



**LEGALINK**  
INTERNATIONAL BUT PERSONAL

# ICOs and Token Sales

## Regulatory Framework in Various Jurisdictions

2nd Edition 2019



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 CLICK ON THE COUNTRY NAME

**Argentina** Nicholson y Cano

**Australia** Piper Alderman

**Belgium** IUSTICA.BE

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**Bulgaria** Varadinov Law

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**Poland** FKA

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**Singapore** Braddell Brothers LLP

**Slovak Republic** Paul Q

**South Africa** Fluxmans Inc

**South Korea** Barun Law

**Spain** Ventura Garcés & López-Ibor

**Sweden** Hellstrom Law

**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?
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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.
- 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.

# ARGENTINA

## NICHOLSON Y CANO

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

ICOs and Token Sales are allowed in Argentina, as they are not expressly prohibited.

**2** Does your country regulate ICOs and Token Sales?

Argentina does not have any specific regulation over ICOs and Token Sales, yet.

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

N/A

**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

# ARGENTINA

NICHOLSON Y CANO

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

Notwithstanding what we inform in question 2 above, the Comisión Nacional de Valores – which function consists in watching over the transparency of stock exchange markets, see to the right pricing in such markets and protect investors – has released a press statement some days ago, about the trading of ICO's and Token Sales, warning that they are a “speculative investment with high risk” and consequently, “only an expert investor should be trading with such securities”. We expect, therefore, that ICOs and Token Sales will be subject to regulation in Argentina shortly.

**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.**

ICOs and token offers are not specifically regulated in Argentina. Nevertheless, if the token offer would entitle its holder to any equity or share of the resulting income in the invested project, then those tokens would probably be subject to securities regulation. Likewise, and as mentioned before, the Argentine Securities Commission has released a press statement about the trading of ICOs and token sales, where it warns that they are a ‘speculative investment with high risk’ and consequently ‘only an expert investor should be trading with such securities’.

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

The Argentine Central Bank has stated that cryptocurrencies are not backed and are not legal tender. Therefore, given the lack of regulation of cryptocurrencies and its own characteristics, crypto is considered movable property under Argentine law.

**8 Has the government of your country prosecuted, civilly or criminally, any ICO issuers, token**

To the best of our knowledge, based on publicly available information and without performing a specific search in this regard, we have no information about any proceeding in this regard.

# ARGENTINA

NICHOLSON Y CANO

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).

See previous answer.

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

Given that the Argentine tax system has not yet given a precise definition of what is called 'digital currencies', crypto is currently assimilated as securities. In that context, crypto transactions are subject to the following taxes.

Income tax: The rate depends on the person that performs the transaction. If it is an individual, the rate could be 15% of the profits from the transaction. However, given the current regulation, as cryptocurrency treatment is not explicitly regulated, the rate may vary between 5% and 35% of the profits from the transaction. If it is a legal entity, the rate is 30% of the profits from the transaction and should be reduced to 25% by 2020.

Bank debits and credits tax: Any banking transaction is taxed at 6% of the amount of the transaction. If the crypto transaction involves a bank account, it will be subject to said tax.

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Personal assets tax: As aforementioned, crypto is considered as a security. In that context, although it has not been included in the personal assets tax regulation yet, it may eventually be subject to it.

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

Resolution 300/2014 issued by Argentina's money laundering and financing of terrorism authority (UIF) mandates that registered reporting entities must monitor every transaction made with cryptocurrencies and report them to the UIF.

**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.

N/A.

**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?

Australia allows ICOs and token sales and is considered to be a country with a favourable regulatory approach to blockchain and cryptocurrencies.

The largest Australian ICOs have been PowerLedger (AUS\$30 million), Synthetix (formerly Havven) (AUS\$35 million) and CanYa (AUS\$12 million).

## 2 Does your country regulate ICOs and Token Sales?

Yes. Under existing securities legislation, ICOs are regulated if a cryptographic token meets the definition of a security, share, derivative or interest in a managed investment scheme.

The Australian Securities and Investment Commission (ASIC) has issued Information Sheet INFO225, a general guide on the current legal treatment of cryptocurrencies and ICOs, including limited guidelines for determining whether a token may be considered a financial product.

In 2018, the powers of the Australian Competition and Consumer Commission (ACCC) relating to misleading and deceptive conduct were delegated to ASIC such that ASIC now has jurisdiction to intervene if it believes that an ICO or token sale is misleading or deceptive (including whether or not the offer is the offer of a security or regulated fundraising).

The Australian Transactions and Reporting Analysis Centre (AUSTRAC) regulates the provision of designated services. The conversion of fiat currency into cryptocurrencies/virtual currencies is a designated service, and businesses providing such services generally need to register with AUSTRAC as digital currency exchange providers and comply with anti-money laundering and counterterrorism financing rules and regulations.

## 3 If your country regulates ICOs and Token Sales, what are the names of the government agencies

ASIC is the agency with jurisdiction over corporate fundraising and misleading and deceptive conduct occurring in connection with ICOs and token sales.

As well as ASIC, those involved in the area will also need to be aware of the requirements of the Australian

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responsible for regulating them?

Taxation Office (ATO) and the anti-money laundering and counterterrorism financing laws administered by AUSTRAC.

**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.**

ASIC Commissioner John Price said in 2018: “ICOs are highly speculative investments, are mostly unregulated, and the chance of losing your investment is high. Consumers should understand the risks involved, including the potential for these products to be scams, before investing.”

While token sales and ICOs are considered by many to be a form of crowdfunding, ASIC has made it clear that it does not consider that token sales will fall under the Australian crowdfunding regulatory framework which commenced on 29th September 2017. That framework permitted licensed operators to raise capital up to certain limits.

An ICO or token sale will be regulated in Australia if the rights and obligations or features of a cryptographic token offered cause that token to be a security, such as a share, derivative or an interest in a managed investment scheme (MIS). If so, then the normal fundraising regulations under chapter 6D of the Corporations Act apply to the issue of the tokens. Australia does not yet have a specific framework for ICO issuance.

While it is possible for a token to be issued in Australia as a genuine pre-sale of a digital good or asset or as a pre-purchase of a loyalty point, the design and characterisation of the token, together with the manner in which it is marketed, will be the deciding factors, and these tend to be the challenging areas for token issuers. If the offer of a token is the offer of an interest in a managed investment scheme, then disclosure and licensing obligations will apply which will require the issuer to hold an Australian Financial Services Licence (AFSL) (or be the authorised representative of a licence holder and be issuing the interest on behalf of the licence holder). Disclosure obligations increase

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dramatically where investors are not ‘sophisticated’ (in Australia a sophisticated investor is one with in excess of AUS\$250,000 income in the past two financial years or assets, excluding principal place of residence, in excess of AUS\$2.5 million).

Piper Alderman has written further on the analysis of tokens in an article available [here](#).

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

If a token is not to be a financial product (security), then a token sold through an ICO is likely to receive the same treatment as any good or service sold in Australia as part of the normal commercial activities of a business. This means the token sale may be subject to goods and services tax (GST), and the company may also be liable for company tax on the profit from the sale.

If the token is a financial product (security), the money raised may not be subject to GST or company tax, but a financial licence and compliance costs carry a significant cost.

While foundations and not-for-profit structures provide some tax exemptions, the Australian Not For Profit and Charities Commission assesses applications for not-for-profit status.

In determining whether the token is a financial product, ASIC will take into account whether the service/product has already been built or whether the money is being raised to fund the initial development or is in reality the offer of an investment.

**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**

Yes. As set out above, the rights and features of the tokens will need to be analysed, and the issuer will need advice on whether the token is likely to constitute a financial product or security. If so, then licensing may be required. Further, the offer of conversion between fiat currency and cryptocurrencies may require registration by the issuer as a digital currency exchange with AUSTRAC.

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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.)?**

In 2014, ASIC submitted to an Australian Senate inquiry that Bitcoin was not a financial product for the purposes of Australian law. Other than for Bitcoin, there is limited clear guidance. However, leading cryptocurrency exchanges including Independent Reserve (a client of Piper Alderman) and BTC Markets have been offering Bitcoin, Ethereum, Litecoin and Ripple trading for several years. Independent Reserve in particular has been operating for over five years. An inference may be drawn that the high-profile nature of these businesses and lack of regulatory intervention means that the tokens listed on those platforms are not presently considered to be financial products or securities, but this could of course change at any time.

