notice on 5 September 2017 stating that while it regards "typical" ICOs as "virtual commodities" which are not subject to securities regulation, depending on a coin's specific features, it may constitute a share, debenture or an interest in a collective investment scheme (CIS), all of which are securities subject to regulation in Hong Kong. The notice does not however elaborate on what the SFC regards as a "typical" ICO. Thus whether or not any particular coin or token offer in Hong Kong is regulated depends upon its intrinsic characteristics.

Very briefly, the position outlined in the SFC's notice is that:

- Digital coins or tokens may be regarded as "shares" where they represent equity or ownership interests in a corporation, e.g. where the coin or token holders are given shareholders' rights, such as the right to receive dividends and the right to participate in the distribution of the corporation's surplus assets upon winding up.
- Where digital coins or tokens are used to create or acknowledge a debt or liability owed by the coin/token issuer, the SFC may regard them as "debentures", e.g. where the issuer will repay coin/token holders the principal of their investment on a fixed date or upon redemption, with interest paid to holders.

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- An ICO may be regulated as an offer of interests in a CIS where the coin/token proceeds are managed collectively by the ICO scheme operator to invest in projects with an aim to enable holders to participate in a share of the returns provided by the projects.

The SFC's guidance indicates that the essential features of a CIS are that:

- a)** It must involve an arrangement in respect of property (property is broadly defined);
- b)** Participants do not have day-to-day control over the management of the property (even if they have the right to be consulted or to give directions about the management of the property);
- c)** The property is managed as a whole by or on behalf of the person operating the arrangements, and/or the participants' contributions and the profits or income are pooled; and
- d)** The purpose of the arrangement is to provide participants with profits, income or other returns from the acquisition or management of the property.

The definition would catch, for example, a coin offer the proceeds of sale of which are invested in different projects, where the coin holders will be entitled to a share of the income from the invested projects or a share of the sales proceeds on a disposal of the projects or part of them. This was the case on the DAO token offer whose tokens were found to constitute securities by the US SEC.

However, there have been no court decisions on the meaning of "collective investment scheme" under Hong Kong law, and whether or not any particular ICO

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falls within the definition will depend on the facts and circumstances of the ICO and ultimately, the courts' interpretation of the statutory definition. Much will also depend on how aggressively the SFC chooses to pursue ICOs and how the ICO market develops both in Hong Kong and internationally.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

Offers of coins and tokens which are securities as defined by Hong Kong's Securities and Futures Ordinance are regulated by the SFC.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

The regulatory framework applicable to ICOs and Token Sales depends upon whether or not the particular coin or token constitutes a "security" as defined under the SFO.

In Hong Kong, as in other jurisdictions, ICOs and Token Sales are typically structured so as to fall outside the definition of "securities", or at least outside the situations described in the SFC's notice as those in which coins or tokens are likely to be regarded as securities. Digital coins/tokens thus generally represent rights of access or use (typically in relation to the technology whose development the ICO proceeds will fund). The intention is to characterize the coins/tokens as pre-payment vouchers, rather than as investment interests. Whitepapers thus typically present the digital coins as providing purchasers with the right to use technology and/or as the means of payment for use of the services offered by the technology. A number of ICOs have been conducted in Hong Kong on the basis that they do not constitute securities for the purposes of Hong Kong law and it is our view that this position can be supported legally.

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If however a particular coin or token were to be a security for the purposes of the SFO, Hong Kong law imposes restrictions on both:

- (i)** How and to whom the coins/tokens may be offered; and
- (ii)** The entities permitted to offer and sell the coins/tokens in Hong Kong.

4.1 Offering Restrictions

Shares/Debentures

Where coins/tokens are deemed to be “shares” or “debentures”, they may only be offered for subscription or sale in Hong Kong by means of a prospectus which must be registered with Hong Kong’s Registrar of Companies and must comply with the detailed contents requirements of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (CWUMPO). Breach of this provision is an offence.

There are however a number of exemptions from the prospectus requirements of the CWUMPO: those most commonly relied on are as follows:

- a)** The “professionals” exemption - this would apply where the coins/tokens are only offered in Hong Kong to purchasers who are “professionals” as defined in the SFO. Professionals include various categories of institutional (banks, investment intermediaries, pension funds etc.), corporate (companies with cash of at least HK\$8 million or total assets of at least HK\$40 million) and individual (those with cash of at least HK\$8 million) professional investors.

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- b)** The private placement exemption which would allow offers of coins/tokens to be made to a maximum of 50 persons in Hong Kong.
- c)** The small offer exemption which would allow a Hong Kong offer of coins/tokens for which the total consideration payable does not exceed HK\$5 million.
- d)** The sophisticated investor exemption where each purchaser of the coins/tokens purchases at least HK\$500,000.

The exemptions under (a) and (b) above can be combined to allow an offer to be made to an unlimited number of professional investors and to a maximum of 50 non-professional investors. For the purposes of determining the 50 person limit under (b) above and the total consideration payable under (c) above, the offer must be taken with all other offers made in the previous 12 months which relied on the same exemption.

Interests in a Collective Investment Scheme (CIS)

Any marketing document issued in relation to coins/tokens to be offered in Hong Kong which constitute interests in a CIS must be authorized by the SFC. In order to be authorized, the coin/token issuer must issue an offering document and a product key facts statement, each containing specified information. The issue of a marketing or offering document in breach of the statutory requirements is an offence.

The exemptions available for a CIS are narrower than those for shares and debentures. To be exempt from the SFC authorization requirement, an offer of coins/tokens must be:

- a)** Offered only to professional investors; or

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- b)** Be offered in a private placement to no more than 50 offerees.

4.2 Licensing Requirements for intermediaries

Any intermediary which offers coins or tokens which are securities for subscription or sale to Hong Kong persons would need to hold an SFC regulated activity Type 1 license (for dealing in securities).

Further, if the coins/tokens are interests in a CIS, the coin/token issuer will likely require a regulated activity Type 9 license (for asset management).

4.3 Licensing Requirement for Coin Exchange Operating in Hong Kong

To the extent that coins/tokens are tradable on an exchange operating in Hong Kong, the operator of the Exchange will need to either obtain recognition as an authorized exchange under the SFO, or obtain a Type 7 regulated activity license for providing automated trading services.

Irrespective of whether coins/tokens are securities, if they can be sold for fiat currency (e.g. US or Hong Kong dollars) on an exchange operating in Hong Kong, the exchange will require a “money service operator” license under the Anti-Money Laundering and Counter-terrorist Financing Ordinance (AMLO). This is despite the fact that cryptocurrencies are not currently regarded as “money” for the purposes of the AMLO licensing requirement: it is the fact that the coins would be exchangeable for fiat currency which would trigger the licensing requirement.

