



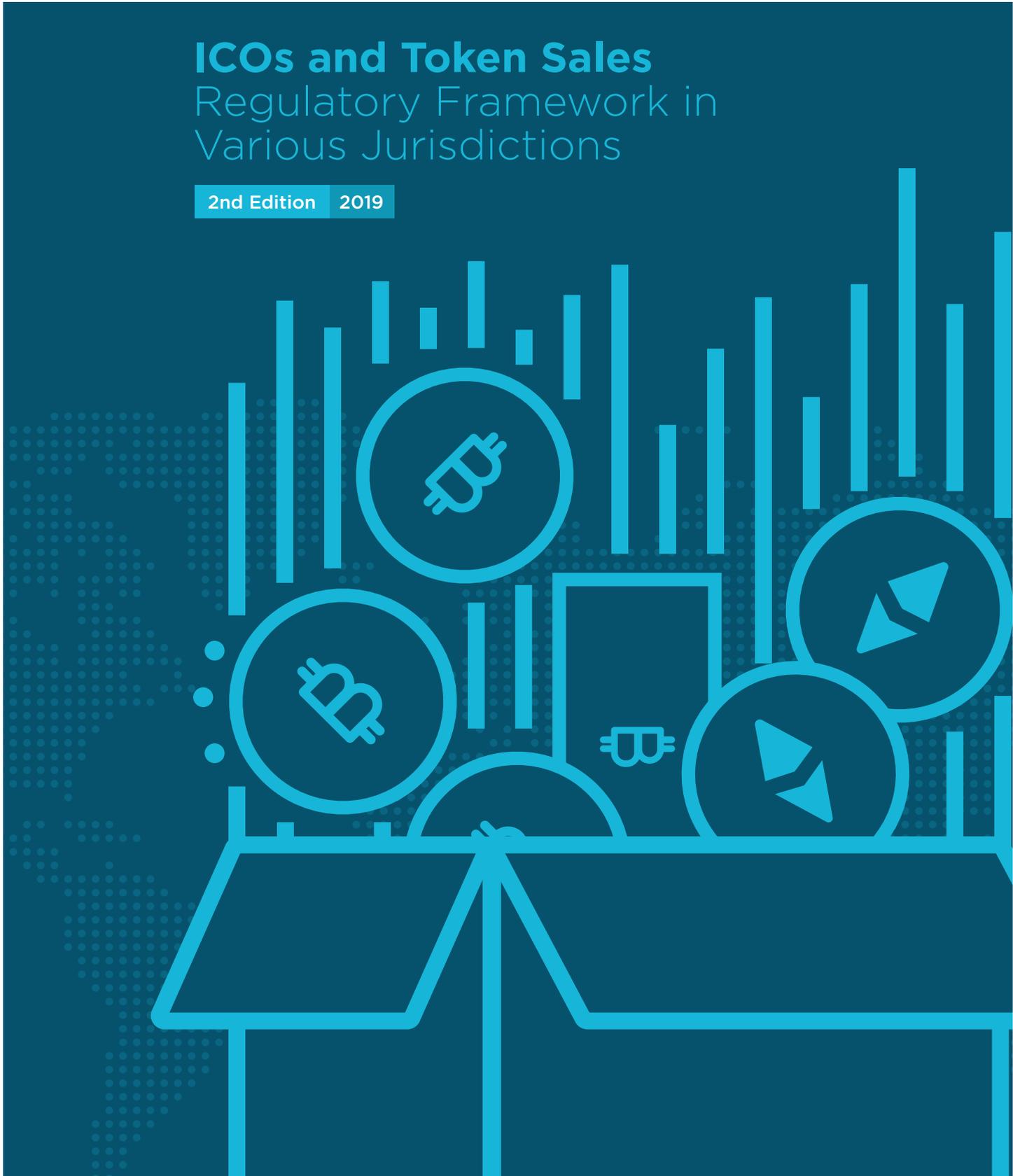
LEGALINK

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?

Neither ICOs nor token sales are expressly allowed nor prohibited in Italy, as there is no ad hoc regulation. ICOs and token sales may well fall in the realm of financial products which are regulated by TUF (the Testo Unico della Finanza, 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 governmental agency for listed companies and financial activity) as well as by a law.

2 Does your country regulate ICOs and Token Sales?

As above written, ICO and token sales are not expressly regulated by a specific law, but they are generally admitted in our jurisdiction.

Lately, two different governmental agencies have addressed the topics of ICOs and token sales.

In its statement 20660 of 31st October 2018, CONSOB stated that ICOs are subject to TUF, because they consist in a public offer of financial products (governed by TUF). In the case at stake the ICO was precautionarily suspended by CONSOB, because the promoter had not complied with one of the requirements set forth by TUF (i.e. the filing of a description of the offer).

The Agenzia delle Entrate (the Italian tax agency) made a statement on token sales. The Agenzia delle Entrate was formally asked whether utility tokens purchased with an ICO should be subject to taxation. The Agenzia delle Entrate released its reply on 28th September 2018. Specifically, the Agenzia delle Entrate stated that purchase of security tokens is not subject to VAT, because tokens are neither goods nor services. On the other hand, VAT should be applied when the owner of the tokens decides to spend them to receive the related products or services.

The Agenzia delle Entrate stated in the same resolution that security tokens which are part of salary or remuneration for professional performances represent labour income, and are thus subject to VAT.

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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 governmental agency competent for regulating financial activity is called CONSOB.

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 neither. Should it fall in the realm of TUF or of equity crowdfunding, the relevant discipline shall apply.