There is no ‘one size fits all’ regulatory approach, given that tokens have almost infinite varieties of rights and obligations. ASIC has indicated it will consider whether a particular token has features rendering it a financial product, security or offer of an interest in a managed investment scheme. Information Sheet INFO225 titled ‘Initial Coin Offerings’ from September 2017 and updated in May 2018 may assist in understanding how ASIC views cryptocurrency more generally.

For the purposes of GST, the Australian Government has enacted laws with a definition of digital currency as follows:

‘digital currency means digital units of value that:

- (a) are designed to be fungible; and
- (b) can be provided as \*consideration for a supply; and
- (c) are generally available to members of the public without any substantial restrictions on their use as consideration; and

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- (d) are not denominated in any country's currency; and
  - (e) do not have a value that depends on, or is derived from, the value of anything else; and
  - (f) do not give an entitlement to receive, or to direct the supply of, a particular thing or things, unless the entitlement is incidental to:
    - (i) holding the digital units of value; or
    - (ii) using the digital units of value as consideration;
- but does not include:
- (g) \*money; or
  - (h) a thing that, if supplied, would be a \*financial supply for a reason other than being a supply of one or more digital units of value to which paragraphs (a) to (f) apply.'

If a token meets the above requirements, then the sale and purchase of the token is generally not subject to GST.

**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).**

In September 2018, ASIC released a statement titled 18-274MR advising that it had taken action to shut down a number of ICOs which it considered were engaging in misleading conduct and which were targeting retail investors, or which were operating an illegal and unregistered managed investment scheme, and failing to hold an Australian financial services licence.

Within the statement, ASIC also noted that raising money from the Australian public carries important legal obligations and that prospective ICO offerers need to ensure that disclosure about a proposed offer is complete and accurate, and that such determinations as to validity will be made with respect to the actual legal substance of the offer, rather than simply how it is entitled.

In addition to that release, we are aware of a number of other projects which have ceased offers after engaging with ASIC to discuss their offering, in many cases where the offer was for a token which paid dividends or shared revenue.

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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).

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

At this stage, there are still no published decisions with respect to commercial or civil cases involving cryptocurrency.

However, a number of disputes are currently before the courts, including claims of misleading and deceptive conduct against the Australian promoter of an overseas issuer. It would be premature to comment on these matters at this time.

The ATO maintains the view that Bitcoin (and other cryptocurrencies with similar characteristics) are neither money nor Australian or foreign currency. Further, the ATO has issued a taxation determination, TD2014/26, confirming that Bitcoin is to be treated as property or an asset for the purposes of capital gains tax under the Income Tax Assessment Act 1997 (Cth). This means that if an individual makes a capital gain when disposing of identified cryptocurrencies, they will be required to pay tax on some or all of that gain.

Alternatively, if the proceeds from the disposal of cryptocurrency are less than what was initially paid to acquire it, then a capital loss may be recorded, which can be used to offset other capital gains made in the same financial year or in a future year (including investments outside of cryptocurrency).

For individuals, if the value of a digital currency holding is below AUS\$10,000 and it is only being used to pay for personal goods or services, then it may fall under a personal use exemption, and no capital gains tax would then be payable. Personal use assets do not include:

- Things acquired as an investment;
- Things forming part of a profit-making scheme; or
- The purchase and sale of cryptocurrencies in the course of carrying on a business.

If a cryptocurrency (or any other asset subject to capital gains tax) is held for at least one year prior to disposal,

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then a 50% discount on capital gains taxes payable may be available.

For companies, no discounts are provided on capital gains, and therefore they are required to pay the prevailing company tax rate on any gains. For individuals, the rate paid is the same as the income tax rate for that financial year, which scales depending on the income bracket into which the individual falls.

If trading between cryptocurrencies occurs, without conversion back into Australian dollars taking place, capital gains tax will still be applicable to those transactions unless an exemption applies. This is because the Australian Tax Office classifies digital currencies as property rather than currency, and so records of the values of those cryptocurrencies received and disposed of should be kept.

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

For all businesses which exchange fiat currency into cryptocurrencies (or vice versa), the Anti-Money Laundering and Terrorism Financing Act 2006 (Cth) (AML/CTF) prescribes a registration and reporting obligation, including adopting and maintaining a KYC and AML/CTF compliance programme that requires the reporting of suspicious matters and threshold transactions conducted on their trading platforms.

**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.**

Australia provides a guideline for cryptocurrency or blockchain-related projects through Information Sheet INFO225, together with a well-developed crypto and blockchain community which is centred around Sydney and Melbourne (with Brisbane and Adelaide communities building up).

ASIC has also invested in the development of its Innovation Hub, a programme which aims to streamline the licensing process for start-ups. By extending the offer of informal regulatory assistance to eligible start-ups, the Innovation Hub states that it offers a helping hand

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in getting crypto-focused companies off the ground in the quickest and most effective manner. However, the Innovation Hub cannot provide legal advice, so it is important that crypto-focused companies obtain that advice from lawyers who understand distributed ledger technologies and cryptocurrencies. The Australian community of lawyers who are technologically knowledgeable continues to grow and provides an important benefit to companies operating in a compliant fashion and engaging with regulators in a constructive way.

Australia also has generous research and development tax incentives for eligible projects and a growing number of innovation hubs and blockchain-specific hubs beginning to be established.

**13 Please identify a point of contact at your firm for cryptocurrency-related matters. 1 Does your country allow or prohibit ICOs and Token Sales?**

Sydney Office:

Michael Bacina: [mbacina@piperalderman.com.au](mailto:mbacina@piperalderman.com.au)

Andrea Beatty: [abeatty@piperalderman.com.au](mailto:abeatty@piperalderman.com.au)

Adelaide Office:

Will Fennell (cryptocurrency taxation matters):

[wfennel@piperalderman.com.au](mailto:wfennel@piperalderman.com.au)

# BELGIUM

IUSTICA.BE

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

See <https://coinidol.com/belgium-to-restrict-all-transactions-with-bitcoin/>, they do not like it.

**2** Does your country regulate ICOs and Token Sales?

No, but again <https://coinidol.com/belgium-to-restrict-all-transactions-with-bitcoin/>, it is coming.

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

None, but go to <https://www.belgium.be/>, <https://finance.belgium.be/en> and particularly the Belgian Financial Services and Markets Authority ([www.fsma.be](http://www.fsma.be)).

**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.

Authorities wish to anticipate the amended European AML regulations, see  
[http://ec.europa.eu/justice/civil/financial-crime/applying-legislation/index\\_en.htm](http://ec.europa.eu/justice/civil/financial-crime/applying-legislation/index_en.htm)  
and particularly the European Securities and Markets Authority ([www.esma.europa.eu](http://www.esma.europa.eu))

# BELGIUM

IUSTICA.BE

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

<https://www.companyformationbelgium.com/set-up-a-cryptocurrency-company-in-belgium>

[https://www.reddit.com/r/CryptoCurrency/comments/6c2mzj/are\\_you\\_paying\\_taxes\\_on\\_your\\_cryptocurrencies/](https://www.reddit.com/r/CryptoCurrency/comments/6c2mzj/are_you_paying_taxes_on_your_cryptocurrencies/)

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

Johan Lambers - [jolambers@iustica.be](mailto:jolambers@iustica.be)

# BRAZIL

## FELSBERG ADVOGADOS

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

ICOs and Token Sales are not prohibited in Brazil.