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5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

While we believe that an argument can be made that ICOs and token sales can be conducted in Hong Kong without triggering Hong Kong's securities laws, we are aware that the Hong Kong SFC is monitoring ICOs in the market and is actively following up with issuers and their advisers where they consider that the offer or sale may have Hong Kong regulatory implications. Typically, the SFC will write to the token issuer and/or its advisers requesting information to ascertain whether or not the particular ICO/token sale involved an offer of securities in Hong Kong, including matters such as:

- a)** The use of proceeds of the coin/token sale;
- b)** Whether purchasers of the coins/tokens will receive any share of the income or revenues of the coin/token issuer or from any technology, platform or other property of the token issuer;
- c)** Whether holders of coins/tokens will share in the coin/token issuer's surplus assets on its winding-up;
- d)** Whether the coins/tokens will be tradable in the secondary market and if so, whether this will be for fiat currencies or other cryptocurrencies; and
- e)** Whether the coins/tokens are redeemable by the issuer and if so, whether this will be on a specific date or on demand by the holders, and whether the redemption amount will include an amount equivalent to interest.

Where a coin offer/token sale is conducted from outside Hong Kong, it is most likely to attract SFC attention if Hong Kong investors are specifically targeted through advertising, whether through newspapers circulating in Hong Kong or through social media, for example Facebook advertising which is "pushed" to Hong Kong. This type of advertising is thus probably best avoided.

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6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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ISRAEL

1 Does your country allow or prohibit ICOs and Token Sales?	Israel does not prohibit ICOs and Token sales.
2 Does your country regulate ICOs and Token Sales?	Israel does not currently regulate ICOs, but we expect this to change in the near future; recently, the Israeli Securities Authority has announced the formation of a special committee tasked to determine, among other, whether crypto currency transactions and coin bids should be regulated by the ISA; the committee is due to present its report by the end of the year. We will keep you updated.
3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?	N/A
4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.	N/A

ISRAEL

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

The ICO industry is thriving in Israel, there are many Israeli companies involved in the evolving field of ICO. Our firm is involved with several Israeli companies that are involved in different aspects of the cryptocurrency industry along with Israeli venture capital funds that wish to raise capital to invest in ICOs.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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Tel: +972-3-6019601.

ITALY

1 Does your country allow or prohibit ICOs and Token Sales?

Neither ICOs nor Token sales are expressly allowed nor prohibited in Italy as there is no ad hoc regulation. In our opinion ICO's and Token Sales may well fall in the realm of "financial products" which are regulated by the so-called TUF (the acronym of Testo Unico della Finanza i.e. the law regulating financial activity) or in the realm of equity crowdfunding, depending on the characteristics of the offer. Equity crowdfunding is regulated by an ad hoc regulation released by CONSOB (the government authority for listed companies, and financial activity) as well as by a law.

2 Does your country regulate ICOs and Token Sales?

As above written, they are not expressly regulated.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

The government agency competent for regulating financial activity is called CONSOB which, at the time being, has not released any regulations on ICOs and Token Sales, yet.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

In the absence of an express regulation on ICOs and Token Sales, each venture needs to be evaluated case by case to understand whether it falls within the realm of TUF or of equity crowdfunding or none of them. Should it fall in the realm of TUF or of equity crowdfunding the relevant discipline shall apply.

ITALY

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

An ad hoc regulation by CONSOB and/or a law by the legislator is strongly demanded by the stakeholders aimed at protecting the interests of investors.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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JAPAN

1 Does your country allow or prohibit ICOs and Token Sales?

Yes, but we have regulations on this matter. Payment Service Law (“PS Law”), which was amended last year and took effect in April 2017, provides regulations for cryptocurrency and ICOs.

2 Does your country regulate ICOs and Token Sales?

See above.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

Financial Services Agency (“FSA”) is mainly responsible for regulating “cryptocurrency” and ICOs.

Under the PS Law, a business operator, who wants to deal with a token falling within the definition of “cryptocurrency” in the PS Law, have to register with the FSA as a cryptocurrency exchange operator.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

See above.

JAPAN

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

If your client solicits a resident of Japan to join its ICOs, the PS law and other Japanese law and regulations would apply for such ICOs. Other than the PS law, Financial Instruments and Exchange Act (“FIEA”) would apply for such ICOs.

Recently, FSA made an announcement titled “Regarding ICOs” where they indicate possible application of the FIEA to ICOs relating to a collective investment scheme. It should be also noted that law and regulations related to consumer protection, e.g. Consumer Contract Act, would apply for a contract for the ICOs.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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LIECHTENSTEIN

1 Does your country allow or prohibit ICOs and Token Sales?

ICOs or token sales are not prohibited in Liechtenstein.

2 Does your country regulate ICOs and Token Sales?

There is no specific ICO or token regulation in Liechtenstein. An ICO or a token sale can have various characteristics, depending on the intention and mechanics of the sale. Depending on the specific design of the project, a number of issues pop up: if the tokens should qualify as securities, the emission may fall under applicable prospectus regulation. If the tokens qualify as financial instruments under MiFID, the related service providers may be regulated under MiFID. If a vehicle is established to raise capital from a number of investors, the structure could fall under the alternative investments funds managers' directive (AIFMD). A further issue to be considered is compliance with anti-money laundering provisions.

When it comes to the regulatory implications of token sales, we expect a convergence within the European Economic Area (EEA) in the upcoming months, after guidance has been issued by the European financial markets authority ESMA.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

See above. If the ICO is subject to regulation (which depends on the specific design of the ICO) the Liechtenstein financial markets authority (FMA) is the competent agency. It will evaluate each project on an individual basis. Please refer to the website of the Liechtenstein FMA for further information:

<https://www.fma-li.li/en/financial-centre/fintech-in-liechtenstein.html>

LIECHTENSTEIN

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework.

For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

See above. There is no single and comprehensive regulatory framework, the regulation depends on the specific design of the tokens (e.g. whether they do have characteristics of equity securities).

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

In light of the fact that financial markets law is harmonized within the EEA and we do expect guidance on an European level in due course, we hold that the most important aspect to consider, when choosing a location for the token sale, is the quality of guidance provided by the local financial authorities and the experience of the service providers involved. Generally speaking the Liechtenstein FMA is very crypto friendly and offers highest possible legal certainty by evaluating each ICO project individually. The Liechtenstein FMA has established a “regulatory laboratory”, which serves as contact point for FinTech related issues.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

Dr. Hannes Arnold - hannes.arnold@gasserpartner.com He the contact point at our firms in questions related to FinTech and cryptocurrency. He has been involved in a number of projects including ICOs and the launching of cryptocurrency related investment projects and is happy to support you in these matters.

MALTA

1 Does your country allow or prohibit ICOs and Token Sales?

Maltese law allows ICOs/Token Sales. In this regard it should be noted that there is no ad hoc legislation in Malta regulating ICOs, the body of laws of the Republic of Malta (including inter alia, the Civil Code (Chapter 16 of the Laws of Malta), the Commercial Code (Chapter 13 of the Laws of Malta), the Electronic Commerce Act (Chapter 426 of the Laws of Malta), the Consumer Affairs Act (Chapter 378 of the Laws of Malta), the Copyright Act (Chapter 415 of the Laws of Malta), the Data Protection Act (Chapter 440 of the Laws of Malta), and the Value Added Tax Act (Chapter 406 of the Laws of Malta)) envisages the possibility of a sale of objects representing value (such as tokens) via electronic means. In certain cases (mainly depending on the nature of the tokens (including their convertible nature e.g. into securities) ICOs and token sales may also fall under the purview of the Investment Services Act (Chapter 370 of the Laws of Malta), the Companies Act (Chapter 386 of the Laws of Malta) and the Prospectus Directive (Directive 2003/71).

