



**LEGALINK**

INTERNATIONAL BUT PERSONAL

# ICOs and Token Sales

## Regulatory Framework in Various Jurisdictions

2nd Edition 2019



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## THE **13** 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.
- 6 If a foreign entity conducts an ICO and offers tokens to residents of your country, will your government require the foreign entity to comply with any rules and regulations? If so, please provide an overview of how ICOs conducted by foreign entities are regulated by the government of your jurisdiction.
- 7 What is the legal nature of crypto in your country (for example, is crypto considered a security, commodity, currency etc.)?
- 8 Has the government of your country prosecuted, civilly or criminally, any ICO issuers, token developers or crypto exchanges for violating your country's laws? If so, please provide an executive summary of the most significant prosecution(s).
- 9 In your country, are there any significant commercial disputes or civil cases (non- government) involving crypto? If so, please provide an executive summary of the most significant dispute(s)/ case(s).
- 10 Does your jurisdiction tax crypto transactions? If so, please provide a basic explanation of how and at what rate they are taxed.
- 11 Separate from ICOs, does your jurisdiction regulate crypto trading or crypto exchanges? If so, please provide an overview of the regulation.
- 12 Does your country offer any unique or important benefit to crypto-focused companies (for example, clear regulatory guidance)? If so, please describe the unique/ important benefit.
- 13 Please identify a point of contact at your firm for cryptocurrency- related matters.

# CHINA

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**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.

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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

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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.

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

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