**2 Does your country regulate ICOs and Token Sales?**

Generically speaking, ICOs and Token Sales are not subject to specific laws or regulations in Brazil. However, depending on the structure and goals of the offer, it may be subject to specific regulations of Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários - "CVM"). Moreover, CVM recently issued an official note stating that certain operations with ICOs and/or their issuance might be framed as securities and exchange transactions depending on the economic context of their issuance and so, be subject to current rules applicable to these matters and, also, subject to inspection and supervision by CVM. Besides the lack of specific regulation of ICOs and Token Sales transactions described above, there are some rules currently in force in Brazil that contain conditions applicable to overseas remittances and exchange market operations. One example is the Decree No. 23.258/1933, that determines that all overseas remittances not executed through a financial institution authorized to operate in the foreign exchange market shall be considered as an unlawful transaction. As a matter of effect, there are several recent events of penalties being applicable by the BCB based on this Decree. Additionally, according to Law No. 7.492/1986, the overseas remittances of funds performed outside the official exchange system is considered a crime. Therefore, should the trading of cryptocurrencies virtually be framed as overseas remittance in the future, the transactions with that type of tokens would be considered as a crime.

On the other hand, it is important to emphasize that brokers and companies trading cryptocurrency transactions must report to the Brazilian authorities suspicious transactions that may involve money

# BRAZIL

## FELSBERG ADVOGADOS

laundering and terrorist financing transactions, as determined by a compliance-related legislation (Law No. 9.618/1998). However, as there is no specific legislation that requires a very complex KYC procedure in respect of cryptocurrency brokers, it is very unlikely that such brokers are able to check the “suspicious origin” of the money being used to purchase the cryptocurrencies.

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

The expectation is that ICOs and Token Sales should be regulated by BCB and/or CVM, as the two Brazilian governmental agencies responsible for the issuance of money and for the securities and exchange regulation and oversight, respectively.

**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.

As mentioned above in our comments to question 3, ICOs and Token Sales are not subject to specific laws or regulations in Brazil so far.

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

Besides the lack of ruling regarding ICOs and Token Sales as per our comments above, the Brazilian IRS indicates that individuals holding cryptocurrencies must consider them as financial assets and, consequently, declare them in the income tax return the property over these assets as “Goods and Rights” (“Bens e Direitos”).

# BRAZIL

## FELSBERG ADVOGADOS

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

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# BULGARIA

VARADINOV & CO ATTORNEYS AT LAW

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

Bulgarian legislation does not prohibit Bitcoin or ICOs. According to the official statements of the Bulgarian National Bank (BNB) and the Finance Supervision Commission (FSC), which were given further to an explicit request from Sofia city court with regard to a specific court case, Bitcoin and other cryptocurrencies do not represent a legally defined payment instrument in the country. Thus, the Bulgarian legislation does not regulate Bitcoin and the other cryptocurrencies, nor ICOs and token sales. There is no specific legal registration or license regime in this regard.

**2 Does your country regulate ICOs and Token Sales?**

Activities connected to the acquisition, exchange, sale etc. of Bitcoin and ICOs are not legally regulated by the Bulgarian legislation.

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

There is no official regulation.

**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 no explicit regulation.

# BULGARIA

## VARADINOV & CO ATTORNEYS AT LAW

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

In recent years there is a certain interest in the country in ICOs and issues related to cryptocurrency in general. Due to the fact that there is no regulation in this business sphere, the participants are very careful and cautious.

**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.**

There is no explicit regulation of cryptocurrency.

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

Bitcoin and other cryptocurrencies do not represent a legally defined payment instrument in Bulgaria. Thus, the Bulgarian legislation does not regulate Bitcoin and other cryptocurrencies, nor ICOs and token sales. There is no specific registration or licence regime in this regard.

**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**

There is no explicit regulation.

# BULGARIA

VARADINOV & CO ATTORNEYS AT LAW

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).

There is no explicit regulation.

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

Income derived from trading with cryptocurrency is considered to be taxable income under the general rules of taxation of physical persons and legal entities, including for VAT registration.

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

There is no explicit 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.

There is no explicit regulation.

# **BULGARIA**

VARADINOV & CO ATTORNEYS AT LAW

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

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# CHILE

## GRASTY QUINTANA MAJLIS

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

Chile does not prohibit ICOs and Token Sales, although it does not expressly allow these either.

**2 Does your country regulate ICOs and Token Sales?**

Chile does not regulate ICOs or token sales. However, on 5th April 2018, the Financial Stability Council (CEF, for its initials in Spanish), a government agency that combines Chile's main financial, securities and banking authorities, issued a public statement on risks associated with the acquisition and holding of cryptocurrencies. In its statement, although the CEF rejected the idea that cryptocurrencies could represent a threat to Chile's financial stability, it did highlight that they 'are not emitted or backed by central banks or other state authorities' and that 'in most cases, its intrinsic value derives from the confidence of their users'. The CEF also explained that the Commission for the Financial Market did not consider cryptocurrencies to be securities under Chilean financial regulation and that Chile's Central Bank did not define them as currency in a traditional sense, as they are not treated as such by the law.

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

As previously mentioned, ICOs and Token Sales are not expressly regulated in Chile and consequently, there are no 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**

Not applicable.

# CHILE

## GRASTY QUINTANA MAJLIS

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.**

New regulation is being studied, considering that current regulation on securities exchange and financial markets is insufficient to assess the risks involving ICOs and token sales. Moreover, Chilean authorities have recognised that their knowledge on cryptocurrency is very limited and that the technology underlying tokens develops at increasing speeds.

Nevertheless, a new law regarding fintech (a broad concept that encompasses new technologies for the provision of financial services such as crowdfunding, lending, personal financial management, wealth management, scoring, identity and fraud) is expected to be discussed during the course of this year and gradually implemented going forward. Preliminary reports provided by the Commission for the Financial Market have not clarified whether this new law will include a chapter on ICOs or if additional regulation will be created for this specific matter within the proposed fintech regulatory framework.

**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**

Notwithstanding the lack of specific regulation regarding ICOs, foreign entities performing exchange activities as a result of token sales would be subject to the applicable foreign exchange regulation. In this sense, under Law 19,913 on Money Laundering Prevention, certain entities are required to report any suspicious activities to the Financial Analysis Office (UAF, for its initials in Spanish). Such is the case for private entities involved in cross-border transactions of tokens; these entities are required to register before the UAF not because of token sales but because of the activities they perform as foreign exchange offices or other entities entitled to

# CHILE

## GRASTY QUINTANA MAJLIS

the government of your jurisdiction.

receive foreign currency. Once the entity is registered before the UAF, it must designate a special compliance officer who will be in charge of reporting to the UAF any suspicious or unusual activity, defined under article 3 of Law 19,913 as ‘an operation that does not have an economic or lawful purpose, that may serve to fund terrorist organizations or that is performed by a person or legal entity listed under a United Nations Security Council resolution’. Entities registered under the UAF must keep special records for a minimum period of five years and report to the UAF any cash transaction that exceeds US\$10,000 or its equivalent in national currency as of the day of the transaction.

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

Although Chilean law has not defined crypto, several relevant authorities have specified what it cannot be considered. In this sense, the Chilean Central Bank has stated that it cannot be considered currency as it lacks such legal recognition. Additionally, the Commission for the Financial Market has established that, under applicable financial regulations, cryptocurrency cannot be considered as a security. Finally, the Chilean Internal Revenue Service has stated that, for tax purposes, cryptocurrencies should be treated as ‘monetary assets agreed upon between private parties’. Therefore, any income produced by the trade of cryptocurrency must be added to other sources of income when calculating the value of income tax payable each year.

**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.

# CHILE

## GRASTY QUINTANA MAJLIS

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).

On 3rd December 2018, the Supreme Court ruled that Banco del Estado, a state-owned bank, had not acted arbitrarily or illegally by closing the bank account of a Chilean cryptocurrency trading platform, OrionX. In its ruling, the Supreme Court acknowledged that the origins of the funds represented by cryptocurrencies traded by OrionX are anonymous and unknown to the bank, circumstances that prevented the bank from fulfilling its legal duties of preventing money laundering and the financing of terrorism and drug trafficking in accordance with national and international financial regulation.