2 Does your country regulate ICOs and Token Sales?

See answer to question 1) above.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

As such there is no central government agency or authority regulating ICOs and token sales. Having said that an ICO and the sale of tokens (or some aspects thereof) may fall under the purview of a number of authorities depending on the nature of the nature of the tokens in terms of the ICO and their convertibility e.g. into securities. In the latter case the tokens could possibly be considered as a securities offering which would depending also on the size be considered as an offer of securities to the public in terms of the Companies Act and the Prospectus Directive. In such case the Listing Authority [which forms part of the Malta Financial Services Authority (the ‘MFSA’)] would be the regulator responsible for the ICO. The same would

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

apply if the entity issuing the ICO is itself regulated by the MFSA in which case any fund raising initiative would have to be consented by MFSA.

See answers to question 1 and 3 above. Other than in situations when the sale of tokens is re-characterized as the sale of some other asset which would ad validatelem have to be registered with a central registry/authority, registration of tokens is not a regulatory requirement. Again the sale of tokens to certain type of investors would much depend on the nature of the tokens and their assimilation or convertibility to securities and the complexity of such securities in which case the sale of the tokens could be restricted to sophisticated investors or open also to retail as the case may be. In this regard it is also relevant to mention that the Malta Financial Services Authority has some months ago issued a warning to potential investors looking to invest in virtual ‘currencies’ via ICOs highlighting the potential risks involved in such investments whilst noting that issuers would not necessarily fall to be regulated by the MFSA.

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

The Government of Malta has over the past months committed to make Malta a cryptocurrency and Blockchain hub. In sync with the Government’s agenda the MFSA has just last week issued a consultancy paper in connection with the launch of a new rule book to regulate the setting up, licensing of cryptocurrency funds in Malta.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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MEXICO

1 Does your country allow or prohibit ICOs and Token Sales?

ICOs and Token Sales are not regulated in Mexico yet. However, they are not expressly prohibited, hence they are allowed.

2 Does your country regulate ICOs and Token Sales?

We do not have any regulations in Mexico regarding ICOs and Token Sales yet. However, there is a proposal issued on October 10, 2017, by the Interior Ministry (Secretaría de Gobernación) of the Law to Regulate Financial Technology Institutions (Ley para Regular las Instituciones de Tecnología Financiera) (the “Fintech Law”) to the Senator’s Chamber and subject to legislative process.

Fintech Law has the purpose to create two types of Financial Technology Institutions (“ITF”): (i) crowdfunding institutions and (ii) payment fund institutions. To operate as an ITF in Mexico, it is proposed to obtain an authorization from the National Banking and Securities Commission (Comisión Nacional Bancaria y de Valores), prior authorization of a Interinstitutional Committee formed by members of the Ministry of Finance and Public Credit (Secretaría de Hacienda y Crédito Público), the National Banking and Securities Commission (Comisión Nacional Bancaria y de Valores) and the Bank of Mexico (Banco de México). Additionally, ITFs will be supervised by the National Commission for the Defense of Users of Financial Services (CONDUSEF).

Payment fund institutions will be in charge of issuing, administration, redemption, and transfer of e-money. Additionally, it is proposed that ITFs have sufficient capacity to operate with virtual assets; as well as open APIs prior users’ consent.

MEXICO

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

Please refer to question 2 above.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

Please refer to question 2 above.

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

Please note that the aforesaid information is subject to Mexican legislative process, hence the terms and conditions of the Fintech Law may vary or even may be not approved and be unenforceable.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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NETHERLANDS

1 Does your country allow or prohibit ICOs and Token Sales?

Does allow, not explicitly, but in the sense that since it is not forbidden, it is allowed.

2 Does your country regulate ICOs and Token Sales?

Not specifically. As soon as they, because of structuring to be judged per specific individual case, would fall for whatever reason under the regular financial and securities regulatory and compliance framework, they would be dealt with as any other case falling within the scope of that framework.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

N/A. If any supervisory authority would be responsible, it would be the Dutch “Authority for the Financial Markets” (their own English translation; “AFM”). Although they have no legal authority regarding ICO’s and crypto-currency as such, they have occasionally issued warnings about crypto-currencies during the past two years. In an unusually explicit warning of 13 November 2017, the Dutch AFM has issued the sternest warning and alert thus far. Consumers are very explicitly advised never to invest in ICO’s. ICO’s are described by the AFM as the ideal playing ground for crooks, as too anonymous and too opaque, and surrounded by overrated expectations as regards profits. Moreover, they state, consumers lack the necessary expertise to invest in ICO’s.

NETHERLANDS

- 4** If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.
- 5** Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.
- 6** Please identify a point of contact at your firm for cryptocurrency-related matters.

N/A

Crypto-currency is neither regarded as money, nor as securities in The Netherlands. Depending on individual characteristics, Tokens may fall within the scope mentioned under 2) above.

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NEW ZEALAND

1 Does your country allow or prohibit ICOs and Token Sales?

New Zealand allows ICO and Token Sales.

2 Does your country regulate ICOs and Token Sales?

Yes. As set out below, ICOs and Token Sales conducted in New Zealand or offered to New Zealand Residents should be regulated as if they are any other security.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

Primarily, the Financial Markets Authority (FMA) and, in some instances, the Financial Service Providers Register (FSPR) and the Companies Office.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

(a) The extent to which an ICO is regulated depends on whether a ‘financial product’ is being offered to retail investors in New Zealand and thus a ‘regulated offer’ is being made. Whether a token offered via an ICO is a particular type of financial product depends on its specific characteristics and economic substance.

(b) The Financial Markets Conduct Act 2013 (FMC Act) contains a list of situations where an offer is not being made to retail investors. Offers conducted in accordance with these exceptions are far less regulated.

(c) The FMC Act sets out four types of regulated offer:

- i. Debt securities;
- ii. Equity securities;
- iii. Managed investment products; and
- iv. Derivatives.

Debt securities

(d) A token is a debt security if investors have the right

NEW ZEALAND

to be repaid money or interest by an entity making a token offer.

(e) To make a regulated offer of debt securities, and ICO offer or must:

- i. register a product disclosure statement (PDS);
- ii. appoint a licensed supervisor;
- iii. have a trust deed that sets out investor rights and the supervisor's role; and
- iv. meet financial reporting and fair dealing obligations.

Equity securities

(f) A token is an equity security if investors buy, or have the option to buy, a share in a company. If an ICO amounts to a regulated offer of equity securities, the offeror must register a PDS and set out certain investor interests and in their constitution. Financial reporting and fair dealing obligations also apply.

Managed investment products

A token is a managed investment product if:

- i. Investors contribute funds to receive interests (tokens) in a scheme (a structure or project that allows investors to pool their money);
- ii. Returns, income and rewards to investors from the scheme are principally produced by someone else; and
- iii. Investors do not have any day-to-day control over the operation of the scheme/its investments.

(g) The manager of a scheme must be licensed by the FMA in order to make offers to retail investors in New Zealand. The manager is the person, company, or unincorporated entity issuing the tokens. If an ICO amounts to a regulated offer of managed investment products, the manager must also:

NEW ZEALAND

- i. register a PDS;
- ii. appoint a licensed supervisor;
- iii. have a trust deed that sets out investor rights and the supervisor's role; and
- iv. meet financial reporting and fair dealing obligations.

