



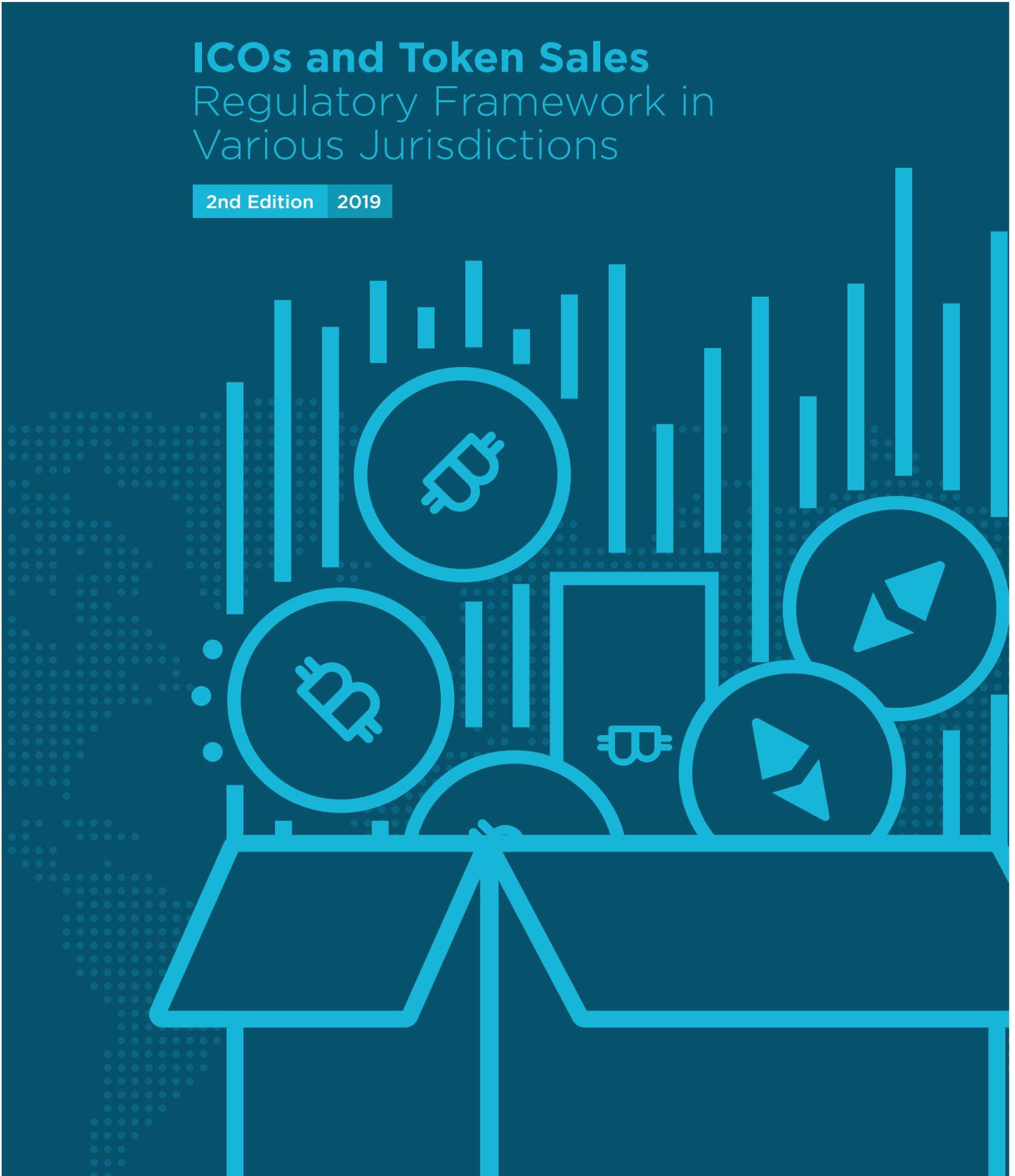
LEGALINK

INTERNATIONAL BUT PERSONAL

ICOs and Token Sales

Regulatory Framework in Various Jurisdictions

2nd Edition 2019



INDEX

 [CLICK ON THE COUNTRY NAME](#)

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Poland [FKA](#)

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Switzerland [Bratschi Ltd.](#)

Turkey [Gun + Partners](#)

Ukraine [Asters Law](#)

United Kingdom [Mishcon de Reya](#)

United States of America
[Bell Nunnally](#)

Uruguay [Hughes & Hughes](#)

Vietnam [Indochina Legal](#)

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?

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, has 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.

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

N/A

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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.

N/A

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.

In Portugal there is no legislation or regulation concerning cryptocurrencies. According to the Portuguese Banking Authority (Banco de Portugal), operations relating to cryptocurrencies are not illegal or forbidden. However, the entities that issue and/or sell virtual currencies are not subject to any obligation for authorisation or registration with Banco de Portugal. Therefore, cryptocurrency issuing or selling activity is not subject to any kind of prudential or behavioural supervision.

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

In Portugal there is no official position on the nature of cryptocurrencies yet. The Chairman of Banco de Portugal (as have other board members) has publicly expressed the view that cryptocurrency is not a currency but an asset.

Moreover, as seen in the previous response, the official view is that cryptocurrencies are not supervised nor regulated by Banco de Portugal. Banco de Portugal is

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still waiting for the European Commission to take the first step in order to regulate cryptocurrencies.

The Portuguese Securities Authority (CMVM) released, in July 2018, an alert/statement on virtual currencies in which it states that there is no regulation or supervision regarding trading platforms, ICOs or virtual currency trading. Therefore, there are no legal protections or guarantees for cryptocurrency traders/investors.

The first Portuguese cryptocurrency is Bityond. This token allows its owners to participate in polls related to the development of the platform created by the company or to donate those tokens to the company in order to develop new functionalities and applications.

After analysing Bityond's white paper, CMVM issued a notice concluding that this token is not a security and therefore is not subject to CMVM's supervision. However, the CMVM does not exclude the possibility of some of these instruments being treated as securities.

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).

To this date, no civil or criminal prosecution has been presented in respect of these matters.

9 In your country, are there any significant commercial disputes or civil cases (non-government) involving crypto? If so, please provide an executive

To this date, there are no significant commercial disputes or civil cases presented in respect of these matters.

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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.

Cryptocurrency taxation does not have any specific legal framework in Portugal. The most recent understanding of the tax authority is that cryptocurrencies and transactions will only be taxed if they constitute a taxpayer's professional or business activity for the purpose of personal income tax, according to the Portuguese Tax Code.

Cryptocurrencies can also be taxed as corporate income where the currency has served as a payment or from capital gains resulting from its transmission or appreciation.

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

No. There is still no legislation on cryptocurrency markets or trading in Portugal. However, it is expected that Parliament will soon start debating and discussing a new legislative framework in respect of cryptocurrency trading. No date for the approval of such legislation can be indicated at this stage.

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.

The CMVM has set up a department in charge of market developments which reveals openness and proximity to operators in the prospective analysis of operations regarding these matters.

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

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