Considering the above, the Court found that the bank's decision to unilaterally close the account was legally grounded, as it had acted in accordance with article 3 of Law 19,913, which requires banks, among other entities, to report 'any suspicious activities within the course of their business', and chapters 1 to 14 of the Updated Compilation of Rules established by the Superintendence of Banks and Financial Institutions, which provide that banks must 'adopt sufficient precautions in order to procure adequate knowledge of their clients, their activities and the main characteristics of the operations they perform'. Additionally, the Court stated that 'as long as there is no explicit acknowledgement by the law of the (cryptocurrency trading) activity', the bank's actions could be deemed 'reasonable and within full compliance of legal standards, as (the closure of the account) has prevented its instrumentalization for possible money laundering operations and financing of terrorist activities, among other risky transactions'. It should be noted that this is the first ruling regarding cryptocurrencies, and it is especially relevant as it overruled a previous Court of Appeals ruling that had ordered Banco del Estado to reopen the platform's account.

# CHILE

## GRASTY QUINTANA MAJLIS

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

Yes, crypto transactions are considered by the Chilean Internal Revenue Service as ‘monetary assets agreed upon between private parties’, and as such they are a source of income for the relevant parties. Income generated by crypto transactions must be considered for the purposes of calculating income tax (27% of overall income, paid annually) and value added tax (19% of every transaction involving the sale of goods or the provision of a service).

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

There is no specific regulation regarding crypto trading.

**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.**

Chile does not offer any unique or important benefit to crypto-focused entities.

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

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# CHINA

## GRANDWAY

**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.

# CHINA

## GRANDWAY

**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

# CHINA

## GRANDWAY

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.

# **CHINA**

## GRANDWAY

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

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Tom Shi - [shixinhang@grandwaylaw.com](mailto:shixinhang@grandwaylaw.com)

# COLOMBIA

## MTA

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

Colombian regulation does not prohibit cryptocurrencies and/or ICOs. Nevertheless, there have been a series of concepts and statements both from the Colombian Central Bank and the Financial Superintendence warning the public of the different risks associated with cryptocurrencies.

**2 Does your country regulate ICOs and Token Sales?**

No, ICOs and token sales are not regulated in Colombia yet. Nevertheless, based on official statements from the Colombian Central Bank and the Financial Superintendence, cryptocurrencies cannot be considered as a security, as currencies or as a defined payment instrument in Colombia, to the extent that (i) they are not backed by central banks, and (ii) they lack high liquidity in the market.

However, we are aware that Bill 028 of 2018 was filed in Congress and proposes to regulate all transactions and operations, both civil and commercial, with cryptocurrencies in Colombia for the acquisition of services and goods. Nevertheless, the Bill has not been discussed yet and has received multiple criticisms and negative comments from the market.

Therefore, as said before, to date, the Colombian legal system does not 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?**

Although it is not regulated, the Financial Superintendence is the Colombian agency reviewing its evolution and discussing regulatory issues on cryptocurrencies, ICOs and token sales. Additionally, the Colombian Central Bank has formed a task force with other entities (as the Financial Superintendence) to study cryptocurrency markets and evaluate the convenience of regulating certain aspects related to them. Furthermore, the Colombian Congress has taken certain steps to consider enacting a law to regulate cryptocurrencies.

# COLOMBIA

## MTA

**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.**

Not applicable.

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

The Colombian Financial Superintendence has informed all financial entities under its supervision that they cannot hold, invest, act as intermediaries or allow the use of platforms that operate with cryptocurrencies. Therefore, it has defined that cryptocurrencies are not a valid investment for supervised entities, and they cannot advise or administer any operation with such assets. To the extent that this agency has defined cryptocurrencies as non-financial assets, it has also informed the public that each person is responsible to assess the risks derived from any operation carried out with cryptocurrencies.

Furthermore, although initially the Technical Council of Public Accounting in Colombia concluded that cryptocurrencies were considered as a financial asset for accounting purposes, this position was amended through Concept 2018-472 issued on 28th May 2018. Therefore, cryptocurrencies must be classified as a special account not defined under International Financial Reporting Standards, as adopted by Colombia.

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

Since cryptocurrencies are not regulated in Colombia, there is no specific rule or law that foreign entities shall comply with to offer tokens to residents of Colombia.

# COLOMBIA

## MTA

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.

However, the Colombian Central Bank and the Financial Superintendence have warned about the risks operations and transactions with cryptocurrencies may bring, especially when cryptocurrencies are used to carry out illegal operations that can put the financial system at risk.

To the extent that cryptocurrencies have not been defined in Colombia as financial assets and/or securities, in our opinion, if a foreign entity conducts an ICO and offers tokens to residents, our government will not require the foreign entity to comply with any rules and regulations other than the ones provided for the sale and purchase of assets and foreign exchange regime.

Nevertheless, if the foreign entity conducting an ICO and offering tokens to Colombian residents is a foreign financial or securities entity under applicable law, it would be required to have a representative office to promote such transactions.

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

As stated above, based on official statements from the Colombian Central Bank and the Financial Superintendence, cryptocurrencies cannot be considered as a security, as currencies or as a defined payment instrument in Colombia, to the extent that (i) they are not backed by central banks, and (ii) they lack high liquidity in the market.

In that sense, according to the Colombian Central Bank, cryptocurrencies in Colombia have the nature of intangible assets that have the capacity to satisfy means of payment functions, value deposits and units of account, but lack the attributes of the currency of legal tender and therefore cannot be considered as money.

8 Has the government of your country prosecuted, civilly or criminally,

We are not aware of any prosecution, civil or criminal, over any ICO issuers, token developers or crypto exchanges for violating the laws of Colombia.

# COLOMBIA

## MTA

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).

We are not aware of such cases in Colombia.

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

Colombia does not have special tax regulations for crypto transactions. Nevertheless, to the extent that they are considered intangible assets they are subject to general income and capital gains taxes.

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

Colombia does not have a regulation applicable to crypto trading or crypto exchanges.

**12** Does your country offer any unique or important benefit

Colombia does not offer any unique or important benefit to crypto-focused companies. Nevertheless, the current government has issued a series of statements whereby it

# COLOMBIA

## MTA

to crypto-focused companies (for example, clear regulatory guidance)? If so, please describe the unique/important benefit.

has shown more interest in promoting innovation, including, but not limited to, crypto development.

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

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# CYPRUS

## IOANNIDES DEMETRIOU LLC

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

Cyprus does not prohibit ICOs or Token sales.

**2 Does your country regulate ICOs and Token Sales?**

There is no regulation in Cyprus.

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

Not applicable, as there is no regulation. A working group was, however, established in late 2018 to advise upon the formation of a regulatory framework. It is anticipated that regulation in the form of a law will exist within 2019.

**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.**

Not applicable as there is no regulation.

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

The responsible officer at the Central Bank of Cyprus advised us that the Central Bank has issued a circular to all commercial banks requesting that they not offer services to businesses involved in Bitcoin or crypto or virtual currency trading of any kind. This is being adhered to by all local and international banks on Cyprus, thereby effectively rendering Cyprus a no-go area for such activities. This attitude is, however, changing as a

# CYPRUS

## IOANNIDES DEMETRIOU LLC

result of the rise in relevance and use of token sales and cryptocurrencies. A working group was established in late 2018 to advise upon the formation of a regulatory framework. It is anticipated that regulation in the form of a law will exist within 2019.

**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.**

Cyprus has no legislation governing Crypto currencies or tokens of any nature. At present Cypriot banks decline to offer banking services of any nature whatsoever in relation to either Crypto currencies or tokens.

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

As stated above crypto has no legal status in Cyprus. This does not mean that crypto is regarded as without value. In a dispute the terms of a contract relating to crypto are capable of being enforced and the contract is not viewed as illegal per se.

**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

# CYPRUS

## IOANNIDES DEMETRIOU LLC

- 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.
- None
- Any profit realised on a crypto transaction within the Republic of Cyprus is theoretically liable to taxation in the normal manner. Additionally the transfer of a crypto asset on death is theoretically liable to taxation as estate duty in the normal manner.
- There are no regulations at present in Cyprus for ICOs. There are no crypto trading platforms or exchanges due to the fact that banks do not offer banking services in relation to the same.
- It is anticipated that when laws and regulations are passed in relation to crypto currencies ICO and Blockchain the favourable tax environment of Cyprus will be an attractive incentive for crypto - focused companies.
- Andrew Demetriou, Director - [a.demetriou@idlaw.com.cy](mailto:a.demetriou@idlaw.com.cy)

# CZECH REPUBLIC

## FELIX A SPOL. ATTORNEYS AT LAW

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

There is no regulation, thus no approval or ban.