Derivatives

(h) A token may be a derivative if, under the terms of the token, the issuer or holder may be required to pay an amount or provide something else in the future, and the amount to be paid or the value of the token is derived from the value or amount of something else, such as a commodity or asset.

(i) The issuer of the tokens must also be licensed by the FMA in order to make offers to retail investors in New Zealand. If the issuer makes a regulated offer of derivatives, it must register a PDS and meet financial reporting and fair dealing obligations.

Other Obligations

(j) Even if the token or cryptocurrency is not a financial product or financial service, the issuer/manager will need to comply with the Fair Trading Act 1986 to the extent that the issuer is in 'trade'.

(k) The Fair Trading Act also applies to overseas-based tokens and cryptocurrencies offered in New Zealand.

NEW ZEALAND

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

(l) It is important to note that all tokens or cryptocurrencies are securities under the FMC Act – even those that are not ‘financial products’. A security is any arrangement or facility that has, or is intended to have, the effect of a person making an investment or managing a financial risk.
(m) If appropriate, the FMA can designate any security to be a particular financial product based on its economic substance.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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NORWAY

1 Does your country allow or prohibit ICOs and Token Sales?

Norway allows ICO's and Token Sales.

2 Does your country regulate ICOs and Token Sales?

Norwegian law and other financial regulatory frameworks do not yet regulate cryptocurrencies, nor ICOs. However, the act of an ICO or Token Sale may be regulated by rules pertaining to alternative investment funds, money laundering and prospecting, despite cryptocurrencies not having status as a financial instrument under Norwegian law. Whether an ICO or a Token Sale will fall under the aforementioned rules is subject to a case-by-case evaluation where the Norwegian Financial Supervisory Authority bases said evaluations on the internal guidelines provided by the European Securities and Markets Authority (ESMA).

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

If an ICO or a Token Sale were to be considered to fall under Norwegian rules on alternative investment funds, money laundering and prospecting, the Norwegian Financial Supervisory Authority is responsible for regulating said activity.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

N/A.

NORWAY

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

The Norwegian Financial Supervisory Authority and Norges Bank, the Norwegian Central Bank, has not provided any indication of a prohibition nor stricter regulation of ICO's or Token Sales.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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PERU

1 Does your country allow or prohibit ICOs and Token Sales?

ICOs and token sales are not explicitly allowed nor expressly prohibited under Peruvian law.

2 Does your country regulate ICOs and Token Sales?

While ICOs and token sales are not expressly regulated in Peru, it is necessary to bear into consideration that under the Peruvian Securities Market law (Legislative Decree No. 861) there could be an interpretation that may consider cryptocurrency as a “security”, given the broad definition of the latter. If this is the case, then ICOs could be considered to be regulated under the terms of the cited regulation. Notwithstanding the aforementioned, up to this date the Peruvian regulator of the securities market (the Superintendencia del Mercado de Valores) has not issued any opinion to this effect nor has it issued any project suggesting any amendments to the cited regulation in order to include ICOs and token sales within the scope of the securities market regulatory framework.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

Currently, there are no government agencies responsible for regulating ICOs and token sales as they are not expressly regulated in Peru.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

Not applicable.

PERU

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

While there is no current regulation in Peru regarding ICOs and token sales, cryptocurrencies are experiencing increasing demand in Peru, with several companies exploring the possibility of using them in a complementary way for its operations. In the same vein, the Peruvian banking and finance regulator has been monitoring cryptocurrency activities in the Peruvian market. We have not yet seen any ICOs nor any token sales in the domestic market.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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POLAND

1 Does your country allow or prohibit ICOs and Token Sales?

ICOs and Token Sales are generally allowed in Poland as there are no provisions of law explicitly prohibiting such offerings or sales.

2 Does your country regulate ICOs and Token Sales?

There are no specific regulations regarding ICO's and Token Sales in Poland. The only document issued by the official state agency on ICOs and Token Sales is "The KNF's [Polish Financial Supervision Authority] statement on selling so-called coins or tokens (Initial Token Offerings - ITOs or Initial Coin Offerings - ICOs)". In the statement, the KNF points out risks associated with investing in ICOs and ITOs. It also stresses, that although ICOs and ITOs generally are not regulated, depending on how they are structured - ICO's and ITOs might fall within the scope of some existing regulations. Especially, some of coins and tokens might be qualified as financial instruments. Such qualification would result in firm involved, in particular ICO's being obliged to comply with the EU and state capital markets regulations.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

As explained in 2), there are no specific regulations regarding ICOs and Token Sales, therefore none of the government agencies was designated to supervise such actions. Nevertheless, questions regarding ICOs and ITOs, especially questions on whether given ICO or ITO are subject to any existing legal requirements should be directed at the KNF's Office (<https://www.knf.gov.pl/en/>)

POLAND

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework.

For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

Poland only regulates on the offering of financial instruments, which is also subject of EU regulations. If coin or token are qualified as an financial instrument, the firm involved in public offering should draw up prospectus, that shall be presented for KNF's acceptance.

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

Recently a debate on crypto-currencies was held in Polish Parliament's Public Finance Commission. During the debate most of officials, including the President of the National Bank of Poland, opted for adopting of strict regulations, that would limit or even prohibit investments in crypto-currencies. However, no actual legislative works have been yet undertaken.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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PORTUGAL

1 Does your country allow or prohibit ICOs and Token Sales?

Portugal does not allow or prohibit ICOs and Token Sales. Virtual and Crypto-currencies are not deemed to be money for legal purposes and therefore, in principle, the offering of a virtual/crypto currency as such, i.e., as a currency different from a currency with legal tender would not be prohibited in Portugal.

2 Does your country regulate ICOs and Token Sales?

There is no specific regulation expressly applicable to ICOs and Token Sales. The Portuguese Banking Authority has taken the public view that the entities issuing and offering virtual currencies “are not regulated or supervised” by any national or European authority governing of the financial system. One could take the view that a public offering of virtual currencies aimed at the Portuguese market should be treated as a public offering of securities and thus attracting the same level of regulation as an IPO. However, as mentioned above, there is no express provision governing offers of virtual currencies and the Securities and Exchange Commission has not issued any public opinion regarding this issue yet.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

The two public agencies potentially interested in regulating virtual currencies would be the Portuguese Banking Authority (Banco de Portugal) and the Securities and Exchange Commission (Comissão do Mercado de Valores Mobiliários). The Portuguese Banking Authority, as mentioned above, as taken the public view that there is no current regulation in force applicable to virtual currencies. To our knowledge, the Portuguese Securities and Exchange Commission has not issued any public opinion on the issue yet.

PORTUGAL

- 4** If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.
- 5** Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.
- 6** Please identify a point of contact at your firm for cryptocurrency-related matters.

N/A

N/A

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SINGAPORE

1 Does your country allow or prohibit ICOs and Token Sales?

ICOs and Token sales are not prohibited under Singapore law. A few ICOs have been launched here including TenX's SGD80 million raise.

