



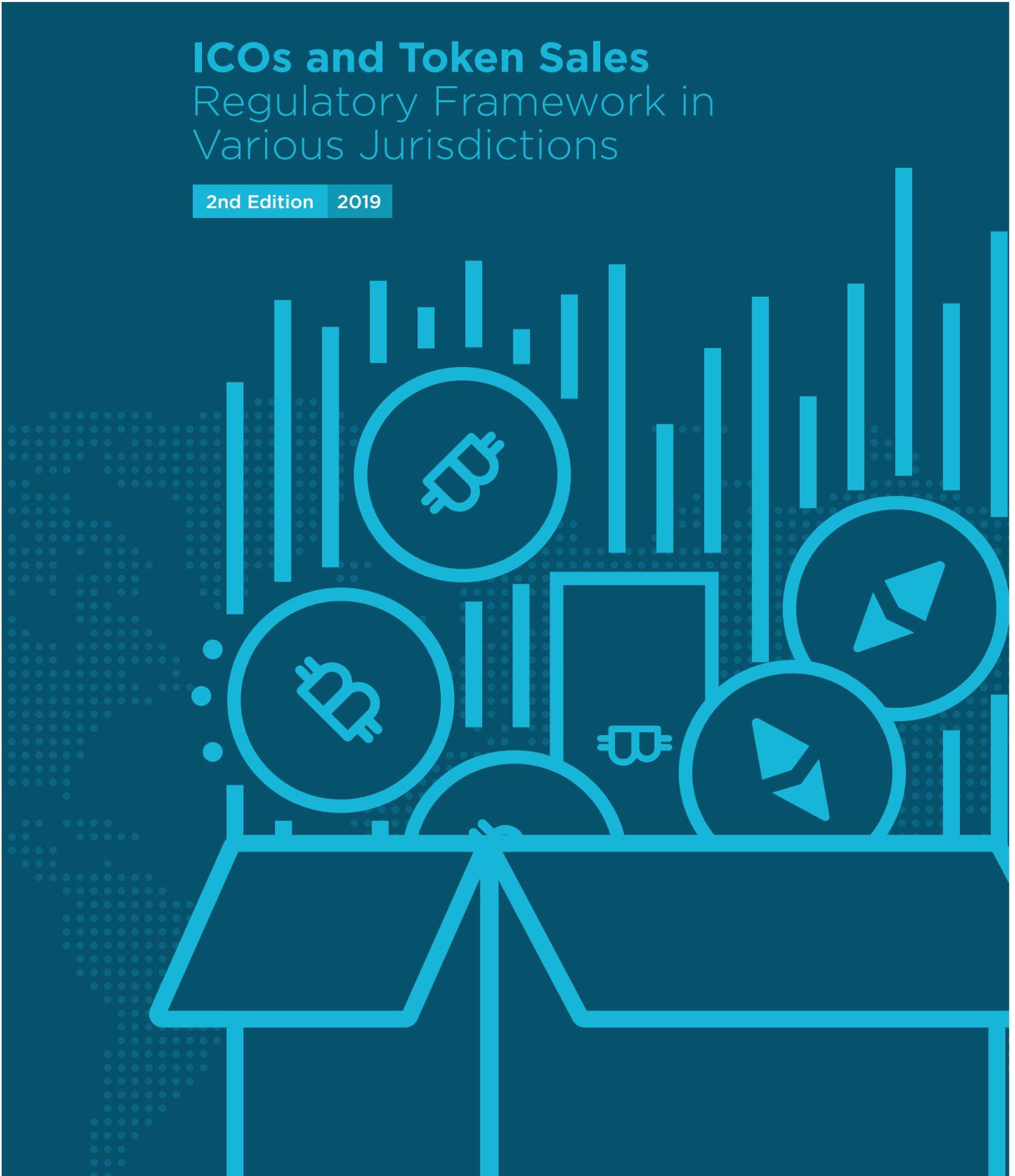
LEGALINK

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?

There is no express prohibition in the case of ICOs, but in our opinion they may be subject to stock market regulations. Private token sales are not considered illegal.

No ICO has yet been registered or authorised in Spain by the Spanish Stock Market Regulatory authority (CNMV) and/or Bank of Spain. Therefore, there are no cryptocurrencies or tokens issued in ICOs whose acquisition or holding in Spain can benefit from any of the guarantees or protections provided for in the regulations on banking or investment products.

2 Does your country regulate ICOs and Token Sales?

There is no specific regulation on cryptocurrencies in Spain, except that they cannot be treated as legal tender, which is exclusively reserved for the euro as national currency. The Spanish CNMV has issued two reports in this respect dated 8th February 2018, but there is no express regulation yet.

The CNMV is highly protective of small investors' rights. This may have had an impact on the non-advertisement of ICOs in the Spanish market so far. On the other side, the CNMV is also sensitive to the benefits of ICOs to the extent that they bring technological innovation and may promote entrepreneurial business. The current position of CNMV and Bank of Spain is that specific regulation of cryptocurrency and ICOs is necessary, but that such regulation can only be made at European Union level and after consultation with certain third countries, such as the US, which play a major role in world financial markets. The CNMV allows its commercialisation in Spain with clear information conditions, but it must be subject to the laws and competent authorities of other territories.