**2 Does your country regulate ICOs and Token Sales?**

No. The Czech National Bank (CNB) issued a memorandum dated 2nd February 2014 stating that Bitcoin trade does not require its approval and is not overseen by it. It also stated that purchase and sale of Bitcoins does not represent any payment or clearing system, nor it is a cashless trade with a foreign currency. Czech law sees cryptocurrencies as intangible objects, and they shall be treated as such.

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

N/A

**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**

Since the tax regulatory authorities of the Czech Republic became stricter in collecting taxes, there is a possibility that ICO may be seen as collective investing, and thus may be already regulated, although the regulation has

# CZECH REPUBLIC

## FELIX A SPOL. ATTORNEYS AT LAW

Token Sale regulation in your country.

not yet been enforced upon them.

**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.

Only general rules apply – international sanctions against countries and organisations, measures against financing of terrorism and prosecuting of money laundering.

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

It may be considered a security. However, it is generally seen as a collective intangible object (thing).

**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).

Only cryptocurrency heist, to our knowledge. The financing of illegal activities by cryptocurrencies was prosecuted too.

**9** In your country, are

No.

# CZECH REPUBLIC

## FELIX A SPOL. ATTORNEYS AT LAW

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.

Transactions are subject to the regular income tax; the calculation is the same as for securities transactions

**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.

There are very benevolent laws (practically non-existent) and no negative attitude from the authorities. Also, there is a running concept of establishing a cryptocurrency arbitration court.

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

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# FRANCE

## BERSAY & ASSOCIÉS

**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.

# FRANCE

## BERSAY & ASSOCIÉS

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).

# FRANCE

## BERSAY & ASSOCIÉS

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.

# FRANCE

## BERSAY & ASSOCIÉS

**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

# FRANCE

## BERSAY & ASSOCIÉS

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.

# **FRANCE**

## BERSAY & ASSOCIÉS

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

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# GERMANY

## RITTERSHAUS RECHTSANWALTE

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

German law does not prohibit issuing, selling, purchasing or any other form of trading in cryptocurrencies.

**2 Does your country regulate ICOs and Token Sales?**

Although over the last few years ICOs and token sales have gained substantial importance in Germany for companies and investors, currently no legislation exists that specifically deals with the initial public offering of cryptocurrencies. In particular, the laws regulating the initial public offerings of shares by stock corporations do not apply to ICOs, irrespective of the similarity of the general terms and the fact that generated tokens are sold in a public bidding process (token sale).

However, even if no specific legislation exists for ICOs in Germany, ICOs or the tokens underlying the ICOs may very well be covered by existing regulations pertaining to the financial sector (see question 4 below for details). The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)) examines on a case-by-case basis whether specific ICOs or tokens are regulated by such rules and, if it determines this to be the case, it has the authority to prohibit the planned ICOs. Also, non-compliance with such regulations constitutes an administrative offence or misdemeanour.

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

Notwithstanding the fact that ICOs and token sales have not yet been regulated by specific legislation, this does not mean that they occur in a completely unregulated legal environment. German government authorities monitor the developments of the market for cryptocurrencies very carefully. The primary government agency responsible for monitoring ICOs and token sales in Germany is BaFin.

In addition, the German Central Bank (Deutsche

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Bundesbank) has responsibility for macro-prudential supervision and monetary policy within the scope of the euro system led by the European Central Bank and frequently publishes opinions regarding cryptocurrencies.

**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.**

Despite the fact that there is no specific legislation governing ICOs and token sales, the offering of cryptocurrencies may be subject to a prospectus requirement according to the German Investment Products Act or the German Securities Trading Act. Depending on the type of token and the ICO process, a banking licence or the approval of the sales prospectus may be required.

BaFin has stated that in the absence of specific legislation it will determine the rules applicable to the specific ICO or token sale on a case-by-case basis, according to the contractual terms of each ICO. BaFin issued an official statement explaining its approach:

'BaFin determines on a case-by-case basis whether a token constitutes a financial instrument within the meaning of the German Securities Trading Act (Wertpapierhandelsgesetz - WpHG) or the Markets in Financial Instruments Directive (MiFID II), a security within the meaning of the German Securities Prospectus Act (Wertpapierprospektgesetz - WpPG), or a capital investment within the meaning of the German Capital Investment Act (Vermögensanlagengesetz - VermAnlG). BaFin bases its assessment on the criteria set out in the statutory provisions under securities supervision law, i.e. in particular the WpHG, WpPG, Market Abuse Regulation (MAR), VermAnlG as well as other relevant laws and applicable national and EU legal acts in the field of securities supervision.'

Market participants providing services related to

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tokens, dealing with tokens or publicly offering tokens must give careful consideration to whether the tokens constitute a regulated instrument, i.e. for instance a financial instrument within the meaning of section 2 subsection (4) of the WpHG, or a security within the meaning of section 2 (1) of the WpPG, so that they can fully comply with any legal requirements. The duty to comply with legal provisions is particularly relevant with regard to possible authorization requirements pursuant to the German Banking Act (Kreditwesengesetz – KWG) the German Investment Act (Kapitalanlagegesetz – KAGB) the German Insurance Supervision Act (Versicherungsaufsichtsgesetz – VAG) or the German Payment Services Supervisions Act (Zahlungsdiensteaufsichtsgesetz – ZAG).’

In cases where a central issuer utilises cryptocurrency as a mere substitute for legal tender, the tokens might be qualified as e-money according to the Payment Services Supervision Act. In consequence, the issuer would need BaFin’s permission to launch an ICO.

In March 2019 the German start-up Bitbond was the first company granted permission by BaFin to issue bonds in the form of security tokens by way of an STO (security token offering). The respective bonds run for ten years and promise 4% interest per year. Both the interest payments and any repayment of principal are made in the cryptocurrency Stellar Lumens.

This is the first time BaFin has approved a prospectus for a security token offering according to the WpPG. Bitbond has been licensed as an investment broker pursuant to the KWG for about two years. The company arranges loans to self-employed and small entrepreneurs on a worldwide basis. It converts fiat currency into cryptocurrency and sends it to the recipient country, where it can then again be exchanged into the local legal currency.

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

German authorities take a very restrictive approach in regard to ICOs and token sales, driven by major concerns regarding issues of consumer and investor protection.

In November 2017 BaFin published a consumer warning relating to the risks of ICOs and token sales, emphasising the following issues:

- ICOs are a highly speculative and risky form of investment which bear the risk of total loss of the invested funds.
- The lack of statutory regulation and regulatory control may attract criminals and often lead to fraud, money laundering and the financing of terrorism. Such illegal businesses are fostered by the anonymity of the internet and the possibility to initiate ICOs and token sales from across the world.
- Codes may contain programming errors and thus may be susceptible to manipulation and exploitation by third parties. Accordingly, the private digital key which is required by investors to access their tokens can be stolen. The loss of this key or its theft means the loss of all tokens which are connected to it.
- White papers which explain the functioning of the tokens and the terms and conditions of the ICO are often non-transparent. The information provided is often incomprehensible or even incorrect and thus misleading, and almost always insufficient to accurately assess potential risks. Understanding the mechanisms of an ICO project would mostly need extensive and in particular technical knowledge.
- Consumer protection does not exist.
- Tokens can be subject to significant price fluctuation.

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In addition, there is often a risk that no secondary market is available, so that tokens end up being completely illiquid. These circumstances may result in the worthlessness of the investment.

- ICOs and token sales are typically made in a very early stage of business in order to raise capital and finance costly projects. However, the business models are mostly experimental and their performance has never been tested. Products which shall be developed by means of the fundraising ICO may not be developed at all or, if developed, may not find the anticipated demand.

BaFin therefore advises investors that they need to ensure they fully understand the mechanisms and functioning of the respective token before making such an investment, and therefore requests that the offerer provides sufficient information and an adequate level of transparency.