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 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

According to article 16 of the Preleggi (preamble) of the Civil Code, a foreign citizen/entity has the same rights in our country if such foreign country recognises those rights to an Italian citizen/entity. For example, a French citizen can purchase real estate in Italy only if French laws allow an Italian citizen to purchase real estate in France. Article 16 of the Preleggi is a general rule, and over time bilateral conventions have been entered by Italy and other countries to grant specific rights to the relevant citizens.

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overview of how ICOs conducted by foreign entities are regulated by the government of your jurisdiction.

As regards ICO and tokens, foreign entities which want to conduct an ICO or a token offer in Italy (i) have to have the same laws as Italian entities, and (ii) have to come from a country which affords to Italian citizens/entities the right to carry out such operations.

7 What is the legal nature of crypto in your country (for example, is crypto considered a security, commodity, currency etc.)?

Italian law does not regulate the legal nature of cryptocurrency, but provides for a definition of it for the sole purpose of combating money laundering. Cryptocurrency is 'the digital representation of value, not issued by a central bank or by a public authority, not necessarily connected to a currency having legal tender, used as a means of exchange for the purchase of goods and services and transferred, stored and electronically negotiated'.

Clearly, cryptocurrency cannot be considered as fiat currency because it is not legal tender in Italy. However, as stated by the anti-money laundering law, cryptocurrency can be used as means of payment, if contractual parties agree on that.

Furthermore, as we know, cryptocurrency might have other functions apart from being a means of payment. In fact, due to its high value and volatility, cryptocurrency might be used also as a commodity and/or financial instrument. Given the wide range of utilisation of cryptocurrency, a comprehensive definition of it is not easy to provide, and might not be even beneficial as it might not cover all aspects of cryptocurrency.

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

No, it has not so far.

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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).

The courts of Verona have pronounced on the contractual relationship between virtual currency exchangers and consumers in a recent judgment (195/2017). One of the parties in the litigation was an Italian company selling a virtual currency to be used by buyers themselves to invest in start-up companies through a Ukrainian e-portal.

The courts of Verona stated that the sale of cryptocurrency had to be qualified 'as professional activity of provision of services towards consumers'. As such, applying the relevant regulation of the Italian Consumer Code, the company was supposed to comply with the duty to inform consumers in a plain and clearly intelligible way before purchasing the cryptocurrency. The courts of Verona ascertained that the cryptocurrency seller had not complied with the Consumer Code, and consequently condemned it to compensate cryptocurrency buyers for suffered damages.

Another judicial decision on cryptocurrency followed the refusal of a notary to register an in-kind contribution of a shareholder paid off with cryptocurrency. Under Italian law, in-kind contributions can be paid only if they are accompanied by a sworn estimate provided by an expert stating their actual value. The notary refused to register the in-kind contribution due to the impossibility of quantifying the correct value of the contribution, even though the shareholder had provided the required sworn expertise. The shareholder addressed the courts of Brescia to obtain an order to the notary to register the contribution.

The judge denied the registration of the in-kind contribution because the cryptocurrency at stake was not traded on any platform, and that made it impossible to identify the value of the in-kind contribution. The registration was

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therefore denied not because cryptocurrencies cannot in principle be a contribution in kind, but because that specific cryptocurrency was not traded.

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

In 2016 the Agenzia delle Entrate released Resolution 72/E, which contains some practical guidance on cryptocurrency taxation.

Resolution 72/E follows the principles set forth by Judgment 264/2014 of the Court of Justice of the European Union, and shares its conclusion about VAT taxation of cryptocurrency exchanging activity. Specifically, the Agenzia delle Entrate resolved that the sale of cryptocurrency is assimilated to money exchange activity, cryptocurrency being comparable to a foreign currency whose sale is exempted from VAT.

Companies and individuals doing money exchange activity have the duty to pay direct taxes on the income of their business activity.

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

The law against money laundering (Italian Legislative Decree 90/2017) sets forth some provisions aimed at avoiding the risk of money laundering in connection with cryptocurrency transactions.

Specifically, the above-mentioned law requires crypto providers to be enlisted in a specific section of the Register of Money Changers, and to be compliant with the obligation of the adequate verification of the customer at the moment of the establishment of a continuous, periodic or sporadic commercial relationship which involves the transmission or movement of cryptocurrency amounting to €15,000 or more.

12 Does your country offer any unique or important benefit to crypto-focused companies (for example,

Italian legislation does not provide for benefits specifically to crypto-focused companies, but provides for a beneficial regulation for innovative start-up companies (Italian Legislative Decree 179/2012 and its subsequent amendments).

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clear regulatory guidance)? If so, please describe the unique/important benefit.

Such regulation defines a start-up as a company which (i) carries out its activity in the technological progress and innovation fields, and (ii) has some minimum requirements regarding the capital structure, kind of company and business model profiles.

Should a crypto-focused company have the above prerequisites, then it can take advantage of the relevant beneficial regulation regarding tax, bureaucratic obligations and company governance profiles (e.g. untaxed and fully digital registration of the company, tax write-off for investors, untaxed stock options for employees, and the possibility of arranging shorter and more flexible employment agreements).

Furthermore, on 27th September 2018, Italy became the twenty-seventh country to sign the declaration creating a European Blockchain Partnership. Its aim is to cooperate in the establishment of a European Blockchain Services Infrastructure (EBSI) that will support the delivery of cross-border digital public services with the highest standards of security and privacy. The Italian membership of the European Blockchain Partnership might create in the future a better regulatory framework for cryptocurrencies and services related to them.

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

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