2 Does your country regulate ICOs and Token Sales?

Depending on how the ICOs and token offerings are structured (i.e if the offerings are considered capital markets products), they are subject to the existing securities laws in Singapore.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

The Monetary Authority of Singapore is the regulatory authority.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

(a) A guide issued by the Monetary Authority of Singapore seven days ago, on 14 November 2017 provides clarity and A proposed ICO or token offer which constitutes a capital market product, i.e, it is a share, ownership interest in, and tags on the token holder's liability and mutual covenants with other token holders in a corporation, or a debenture, a collective investment scheme unit, and as defined under the Singapore securities legislation, is subject to licensing requirements under the Securities and Futures Act (Cap 289) and its regulations ("SFA").

(b) Any offers of ICOs/digital tokens must be made in or accompanied by a prospectus, prepared in accordance with the SFA requirements and registered with the Monetary Authority of Singapore unless the offer is exempted under legislation (for example, small offers which do not exceed SGD 5 million within a 12 month period, private placements not more than 50 persons within a 12-month period or offers to institutional investors or accredited investors, subject to the specified conditions.

SINGAPORE

(c) In addition, the offeror, issuers or intermediaries (who provide a platform, or who are financial advisers or operates the trading platform) carrying on the regulated activities must hold a capital markets services license under the SFA and the Financial Advisers Act, and be an MAS-approved exchange or recognized market operator, unless exempted under the law.

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

There will be a new legislation for a new payments services framework which includes regulating virtual currency services and e-money issuance. We are following the consultation process currently ongoing.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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SLOVAK REPUBLIC

1 Does your country allow or prohibit ICOs and Token Sales?

ICOs or token sales are not prohibited in Slovak republic.

2 Does your country regulate ICOs and Token Sales?

Slovak republic has no specific regulation in this respect.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

As there is no regulation of ICOs, token sales nor any aspect of cryptocurrency in Slovak republic, no government agency is responsible for regulation of this area.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

As no regulation in this matter exist in Slovak republic, we can't provide you with any information in this respect. According to the National Bank of Slovak republic cryptocurrency is not considered as currency nor as electronic money. Cryptocurrency cannot even be subsumed under any of the existing financial instruments listed exhaustively in the Act No. 556/2001 on securities and investment services.

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

As Slovak republic is part of European Union, in future a regulation of cryptocurrency may come in force on European level, probably regarding eliminating the risks connected to these cryptocurrencies.

SLOVAK REPUBLIC

6 Please identify a point
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for cryptocurrency-
related matters.

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SOUTH AFRICA

<p>1 Does your country allow or prohibit ICOs and Token Sales?</p>	<p>It is allowed.</p>
<p>2 Does your country regulate ICOs and Token Sales?</p>	<p>Not yet, although regulation is imminent.</p>
<p>3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?</p>	<p>No regulation yet. Likely to be regulated by National Treasury, The South African Reserve Bank, The South African Revenue Service, Financial Intelligence Centre and Financial Services Board.</p>
<p>4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.</p>	<p>Not applicable yet.</p>
<p>5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.</p>	<p>In December 2016 National Treasury together with The South African Reserve Bank, Financial Intelligence Centre and Financial Services Board established an intergovernmental fintech working group to develop an approach towards fintech including crypto currencies.</p>

SOUTH AFRICA

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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SOUTH KOREA

1 Does your country allow or prohibit ICOs and Token Sales?

ICOs and Token Sales are prohibited in Korea. The Korean government has set up a joint task force consisting of the Financial Services Commission and other related agencies to study and analyze matters related to virtual currencies and recently announced its decision to ban all forms of ICOs on September 29, 2017.

2 Does your country regulate ICOs and Token Sales?

No.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

None.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

None.

SOUTH KOREA

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

The Korea Blockchain Industry Promotion Association consisting of the local crypto industry reacted strongly against a recent announcement of the Korean government regarding a ban on ICOs and Token Sales and declared that they would prepare a self-regulation plan for ICOs. However, given the strong position of the Korean government, ICOs and Token Sales are unlikely to be allowed in Korea for the time being.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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SPAIN

1 Does your country allow or prohibit ICOs and Token Sales?

ICOs and Token Sales are not expressly prohibited in Spain. However, ICOs may fall within the prospectus filing requirements of the Spanish stock market law (LMV) as the definition of financial instruments and negotiable securities is very wide (article 2 LMV), and the Spanish government can add new types of securities by its own fiat without an amendment of the law being necessary, provided this have been agreed under EU regulations. The Spanish regulator (CNMV) and generally, Spanish law are highly protective of small investors rights. This may have had an impact on the non-advertisement of ICOs in the Spanish market so far. Token Sales of bit coins against euros could lead to criminal prosecution risk to the extent that the Bitcoins' seller purports to the buyer to be selling or exchanging "money", hiding the risk of Bitcoins' depreciation, as under Spanish law the payment of debts must be done in the agreed currency or in Euros as the currency of legal tender in Spain (articles 248 CP in relation with section 1170 CC).

2 Does your country regulate ICOs and Token Sales?

Strictly speaking no, but please refer to the risk of ICOs being treated as securities offers.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

- a) The Spanish Ministry of Economy
- b) The CNMV, Comisión Nacional de Mercado de Valores.

SPAIN

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

If ICOs would be assimilated to securities offers, Spanish law would require the filing by the issuer (i.e. the cryptocurrency originator) of a prospectus and its publication with and by the CNMV. Certain offers are exempted from this requirement, if addressed to institutional investors, or if addressed to less than 50 investors, or if the amount issued is less than 6 million, etc.

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

N/A

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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SWEDEN

1 Does your country allow or prohibit ICOs and Token Sales?

ICOs and Token Sales are currently not specifically regulated in any form in Sweden, and definitely not specifically prohibited. ICOs and Token Sales must therefore be regarded as allowed.

2 Does your country regulate ICOs and Token Sales?

As stated under Q 1, there are no regulations in place specifically covering ICOs and Token Sales. Depending on how an ICO or Token Sale is structured the coins or tokens may perhaps qualify as financial instruments, in which case the ICO or Token Sale may be regarded as a regulated investment activity. This must be analysed on a case by case basis.

Of some interest may be that the Swedish Financial Supervisory Authority (Sw. Finansinspektionen, FI) has issued a warning related to risks involved with participation in ICOs. The risks identified are e.g. that since most ICOs are unregulated there are no guarantees that the token or crypto currency issued actually confer any rights to the holder against the issuer, that there is no guaranteed market available for the issued asset to be traded on, that information regarding the asset may be misleading or not provided to all investors simultaneously, and that there is a significant risk for fraud.

The European Securities and Markets Authority (ESMA) has further just recently issued two statements or alerts regarding ICOs, one directed towards investors and one towards firms involved in ICOs. These two statements are available at the following link:

<https://www.esma.europa.eu/press-news/esma-news/esma-highlights-ico-risks-investors-and-firms>.

SWEDEN

3 If your country

regulates ICOs and

Token Sales, what

are the names of the

government agencies

responsible for

regulating them?

In the event any specific regulation is enacted, the responsible agency will be the Swedish Financial Supervisory Authority. This agency will also oversee and have under supervision any ICO or Token Sale which may become regarded as a regulated investment activity, as mentioned in the answer to Q 2 above.