Shortly after the release of the above-mentioned BaFin warning, the German Government released a consumer warning relating to unlawful marketing practices of cryptocurrencies, stating that many ICOs turn out to be illegal Ponzi schemes. It further points out that consumers are not protected by EU law if they purchase goods and services via cryptocurrencies; cryptocurrencies can be subject to high volatility; there is a lack of protection mechanisms such as deposit insurance; and there is a lack of cybersecurity mechanisms to protect trading platforms. Finally, the anonymity of the internet may even be an incentive for fraudulent conduct.

In view of the increasing importance of ICOs and token sales in the German market, it is somewhat surprising that the German Government still did not initiate a legislative process at national level to establish a regulated framework for ICOs and token sales. In its comprehensive blockchain strategy for 2019 in its

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'Implementation strategy of the Federal Government for shaping digital change' ('Umsetzungsstrategie der Bundesregierung zur Gestaltung des digitalen Wandels'), which was recently announced, the German Government failed to address the issue of regulating cryptocurrencies. Instead it referred the responsibility for regulating ICOs and token sales to the European Union and the international level.

Therefore, it seems unlikely that Germany will regulate ICOs and token sales any time soon.

**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.**

If the ICO falls into one of the categories which is subject to regulatory approval (see question 4), i.e. it is an issuer from a non-EU member state which so far has no subsidiary in the EU, it has to establish a German subsidiary in order to apply for the necessary permit, in particular the authorisation as a credit institution or financial services institution or the approval of a sales prospectus for a public offer of tokens.

If the issuer already has a subsidiary in an EU member state, it can make use of the EU passport rules, and in this case BaFin will examine whether the permits issued by the other EU member state are sufficient to cover the intended activities in Germany.

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

The classification of cryptocurrency in Germany is highly controversial and somewhat contradictory.

In December 2013, BaFin classified Bitcoins and comparable virtual currencies as 'units of account' (Rechnungseinheiten) and thus as a 'financial instrument' (Finanzinstrument) according to section 1 paragraph 11 of the German Banking Act (Kreditwesengesetz (KWG)), a federal law which is not based on EU law.

However, the Higher Regional Court (Kammergericht)

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of Berlin recently disregarded BaFin's classification and held that cryptocurrency could not be considered 'units of account' and thus not as 'financial instruments' and, in the opinion of the court, as a consequence no permit as a financial service provider pursuant to section 32, paragraph 1, sentence 1 of the KWG is required for operating a trading platform.

Along the same line, the Federal Ministry of Finance also rejected BaFin's classification of Bitcoins as financial instruments and rather defined them as 'other intangible assets'.

However, the ruling of the Higher Regional Court of Berlin does not prevent BaFin from upholding its own classification and, where necessary, starting investigations and imposing fines on issuers and investors. Legal challenges of any decision by BaFin are both very time-consuming and expensive, and the chances of success are relatively low. As explained in question 4, BaFin examines in each individual case whether cryptocurrencies or tokens are financial instruments within the meaning of the German Securities Trading Act or the Markets in Financial Instruments Directive, a security within the meaning of the German Securities Prospectus Act or a capital investment within the meaning of the German Capital Investment Act.

**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).**

The most important case related to cryptocurrencies is the aforementioned ruling of the Higher Regional Court of Berlin dated 25th September 2018. In this case the public prosecutor had filed criminal charges against the operator of an electronic trading platform where investors could sell and purchase Bitcoins, who had not applied for a permit as a financial service provider pursuant to section 32, paragraph 1, sentence 1 of the KWG.

The mining of Bitcoins also was the subject of two

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further criminal proceedings. On 29th October 2014 the Regional Court of Kempten heard a case (6 KLs 223 Js 7897/13) in which criminals created and used an illegal bot network for obtaining substantial computing power in order to create new blocks in the Bitcoin blockchain and to thereby receive new Bitcoins. The accused was sentenced to three years of imprisonment according to section 202a (data espionage), section 263 (fraud), section 263a (computer fraud), section 269 (forgery of data intended to provide proof) and section 303a (data tampering) of the German Criminal Code (Strafgesetzbuch (StGB)). Another offender, who was convicted in a separate trial by the Regional Court of Kempten (13 Ss 360/16), appealed against the decision. The case came before the German Federal Court of Justice (Bundesgerichtshof), which mainly upheld the Regional Court's ruling on 27th June 2017 (1 StR 412/16) convicting the accused according to sections 202a, 303a, 236, 263a and 269 of the StGB.

In addition, BaFin as a regulatory agency can also impose administrative fines upon the issuer of up to €10 million for intentional and up to €5 million for reckless violation of the aforementioned laws.

Finally, the Consumer Protection Agency of the German state of Hesse is currently conducting investigations against 20 different distributors of cryptocurrencies related to six different currencies based on consumer complaints.

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

The Regional Court of Berlin is currently hearing several civil claims for damages brought by investors against the German start-up Envion AG. Envion's idea was to offer mobile mining pools in the form of lorries or mobile containers which could be placed next to an energy source in order to reduce the immense energy costs usually incurred in an ICO. In order to finance its project,

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summary of the most significant dispute(s)/case(s).

Envion conducted an ICO itself in early 2018 in which about 30,000 investors purchased tokens for US\$1 per token, and the company raised more than US\$100 million. However, it turned out that Envion AG had no valid business concept and, in addition, the tokens were sold to private investors without seeking BaFin's approval of the prospectus prior to the ICO.

In addition to the civil claims filed by the investors, the public prosecutor has also initiated criminal proceedings against both the CEO and the shareholders of Envion AG who are accused of having set aside collected assets.

**10 Does your jurisdiction tax crypto transactions?**

If so, please provide a basic explanation of how and at what rate they are taxed.

The taxation of cryptocurrencies in Germany raises complex issues.

According to the BFM, a company that holds cryptocurrencies as operating assets, regardless of whether they are part of the fixed or current assets, has to observe the valuation provisions of the income tax act.

According to section 2, subsection 1, number 2 of the German Income Tax Act (Einkommenssteuergesetz (EStG)) any income of a commercial enterprise is subject to taxation. For the purposes of the EStG, section 15, subsection 2 clarifies that an independent sustainable activity, undertaken with the intention of making a profit and presenting itself as participation in general economic traffic, may be considered as a commercial enterprise.

The process of mining is likewise a commercial activity and treated as the production of any other economic good with regard to taxation.

Furthermore, the administration and operation of an electronic trading platform where cryptocurrencies can be sold, purchased or changed into fiat legal tender is a commercial activity and thereby subject to taxation.

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Based on the ECJ ruling in Hedqvist, issued on 22nd October 2015, the German Ministry of Finance (Bundesfinanzministerium) released a guideline regarding the imposition of VAT on cryptocurrencies, dated 27th February 2018, where it held that:

- the exchange of cryptocurrencies into fiat is exempted from VAT.
- the mere use of cryptocurrency as an instrument of payment cannot be considered as a transaction triggering VAT.
- the process of mining does not fall into the tax regime of VAT.
- offering digital wallets for a fee can be considered as an electronically provided service according to section 3a, subsection 5, sentence 2, number 3 of the German Value Added Tax Act (Umsatzsteuergesetz (UStG)) and thus constitutes a taxable act.
- Operating a platform to exchange virtual currencies for a fee is a taxable act.

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

Market participants who provide services relating to tokens, trade in tokens or offer tokens publicly are required to verify accurately whether the tokens can be regulated as a financial instrument within the meaning of the German Securities Trading Act, or a security as defined by the German Securities Prospectus Act, in order to fully comply with any legal requirements. The obligation to comply with the legal requirements applies in particular against the background of possible licensing requirements according to the German Banking Act, German Investment Act, Insurance Supervision Act or Payment Services Supervision Act.

**12 Does your country offer any unique or important benefit to crypto-focused**

Currently, there are no specific benefits for crypto-focused companies in Germany.

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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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# HONG KONG

## CHARLTONS

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

ICOs and Token sales are allowed in Hong Kong, that is the Hong Kong Special Administrative Region of China, which is of course separate (in terms of its legal and regulatory regime) from the People's Republic of China, which banned ICOs on 4 September 2017.

