



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.

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

France allows ICOs and token sales.

2 Does your country regulate ICOs and Token Sales?

ICOs and token sales are not regulated in France yet. Nonetheless, France should soon provide a clear legal framework through the adoption of the Pact Law planned for the first half of 2019 ('Projet de loi relatif à la croissance et à la transformation des entreprises', ECOT1810669L). The purpose of this Pact Law is to facilitate entrepreneurship on the one hand, and to develop financing by way of equity capital on the other hand.

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

Under the terms of the draft Pact Law, the Autorité des Marchés Financiers (AMF), the French independent public authority in charge of regulating and policing financial markets, should be the competent authority for regulating 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.

There is an innovative and flexible supervision concerning offers to the public of tokens (utility tokens only). The legal person established or registered in France needs to be registered on a white list after compliance with their legal requirements.

Requirements of the issuer with respect to the visa given by the AMF:

- Exact, clear and not misleading information allowing an understanding of the risks relative to the offer;
- follow-up and protection of the funds raised.

The AMF has the authority to control and apply penalties in case the requirements attached to the visa are not met. In this regard, it can ban any new issuance, subscription of tokens and promotional communication.

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The AMF is entitled to access the deposit and escrow accounts. Access is based on objective and non-discriminatory rules. The Caisse des Dépôts et Consignation is a last resort.

There are still a few disputed issues:

- Nature and scope of the commitment of the project leader during the ICO and in the long run;
- Valuation of the token realised to the issuer's initiative;
- Related accounting and tax aspects (works of the National Accounting Authority, which should present its draft regulation at the end of the year).
- Clarification expected on the useful nature of information which will be made available to the public within the white paper.
- ICOs which are not in the scope of article 26 (issuer not established or registered in France or ICO not targeted by the AMF)

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

The European Securities and Markets Authority (ESMA) published on 9th January 2019 its advice to the European Union (EU) institutions – the Commission, Council and Parliament – on initial coin offerings and crypto-assets. The advice clarifies the existing EU rules applicable to crypto-assets that qualify as financial instruments and provides ESMA's position on any gaps and issues in the current EU financial regulatory framework for consideration by EU policymakers.

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

In order to conduct an ICO and offer token sales to French residents, a foreign entity will need to register a company under French law. However, an exception could be applied where the token sales offer is not considered as a public offer, that is to say when it is addressed to a restricted circle of investors (below 150 persons).

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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.)?

First of all, in France, cryptology is defined as any material or software designed or modified to transform data, whether information or signals, using secret conventions, or to carry out the reverse operation with or without a secret convention. The main purpose of cryptographic means is to guarantee the security of the storage or the transmission of data, in order to ensure their confidentiality, their authentication or the control of their integrity.

Three different kinds of token should be recognised:

- Utility token: it gives access to a product or service developed by the ICO company initiator.
- Asset/security token: the tokens are similar to shares, giving a right to a dividend but also bonds or debt securities. In these conditions, they can be qualified as financial instruments.
- Payment token: the payment token confers no right toward the transmitter but is accepted as a means of payment. Particular application of anti-money laundering regulations.

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).

None, to our knowledge.

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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).

None, to our knowledge.

10 Does your jurisdiction tax crypto transactions? If so, please provide a basic explanation of how and at what rate they are taxed.

The tax rules are directly linked to the considerations offered by the issuer. The drafting of the white paper and of all agreements to set up the ICO will be very important.

➤ For the issuer

From a VAT standpoint, the same rules should apply to all member states. As from 1st January 2019, and if the issuer is subject to VAT, tokens should be in the scope of the Vouchers Directive.

From an accounting standpoint, the ICO should be performed in two stages:

- Preliminary stage: neutrality established on a reimbursement obligation in case of failure of the fundraising.
- Implementation stage: during which it will be necessary to proceed to a legal analysis of the token (financial securities or utility token).

From a corporate income tax standpoint, no specific rules have been adopted yet. The tax treatment should follow the accounting treatment. Taxation is at the standard CIT rate of 31% for 2019, which should decrease to 25% by 2022.

➤ For the individual subscriber

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Three different tax rules have been determined following the decision of the State Council (Conseil d'Etat 417809, 28th April 2018). Profits resulting from the trading of crypto are taxable as:

- Industrial and commercial profits (ICP) for transactions realised on a regular basis (progressive income tax rate).
- Non-commercial profits (NCP) for gains stemming from a mining activity (progressive income tax rate).
- Capital gains on movable goods (CGMG) for occasional sales (flat rate of 30%).

11 Separate from ICOs, does your jurisdiction regulate crypto trading or crypto exchanges? If so, please provide an overview of the regulation.

France regulates cryptology trading and exchanges through the following laws:

- Law 2004-575 of 21st June 2004 for confidence in the digital economy – Title III ‘Security in digital economy’;
- Decree 2007-663 of 2nd May 2007 implementing law of 21st June 2004 related to means and benefits of cryptology;
- Decree 2001-1192 of 13th December 2001 related to export/import control and transfer of assets and dual-use technology ;
- Order of 29th January 2015 laying down form and content of the registration and authorisation application files regarding operations and related to means and benefits of cryptology.

Nevertheless, no regulation is adopted in France for cryptocurrency yet.

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.

France offers clear regulatory guidance through the above-mentioned regulations applicable to cryptology-focused companies (law, decrees and order), but not for those which are cryptocurrency-focused yet.

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

Claire Poirson - cpoirson@bersay-associes.com
(IP/IT Partner)

Alain Jouan - ajouan@bersay-associes.com
(Tax Partner)



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