4 If your country

regulates ICOs and

Token Sales, please

provide a short

summary of the

regulatory framework.

For example, do ICOs

and Token Sales need

to be registered or

comply with any rules;

or can they only be

sold to certain types of

purchasers/investors.

Not applicable, see answer to Q 3.

5 Please provide any

additional information

you feel is important to

understanding ICO and

Token Sale regulation in

your country.

For some additional information, please see answer under Q 3. We are seeing a significant increase in interest in ICOs and issues related to crypto currencies more generally.

6 Please identify a point

of contact at your firm

for cryptocurrency-

related matters.

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SWITZERLAND

1 Does your country allow or prohibit ICOs and Token Sales?

Yes, ICO's and Token Sales are allowed and so far not specifically regulated. FINMA, the Swiss Financial Market Authority issued recently a guidance on how FINMA intends to deal with such transactions in a regulatory manner (FINMA Guidance 04/2017 of September 29, 2017, see annex). Depending on how an ICO is structured, however, some parts of the procedure may already be covered by existing regulations. This concerns the following areas in particular:

- provisions on combating money laundering and terrorist financing;
- banking law provisions;
- provisions on securities trading;
- provisions set out in collective investment scheme legislation.

2 Does your country regulate ICOs and Token Sales?

See answer 1), ICOs are currently not governed by any specific regulation in Switzerland.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

See answer 1), FINMA is responsible to apply the above mentioned regulations on cryptocurrencies or ICOs, if necessary and indicated.

SWITZERLAND

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework.

For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

See again answer 1); depending on the structure the transactions may be subject to one of the above mentioned regulations. In most cases AML-legislation will be applicable, provided certain thresholds values per investor are exceeded.

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

See FINMA Guidance 04/2017 in the annex.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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THAILAND

1 Does your country allow or prohibit ICOs and Token Sales?

In Thailand, the Securities and Exchange Commission, Thailand (SEC Thailand) has been monitoring the development and the increasing popularity of Initial Coin Offerings (ICO). It is understood by the authorities that an ICO refers to a digital way of raising funds from the public.

The SEC Thailand encourages access to funding for businesses and realizes that ICOs have the potential to answering the needs of startups. It also understands the unique environment in which tech startups operate and realizes that ICO may not fit with SEC Thailand's current regulatory framework. The concern is to strike the balance between supporting digital innovation and protecting investors from potential ICO scams.

Depending on how the ICO is presented, the ICO can be qualified as offering of securities. Therefore, the issuer will have to comply with applicable regulatory requirements under the SEC Thailand's overview.

2 Does your country regulate ICOs and Token Sales?

ICOs and Token Sales are not yet regulated in Thailand. The SEC Thailand is taking careful steps (soft approach) to address the issue in the most flexible but appropriate manner. It has called for comments and suggestions from the private sector. On 14 September 2017, the SEC has released its guidelines on ICOs which is very close to the US SEC.

Investors in an ICO are invited to do their homework and to understand the benefits and risks associated with it, because legal protection and recourse for investors may be limited or not applicable in most ICO cases.

Draft regulation are considered in the context of the adoption and enforcement of the Fintech Act schedule for 2018. SEC would allow retail investors to put up to 9,000 USD (equivalent) per company in ICO funding.

THAILAND

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

Since there is no adopted laws and regulations on ICOs in Thailand, there is no government agency in charge yet. By default, the SEC is playing the monitoring role.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

No compliance requirement to date

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

Because ICOs have increased in popularity, the Thai SEC has expressed concerned that this digital fundraising mechanism might be used by cybercriminals.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

Dr. Roland Amoussou-Guenou, Partner

TURKEY

1 Does your country allow or prohibit ICOs and Token Sales?

There is no specific regulation on this issue. Therefore, it can be said that it is currently allowed in Turkey. However, this also depends on how the courts and regulatory bodies would interpret one of the general provisions under the Turkish Commercial Code (“TCC”); Article 552 of the TCC sets forth that no one can collect money from the public by making an invitation to public to become shareholders in a company to be established or to contribute to capital increases in already established companies (except for publicly listed companies). The Banking Regulatory Authority in Turkey does not currently consider Bitcoin, altcoins and tokens as “money”, however the courts are not bound by this categorization and there is a risk that a court may interpret the ICOs or token sales under the scope of Article 552 of the TCC by considering the tokens as “money”. The main aim of this article is to prevent fraudulent activities. As ICOs and token sales are sometimes used for fraudulent activities (such as fabricating a project that is not going to happen and collecting bitcoins without giving any tradable tokens), in case of a fraudulent ICO, a court may decide to apply Article 552 of the TCC.

2 Does your country regulate ICOs and Token Sales?

No, but this issue is coming to the attention of the public and therefore regulatory bodies.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

N/A

TURKEY

- 4** If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.
- 5** Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.
- 6** Please identify a point of contact at your firm for cryptocurrency-related matters.

N/A

N/A

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Filiz Toprak Esin - filiz.toprak@gun.av.tr

Both of us are dealing with cryptocurrency matters, Filiz is more into the anticorruption aspects and I deal with the technological background and we both deal with any possible regulatory issues.

UKRAINE

1 Does your country allow or prohibit ICOs and Token Sales?	Ukrainian laws do not prohibit ICOs or Token Sales.
2 Does your country regulate ICOs and Token Sales?	There is no regulation in Ukraine dedicated to ICOs or Token Sales.
3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?	N/A.
4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.	N/A
5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.	Although there is no ICO Token Sale-specific regulation in Ukraine, organizers of ICOs and Token Sales should be mindful of a broader traditional legal framework that may apply. Depending on how ICOs / Tokens are promoted, what commitments are made and how borrowings are structured, the following aspects should be considered:

UKRAINE

- 1.**An ICO / Token prospectus may be regarded as a form of public contract and thus subject to the usual civil treatments of contracts. Accordingly, organizers may be recognized as being contractually bound by the undertakings they assume.
- 2.**The activity in question may be regarded as 'entrepreneurial activity' and the organizers may be obligated to form and register corporate entities.
- 3.**ICOs / Token offerings are often made based on attraction of cryptocurrency funds from the investors. Although cryptocurrencies have no legal status yet, it is conceivable that if they are treated as a form of property, then the collection of funds in form of cryptocurrency may potentially qualify to be taxable. (Also, given that ICOs / Token sale do not fall under the established forms of raising capital, the money received may also be taxable).
- 4.**In the course of the activity, raised funds in form of cryptocurrency will generally need to be converted to fiat currencies, spending will have to be made, accounted for and taxed. Unless a proper structure is established for this and is duly administrated (in many practical instances we observed - it is not), there may be associated tax or compliance risks.
- 5.**It is conceivable that ICO / Token offerings may be subject to the consumers' protection laws. The disclaimers and liability limitations specified by organizers in their prospectus papers may be not fully enforceable.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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UNITED KINGDOM

1 Does your country allow or prohibit ICOs and Token Sales?	Token sales are permitted. Depending on whether the offering of the tokens is regulated, certain restrictions may apply.
2 Does your country regulate ICOs and Token Sales?	It depends on how the token is structured (for example, whether the token constitutes a security).
3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?	Where applicable, the regulator will be the UK Financial Conduct Authority (FCA).
4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.	N/A
5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.	The FCA has released a statement highlighting the risks of investing in ICOs, warning companies to “carefully consider if their activities could mean they are arranging, dealing or advising on regulated financial investments.” In addition, the FCA highlighted that digital currency exchanges that facilitate the exchange of certain tokens should consider if they need to be authorised by the FCA to be able to deliver their services.