### 2 Does your country regulate ICOs and Token Sales?

The regulatory position of ICOs and Token Sales in Hong Kong, as in other jurisdictions, is something of a legal grey area. Hong Kong's securities regulator, the Securities and Futures Commission (the SFC), issued a notice on 5 September 2017 stating that while it regards "typical" ICOs as "virtual commodities" which are not subject to securities regulation, depending on a coin's specific features, it may constitute a share, debenture or an interest in a collective investment scheme (CIS), all of which are securities subject to regulation in Hong Kong. The notice does not however elaborate on what the SFC regards as a "typical" ICO. Thus whether or not any particular coin or token offer in Hong Kong is regulated depends upon its intrinsic characteristics.

Very briefly, the position outlined in the SFC's notice is that:

- Digital coins or tokens may be regarded as "shares" where they represent equity or ownership interests in a corporation, e.g. where the coin or token holders are given shareholders' rights, such as the right to receive dividends and the right to participate in the distribution of the corporation's surplus assets upon winding up.
- Where digital coins or tokens are used to create or acknowledge a debt or liability owed by the coin/token issuer, the SFC may regard them as "debentures", e.g. where the issuer will repay coin/token holders the principal of their investment on a fixed date or upon redemption, with interest paid to holders.

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CHARLTONS

- An ICO may be regulated as an offer of interests in a CIS where the coin/token proceeds are managed collectively by the ICO scheme operator to invest in projects with an aim to enable holders to participate in a share of the returns provided by the projects.

The SFC's guidance indicates that the essential features of a CIS are that:

- a)** It must involve an arrangement in respect of property (property is broadly defined);
- b)** Participants do not have day-to-day control over the management of the property (even if they have the right to be consulted or to give directions about the management of the property);
- c)** The property is managed as a whole by or on behalf of the person operating the arrangements, and/or the participants' contributions and the profits or income are pooled; and
- d)** The purpose of the arrangement is to provide participants with profits, income or other returns from the acquisition or management of the property.

The definition would catch, for example, a coin offer the proceeds of sale of which are invested in different projects, where the coin holders will be entitled to a share of the income from the invested projects or a share of the sales proceeds on a disposal of the projects or part of them. This was the case on the DAO token offer whose tokens were found to constitute securities by the US SEC.

However, there have been no court decisions on the meaning of "collective investment scheme" under Hong Kong law, and whether or not any particular ICO

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## CHARLTONS

falls within the definition will depend on the facts and circumstances of the ICO and ultimately, the courts' interpretation of the statutory definition. Much will also depend on how aggressively the SFC chooses to pursue ICOs and how the ICO market develops both in Hong Kong and internationally.

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

Offers of coins and tokens which are securities as defined by Hong Kong's Securities and Futures Ordinance are regulated by the SFC.

**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.**

The regulatory framework applicable to ICOs and Token Sales depends upon whether or not the particular coin or token constitutes a "security" as defined under the SFO.

In Hong Kong, as in other jurisdictions, ICOs and Token Sales are typically structured so as to fall outside the definition of "securities", or at least outside the situations described in the SFC's notice as those in which coins or tokens are likely to be regarded as securities. Digital coins/tokens thus generally represent rights of access or use (typically in relation to the technology whose development the ICO proceeds will fund). The intention is to characterize the coins/tokens as pre-payment vouchers, rather than as investment interests. Whitepapers thus typically present the digital coins as providing purchasers with the right to use technology and/or as the means of payment for use of the services offered by the technology. A number of ICOs have been conducted in Hong Kong on the basis that they do not constitute securities for the purposes of Hong Kong law and it is our view that this position can be supported legally.

If however a particular coin or token were to be a security for the purposes of the SFO, Hong Kong law imposes restrictions on both:

- (i)** How and to whom the coins/tokens may be offered; and
- (ii)** The entities permitted to offer and sell the coins/tokens in Hong Kong.

#### **4.1 Offering Restrictions**

##### Shares/Debentures

Where coins/tokens are deemed to be “shares” or “debentures”, they may only be offered for subscription or sale in Hong Kong by means of a prospectus which must be registered with Hong Kong’s Registrar of Companies and must comply with the detailed contents requirements of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (CWUMPO). Breach of this provision is an offence.

There are however a number of exemptions from the prospectus requirements of the CWUMPO: those most commonly relied on are as follows:

- a)** The “professionals” exemption - this would apply where the coins/tokens are only offered in Hong Kong to purchasers who are “professionals” as defined in the SFO. Professionals include various categories of institutional (banks, investment intermediaries, pension funds etc.), corporate (companies with cash of at least HK\$8 million or total assets of at least HK\$40 million) and individual (those with cash of at least HK\$8 million) professional investors.

- b)** The private placement exemption which would allow offers of coins/tokens to be made to a maximum of 50 persons in Hong Kong.
- c)** The small offer exemption which would allow a Hong Kong offer of coins/tokens for which the total consideration payable does not exceed HK\$5 million.
- d)** The sophisticated investor exemption where each purchaser of the coins/tokens purchases at least HK\$500,000.

The exemptions under (a) and (b) above can be combined to allow an offer to be made to an unlimited number of professional investors and to a maximum of 50 non-professional investors. For the purposes of determining the 50 person limit under (b) above and the total consideration payable under (c) above, the offer must be taken with all other offers made in the previous 12 months which relied on the same exemption.

#### Interests in a Collective Investment Scheme (CIS)

Any marketing document issued in relation to coins/tokens to be offered in Hong Kong which constitute interests in a CIS must be authorized by the SFC. In order to be authorized, the coin/token issuer must issue an offering document and a product key facts statement, each containing specified information. The issue of a marketing or offering document in breach of the statutory requirements is an offence.

The exemptions available for a CIS are narrower than those for shares and debentures. To be exempt from the SFC authorization requirement, an offer of coins/tokens must be:

- a)** Offered only to professional investors; or

- b)** Be offered in a private placement to no more than 50 offerees.

#### **4.2** Licensing Requirements for intermediaries

Any intermediary which offers coins or tokens which are securities for subscription or sale to Hong Kong persons would need to hold an SFC regulated activity Type 1 license (for dealing in securities).

Further, if the coins/tokens are interests in a CIS, the coin/token issuer will likely require a regulated activity Type 9 license (for asset management).

#### **4.3** Licensing Requirement for Coin Exchange Operating in Hong Kong

To the extent that coins/tokens are tradable on an exchange operating in Hong Kong, the operator of the Exchange will need to either obtain recognition as an authorized exchange under the SFO, or obtain a Type 7 regulated activity license for providing automated trading services.

Irrespective of whether coins/tokens are securities, if they can be sold for fiat currency (e.g. US or Hong Kong dollars) on an exchange operating in Hong Kong, the exchange will require a “money service operator” license under the Anti-Money Laundering and Counter-terrorist Financing Ordinance (AMLO). This is despite the fact that cryptocurrencies are not currently regarded as “money” for the purposes of the AMLO licensing requirement: it is the fact that the coins would be exchangeable for fiat currency which would trigger the licensing requirement.

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

While we believe that an argument can be made that ICOs and token sales can be conducted in Hong Kong without triggering Hong Kong's securities laws, we are aware that the Hong Kong SFC is monitoring ICOs in the market and is actively following up with issuers and their advisers where they consider that the offer or sale may have Hong Kong regulatory implications. Typically, the SFC will write to the token issuer and/or its advisers requesting information to ascertain whether or not the particular ICO/token sale involved an offer of securities in Hong Kong, including matters such as:

- a)** The use of proceeds of the coin/token sale;
- b)** Whether purchasers of the coins/tokens will receive any share of the income or revenues of the coin/token issuer or from any technology, platform or other property of the token issuer;
- c)** Whether holders of coins/tokens will share in the coin/token issuer's surplus assets on its winding-up;
- d)** Whether the coins/tokens will be tradable in the secondary market and if so, whether this will be for fiat currencies or other cryptocurrencies; and
- e)** Whether the coins/tokens are redeemable by the issuer and if so, whether this will be on a specific date or on demand by the holders, and whether the redemption amount will include an amount equivalent to interest.

Where a coin offer/token sale is conducted from outside Hong Kong, it is most likely to attract SFC attention if Hong Kong investors are specifically targeted through advertising, whether through newspapers circulating in Hong Kong or through social media, for example Facebook advertising which is "pushed" to Hong Kong. This type of advertising is thus probably best avoided.