There are currently 37 ICOs operating in Spain but incorporated under the laws of other territories. The most popular ICOs are the following:

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- Inclusivity: <http://inclusivity.network/es/sc-our-team/>
- Real: <https://www.real.markets/>
- Hearthy: <https://hearty.co/>
- Aragon: <https://aragon.org/project>
- Fluon: <http://fluonecosystem.org/>
- Spice: <https://spicevc.com/>
- Flixxo: <https://www.flixxo.com/#/>
- Pylon: <https://pylon-network.org/es/>
- Witcoin: <https://witcoin.io/>

(SOURCE: <http://www.finnovating.com/news/mapa-icos-espana/>)

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

The CNMV.

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

CNMV position regarding ICOs:

On 8th February 2018, the CNMV issued a joint communique, 'CNMV considerations on cryptocurrencies and initial coin offering (ICO) addressed to the financial

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Token Sale regulation in your country.

sector professionals'. This joint communique points out that there are no issues of cryptocurrency or ICO which has been approved or verified by any regulatory authority such as the Bank of Spain or the CNMV. In Spanish law, cryptocurrency cannot be considered either as a financial instrument (promissory note, derivative etc.) or a currency (domestic or foreign), but we consider that they could be assimilated to securities in the case of public offerings or to chattels or commodities when they are traded individually.

The joint communique does not contain a normative definition of cryptocurrencies although it describes accurately concepts such as ICO and tokens by differentiating between security tokens and utility tokens using terms in Spanish which can be easily understood and are accessible to the layman. The joint communique is not part of Spanish true legal order as such, but certain parts could be considered as 'soft law' in as much as they are guidance to the Spanish Government's attitude.

The CNMV requires information on the companies that it suspects have launched ICOs. In the absence of clear regulation in the Spanish market, the CNMV has started to make information requests to companies that CNMV believes have been able to launch an ICO in Spain. Requesting information is one of the options available to the CNMV as part of its powers of supervision and inspection. The request for information is quite extensive: accounting data of the income that could have been obtained with the issuance of the ICO, a description of the obtained and admitted tokens, and the documentation provided to the investors that supports the investment.

6 If a foreign entity conducts an ICO and offers tokens to residents of your country, will your

To the extent that cryptocurrencies as considered to be technological products, there are no licence requirements. If they are used as financial instruments, they will be subject to stock market regulation with

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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.

regards to the issue and the ICO of cryptocurrencies. There is no published guidance about investments in cryptocurrencies by funds, except that alternative investment funds may invest in cryptocurrencies when dealing with money of qualified investors.

To the extent that they can be considered as securities, 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 has been agreed under EU regulations. A communique of the CNMV dated also 8th February 2018 has confirmed this view and has been therefore ratified by a notice dated 6th July 2018. Under article 38 of Royal Decree 1310/2005 as amended from time to time, offerings addressed exclusively to professional investors or to fewer than 150 persons, or if the minimum investment is at least €100,000 per investor or in the case of securities having a face value of at least €100,000, would not be subject to the prospectus filing requirements (CNMV).

AML/KYC requirements need to be fulfilled regarding the initial issuance of tokens/coins and any following transfer of tokens/coins to third parties. In Spain, companies must comply with money transmission laws and anti-money laundering requirements. Law 10/2010, dated 28th April, on the prevention of money laundering is widely drafted regarding the parties which are subject to it. Article 2 expressly mentions entities of electronic money, foreign exchange or money transfer companies, depositors or custodians or funds or payment means, all of which may trade or deal in one way or another in cryptocurrencies, and therefore become subject to money laundering supervision. On top of this, the new EU directive (2015/849/EU) will also extend the

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requirements to entities providing services to safeguard private cryptographic keys to hold, store or transfer virtual currencies. In addition to this, it is clear that the purchase, conversion or transfer of cryptocurrencies originated in a crime will fall within the scope of the Spanish Criminal Code (Article 301 seq) which imposes very serious penalties on this activity.

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

CNMV considers that the tokens issued within the framework of an ICO should be treated as transferable securities pursuant to article 2 of the Spanish Securities Market Law.

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).

No.

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).

No.

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

Capital gains from the sale of cryptocurrencies by a person resident in Spain will be taxed according to a rate of 23%. If they have been acquired and sold within 12 months, the tax rate may vary from €24.75 to €52. If the capital gains have been obtained by a company, there is a flat tax rate of 25%. As for the VAT treatment, the exchange of cryptocurrencies into euros or vice versa is VAT-exempt (ECJ 22nd October 2015-C-264/14, Hedqvist). This judgement establishes that such exchange is a provision of a service and not the delivery of a good, and that Bitcoins can be assimilated as to a type of foreign exchange which has been voluntarily accepted by the parties to the relevant transaction, and therefore enjoys the VAT exemption provided under article 135(1)(e) of Directive 2006/112/CE on VAT.

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

No.

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.

No.

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

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