UNITED KINGDOM

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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UNITED STATES

1 Does your country allow or prohibit ICOs and Token Sales?

The United States (U.S.) allows ICOs and Token Sales.

2 Does your country regulate ICOs and Token Sales?

Yes, the U.S. regulates ICOs and Token Sales.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

U.S. Securities and Exchange Commission (SEC)
U.S. Department of the Treasury, Financial Crimes Enforcement Network (FinCEN)
U.S. Commodities Futures Trading Commission (CFTC)
U.S. Department of Justice (DOJ)
Individual states.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

How coin and token offerings are structured will determine how they are regulated. If an ICO or Token Sale involves the sale of a “security,” then the offering and participants in the offering are subject to SEC jurisdiction and must comply with U.S. federal securities laws. Whether an ICO or Token Sale involves a security is likely to depend on whether the offering involves: (1) an investment of money; (2) in a common enterprise; (3) with a reasonable expectation of profit; and (4) through the managerial efforts of others. If the offering satisfies the four part test, then it is a security. If it does not satisfy all four parts, then the offering likely does not involve a security. When the SEC analyzes whether a security is involved, it will look at the specific facts and circumstances of the offering and will look at the true nature of the offering.

If a security is involved, then the offering will either need to be registered with the SEC or exempt from registration. A registered offering (also known as a public offering) requires, under the Securities Act of 1933 (Securities Act), as amended, the issuer to file a registration statement

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with the SEC before it offers its securities for sale. The issuer is prohibited from actually selling the securities until the SEC staff declares the registration statement “effective.” Registration statements have two principal parts. Part I is the prospectus, the legal offering or “selling” document. The issuer of the securities must describe in the prospectus important facts about its business operations, financial condition, results of operations, risk factors, and management. It must also include audited financial statements. The prospectus must be delivered to everyone who buys the securities, as well as anyone who is made an offer to purchase the securities. Part II contains additional information that the company does not have to deliver to investors, but must file with the SEC, such as copies of material contracts.

If an issuer seeks to rely on an exemption from registration, the level of disclosure required to be made to prospective investors will depend heavily on whether the prospective investors qualify as “accredited investors.” For individual investors, an investor will be considered an “accredited investor” if he or she: (1) earned income that exceeded USD \$200,000 (or USD \$300,000 together with a spouse) in each of the prior two years, and reasonably expects the same for the current year, or (2) has a net worth over USD \$1 million, either alone or together with a spouse (excluding the value of the person’s primary residence). If non-accredited investors are involved, the issuer must disclose certain information about itself, including its financial statements, similar to what would be required for a registered offering. If an issuer is selling only to accredited investors, the issuer disclosure obligations are more limited. Issuers relying on a Regulation D exemption, which is set forth in the Securities Act, are required to file a document called a Form D with the SEC no later than 15 days after they first sale of the securities in the offering. The Form D will include brief information about the issuer, its

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management and promoters, and the offering itself. The issuers will also be required to make notice filings, as required by the laws of the individual states within the U.S. in which their investors reside. State notice filings, and the associated fees that must be paid in connection therewith, differ on a state-by-state basis.

FinCEN also may regulate ICOs and Token Sales if the sales involve a “virtual currency.” FinCEN defines a “virtual currency” as a “medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction.” Under FinCEN regulations, if a person is engaged in the business of issuing (putting into circulation) a virtual currency, and the person has the authority to redeem (to withdraw from circulation) such virtual currency, the person is considered a currency or virtual currency “administrator,” and must register with FinCEN as a “money transmitter,” unless an exemption from registration is available. Note, FinCEN also requires registration if the person is an “exchanger”—a person engaged as a business in the exchange of virtual currency for real currency, funds, or other virtual currencies.

To the extent the ICO or Token Sale involves a “commodity,” the CFTC has jurisdiction, although it may be limited to situations involving fraud and manipulation. Since 2015, the CFTC has considered bitcoin and other virtual currencies to be commodities.

The DOJ can regulate ICOs and Token Sales by prosecuting violations of U.S. federal civil and criminal laws. For example, the DOJ could prosecute persons for failing to comply with FinCEN regulations or engaging in mail, wire, or securities fraud.

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Finally, individual states within the U.S. may have jurisdiction to regulate ICOs and Token Sales, depending on each state's laws. It is common for individual states to regulate securities purchased or sold and currencies exchanged within their state borders.

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

The SEC has been moving aggressively to regulate this space. In July 2017, the SEC issued an Investigative Report on The DAO. In its report, the SEC concluded that tokens issued by The DAO were, in fact, securities, and warned that other coins and tokens could be considered securities under the U.S. federal securities laws. Since then, the SEC has: (1) halted trading in securities of certain publically-traded companies due to concerns about the companies' claims regarding their involvement in the cryptocurrency space; (2) launched an Enforcement Initiative to Combat Cyber-Based Threats and Protect Retail Investors by targeting, among other things, violations involving ICOs; and (3) filed enforcement actions to shut down ICOs that failed to comply with U.S. federal securities laws. It should be noted that U.S. regulators and law enforcement often work collaboratively and sometimes conduct parallel investigations. As a result, understanding the interplay among the various agencies is important.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

Robert Long

Rob previously served as a senior attorney at the U.S. Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA), and well as a federal prosecutor with the U.S. Department of Justice (DOJ). His practice routinely includes advising clients on securities regulatory and compliance issues, including regulation involving cryptocurrency companies. He has been frequently quoted in national media as an expert on cryptocurrency matters, and has presented to national audiences on such topics.

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Christopher Trowbridge

Chris is a commercial litigator with extensive experience in securities litigation, FINRA and other arbitrations, and broker-dealer industry and customer disputes. Chris and his team have advised cryptocurrency investors in disputes, including the MtGox bitcoin exchange bankruptcy pending in Japan and the related bitcoin bankruptcy proceeding pending in Texas.

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URUGUAY

1 Does your country allow or prohibit ICOs and Token Sales?

Act 19.210, dated April 29, 2014, sets forth the possibility of making payments through the use of electronic money or cryptocurrency in Uruguay. In addition, the act defines what is meant by electronic money and that ICOs can only be issued by electronic money institutions, duly authorized for this purpose by the Uruguayan Central Bank.

2 Does your country regulate ICOs and Token Sales?

Uruguay allows the use of electronic money and regulates how they should be issued. However, the sale between authorized agents and private buyers does not have any special formality except for the fulfillment of minimum standards, such as KYC and AML controls.

3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

The name of the government agencies responsible for regulating ICOs and Token sales are the Uruguayan Central Bank and the Ministry of Economy and Finance.

4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

In furtherance of Act of Financial Inclusion, No. 19210, that set forth the possibility of the use of cryptocurrencies or electronic money, Circular No. 2198 of the Uruguayan Central Bank was issued, on September 8, 2014.

The referred Circular regulates the requirements, deadlines and other aspects related to the prior authorization of the Uruguayan Central Bank, necessary for the issuers of cryptocurrencies to carry out their activities. For issuing the authorizations, the Uruguayan Central Bank may consider reasons of legality, opportunity and convenience.

The authorization of issuers of cryptocurrencies shall be granted by the Board of Directors after obtaining a report from the Payment System Area. In order to grant

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authorization to operate, the Payment System Area will evaluate: the quality of the administration and the technology to be used to provide the service; level of risk management development and cash withdrawal network for issuers of (which may be owned or contracted) or the number and geographical distribution of commercial establishments.

The Uruguayan Central Bank must decide within a maximum of 150 working days from the date of submission of the corresponding application. However, this term can be suspended when it is necessary to expand information and / or further documentation.

5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

The president of the Uruguayan Central Bank, Mario Bergara, recently informed that the possibility of having a digital currency is being studied and that a pilot test will be carried out by the end of the current year.

6 Please identify a point of contact at your firm for cryptocurrency-related matters.

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VIETNAM

1 Does your country allow or prohibit ICOs and Token Sales?

There are currently no legal instruments specifically allowing or prohibiting ICOs and Token Sales in Vietnam. The State Bank of Vietnam (“SBV”), however, in its Official Letter No. 5747 dated 21 July 2017 (“Official Letter 5747”) has recently deemed such ICOs and Token Sales as “illicit payment instruments”, the issuance, provision, use or application of which shall subject the individual or organization concerned to an administrative penalty of VND 400 million (approximately USD 18,182) and possibly to a criminal prosecution under the Criminal Code. The SBV used Article 1.1 of the Government’s Decree No. 80/2016/NĐ-CP dated 1 July 2016 as legal basis for such conclusion, in that the aforesaid Article 1.1 provides an exclusive list of recognized or valid non-cash payment instruments in payment transactions in Vietnam (namely, cheques, payment orders, collection orders, bank cards, and other payment instruments prescribed by SBV), and ICOs and Token Sales are not included in such list.

2 Does your country regulate ICOs and Token Sales?

To date, there are no specific regulations on ICOs and Token Sales in Vietnam.

However, the Government is currently in the process of completing the legal framework on management of virtual assets and cryptocurrencies by issuing Decision No. 1255/QD-TTg dated 21 August 2017 approving the scheme of the proposed legal framework on this issue (“Decision 1255”).

Under Decision 1255, the proposals on relevant regulations on virtual assets and cryptocurrencies are anticipated to be completed by December 2018 while other proposals on taxation regulations applicable to the same are scheduled to be completed by June 2019. The proposed amendments to other legal instruments are expected to be completed by December 2020.

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<p>3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?</p>	None at the moment but by virtue of its issuance of Official Letter 5747, SBV seems to be currently overseeing the same.
<p>4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.</p>	Not applicable
<p>5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.</p>	Not applicable
<p>6 Please identify a point of contact at your firm for cryptocurrency-related matters.</p>	Mr. Eric Le Dréau - Managing Partner eric.ledreau@indochinalegal.com Sun Wah Tower - Unit 2009, 115 Nguyen Hue Blvd, District 1 Tel.: (84-28) 38219525 - Fax: (84-28) 38219520

ANNEX

FINMA Guidance 04/2017



FINMA Guidance

04/2017

Regulatory treatment of initial coin offerings

29 September 2017

1 Background

FINMA recognises the innovative potential of distributed ledger/blockchain technology. It welcomes and supports all efforts to develop and implement blockchain solutions in the Swiss financial centre.

Recently there has been a marked increase in initial coin offerings (ICOs), either conducted in or offered from Switzerland. ICOs are a digital form of raising funds from the public. They exclusively take place using distributed ledger or blockchain technology. "Token sale" or a "token-generating event" are other terms used.

Under the usual procedure for ICOs, financial backers will transfer a certain amount of cryptocurrency to a blockchain-generated address supplied by those organising the ICO campaign. In return, financial backers receive blockchain-based coins or other tokens connected with a specific project or company run by the ICO organisers.

How ICOs are structured from technical, functional and business standpoints varies markedly from offering to offering. There is no catch-all definition.

2 Regulation

ICOs are currently not governed by any specific regulation, either globally or in Switzerland. Equity and debt capital-raising, deposit-taking and the activities of financial intermediaries are controlled by existing laws that protect creditors, depositors and investors and which ensure that financial markets function properly. Swiss legislation on financial markets is principle-based; one such principle is technology neutrality. Consequently, collecting funds for one's own account without a platform or issuing house acting as an intermediary is unregulated from a supervisory standpoint in cases where repayment is not obliged, payment instruments have not been issued and no secondary market exists.

However, due to the underlying purpose and specific characteristics of ICOs, various links to current regulatory law may exist depending on the structure of the services provided. This concerns the following areas in particular:

- Provisions on combating money laundering and terrorist financing: the Anti-Money Laundering Act applies where the creation of a token by an ICO vendor involves issuing a payment instrument. If this is the case, other supervisory issues may be effective for third parties, especially for professional cryptobrokers or trading platforms which carry out

exchange transactions or transfers with tokens (secondary trading with tokens).

- Banking law provisions: accepting public deposits where an obligation towards participants arises for the ICO operator because of the ICO generally necessitates a banking licence.
- Provisions on securities trading: a licensing requirement to operate as a securities dealer may exist where the tokens issued qualify as securities (e.g. derivatives).
- Provisions set out in collective investment schemes legislation: potential links to collective investment schemes legislation may arise where the assets collected as part of the ICO are managed externally.

Due to the close proximity in some areas of ICOs and token-generating events with transactions in conventional financial markets, the likelihood arises that the scope of application of at least one of the financial market laws may encompass certain types of ICO model. This is also the case for ICO activities which aim to circumvent those provisions. Owing to the wide variety in structure of ICO models, FINMA can only carry out a conclusive regulatory assessment in specific cases. Currently, FINMA is assessing a number of such cases. Where financial market legislation has been breached or circumvented, enforcement proceedings will be initiated.

FINMA does not carry out legal assessments of ICOs beyond the area of financial market legislation (e.g. the Swiss Code of Obligations and/or tax law).

Launching ICOs

Companies or individuals who intend launching an ICO have to ensure that they comply with the requirements set out in the relevant financial market laws. FINMA therefore recommends parties interested in launching an ICO to inform themselves in time about the statutory provisions applicable to their business plan as set out in financial market legislation.

For further information about ICOs, interested parties are welcome to contact FINMA's FinTech Desk (fintech@finma.ch).

Information for investors

Coins or tokens acquired as part of an ICO may be subject to high price volatility. Often ICO projects are at an early stage of development, which results in a number of uncertainties regarding the financial and implementation aspects involved.

FINMA cannot rule out that ICO activities may be fraudulent, especially in light of current market developments. It has therefore issued a general warning about increased fraudulent activities by providers of fake cryptocurrencies.¹

¹ See FINMA's press release dated 19 September 2017 "FINMA closes down coin providers and issues warning about fake cryptocurrencies" at <https://www.finma.ch/en/news/2017/09/20170919-mm-coin-anbieter/>.



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