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## CHARLTONS

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

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# ISRAEL

AYR

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

Israel does not prohibit ICOs and Token sales.

**2 Does your country regulate ICOs and Token Sales?**

Israel does not currently regulate ICOs, but we expect this to change in the near future; recently, the Israeli Securities Authority has announced the formation of a special committee tasked to determine, among other, whether crypto currency transactions and coin bids should be regulated by the ISA; the committee is due to present its report by the end of the year. We will keep you updated.

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

N/A

**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.**

# ISRAEL

AYR

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

The ICO industry is thriving in Israel, there are many Israeli companies involved in the evolving field of ICO. Our firm is involved with several Israeli companies that are involved in different aspects of the cryptocurrency industry along with Israeli venture capital funds that wish to raise capital to invest in ICOs.

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

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# ITALY

## COCUZZA E ASSOCIATI STUDIO LEGALE

### 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.

# ITALY

## COCUZZA E ASSOCIATI STUDIO LEGALE

**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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## COCUZZA E ASSOCIATI STUDIO LEGALE

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.

# ITALY

## COCUZZA E ASSOCIATI STUDIO LEGALE

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

# ITALY

## COCUZZA E ASSOCIATI STUDIO LEGALE

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).

# ITALY

## COCUZZA E ASSOCIATI STUDIO LEGALE

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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# JAPAN

## URYU & ITOGA

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

Yes, but we have regulations on this matter. Payment Service Law (“PS Law”), which was amended last year and took effect in April 2017, provides regulations for cryptocurrency and ICOs.

**2 Does your country regulate ICOs and Token Sales?**

See above.

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

Financial Services Agency (“FSA”) is mainly responsible for regulating “cryptocurrency” and ICOs.

Under the PS Law, a business operator, who wants to deal with a token falling within the definition of “cryptocurrency” in the PS Law, have to register with the FSA as a cryptocurrency exchange operator.

**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.**

See above.

# JAPAN

## URYU & ITOGA

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

If your client solicits a resident of Japan to join its ICOs, the PS law and other Japanese law and regulations would apply for such ICOs. Other than the PS law, Financial Instruments and Exchange Act (“FIEA”) would apply for such ICOs.

Recently, FSA made an announcement titled “Regarding ICOs” where they indicate possible application of the FIEA to ICOs relating to a collective investment scheme. It should be also noted that law and regulations related to consumer protection, e.g. Consumer Contract Act, would apply for a contract for the ICOs.

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

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# LATVIA

## VILGERTS

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

ICOs and token sales are not prohibited in Latvia. In the meantime, the Financial and Capital Market Commission of Latvia has published a warning to investors about ICO and associated risks, as well as opinion on the legal framework for cryptocurrencies.

**2 Does your country regulate ICOs and Token Sales?**

ICOs are currently not regulated by the laws regulating the financial markets but, depending on how the token sale or ICO is organised, it may fall under the financial instruments definition according to the Law of the Financial Instruments Market (LFIM).

As of 1st January 2019 there are amendments in tax regulation, clarifying that capital gains tax is payable from sale of virtual currency.

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

If the ICO falls under the existing regulation of LFIM, the Financial and Capital Market Commission is the institution regulating it. Criminal offenses involving virtual currency are investigated by the prosecution office.

**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

# LATVIA

## VILGERTS

- 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.)?**

N/A

Latvia does not have a specific regulation. However, if a non-EU company is offering a security token to non-accredited investors, it will be required to have a shadow prospectus for the EU.

In its latest informative report, ‘The benefit and risks of using virtual currencies and further action to promote the development of the field and to mitigate identified risks’, issued on 14th August 2018, the Ministry of Finance referred to virtual currency as a contractual payment instrument and as a means of exchange.

Latvian Law on the prevention of money laundering and terrorism financing defines virtual currency as a digital representation of the value which can be transferred, stored or traded digitally and operate as a means of exchange, but has not been recognised as a legal means of payment, cannot be recognised as a banknote and coin, non-cash money or electronic money, and is not a monetary value accrued in the payment instrument.

# LATVIA

## VILGERTS

Depending of the nature of the coin or token, it can also represent a security if it gives expectations of return for the investor. Whether a token represents a security is evaluated by the Financial and Capital Market Commission.

**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).

There have been no such cases in Latvia.

**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).

There are no cases that we are aware of.

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

Before 1st January 2019 there was no clear guidance on how to tax income from crypto transactions. As of 1st January 2019, however, there are amendments in the tax regulation providing that crypto transactions are subject to capital gains tax at a flat rate of 20%. Only documented provable losses and expenses can be deductible for capital gains tax calculation purposes, otherwise the tax is payable from the selling price. The losses from other capital assets in crypto transactions

# LATVIA

## VILGERTS

cannot be deducted for capital gains tax purposes (e.g. if selling real estate and Bitcoins, the losses from the real estate transaction cannot be regarded against the gain of selling of Bitcoins).

If an individual or legal entity is trading cryptocurrency as its business activity, the regular tax regime is applicable (i.e. personal income tax for self-employed individuals, or corporate income tax for legal entities).

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

Crypto trading is subject to income tax as described in section 11.

Crypto trading and exchanges are subject to the Law on the Prevention of Money Laundering and Terrorism Financing as of 1st July 2019.

**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 Financial and Capital Market Commission has established an innovations sandbox which provides the opportunity to get information from the Financial and Capital Market Commission directly.

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

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# LIECHTENSTEIN

## GASSER PARTNER RECHTSANWALTE

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

Sales of tokens which do not qualify as financial instruments or securities under Liechtenstein law are allowed in Liechtenstein. Sales of token which qualify as securities under Liechtenstein law are allowed subject to compliance with the respective requirements for a public offering of securities.

Other potentially applicable rules or regulations depend on the individual circumstances.

### 2 Does your country regulate ICOs and Token Sales?

With regard to the sale of tokens, we refer to the above. There is currently a draft bill ‘Law on Transaction Systems Based on Trustworthy Technologies’ (TT) going through the legislative process in Liechtenstein which shall address certain aspects related to ICOs. In the absence of specific regulation, the national legal framework applicable to token sales depends on their legal quality and specific characteristics.

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

Where a token sale or ICO falls within the scope of financial regulation, the Financial Market Authority (FMA) Liechtenstein is the competent authority. The authority has created a specialised practice group for fintech-related financial services ([www.fma-li.li/en/regulation/fintech-in-liechtenstein.html](http://www.fma-li.li/en/regulation/fintech-in-liechtenstein.html)).

### 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

If the token qualifies as a security, the Securities Prospectus Act is applicable and the public sale can only be conducted on the basis of an approved prospectus. If the tokens qualify as financial instruments, certain services related to the assets may trigger further licensing requirements.

Other potentially applicable rules or regulations depend on the individual circumstances.

# LIECHTENSTEIN

GASSER PARTNER RECHTSANWALTE

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.**

Liechtenstein is part of the EEA, and EU legislation may be directly applicable or is transposed into Liechtenstein law. Further, the Liechtenstein FMA regularly follows guidance by European regulators such as the European Securities and Markets Authority (ESMA) or the European Banking Authority (EBA). Thus, the Liechtenstein legal environment will be influenced by legal developments on a European level.

The Liechtenstein FMA has issued guidance on ICOs ([www.fma-li.li/files/fma/fma-factsheet-ico-pdf](http://www.fma-li.li/files/fma/fma-factsheet-ico-pdf)) and other fintech-related topics.

**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.**

Sales of tokens which do not qualify as financial instruments or securities under Liechtenstein law by a foreign entity are allowed in Liechtenstein. Sales of tokens which qualify as securities under Liechtenstein law are allowed subject to compliance with the respective requirements for a public offering of securities.

Other potentially applicable rules or regulations depend on the individual circumstances.

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

Virtual currencies do not constitute an official currency, but may qualify as a security, financial instrument or other form of asset as the case may be. The qualification depends on the specific design of the token and must be considered on a case-by-case basis.

# LIECHTENSTEIN

## GASSER PARTNER RECHTSANWALTE

**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).

We are not aware of any specific and significant incidents so far.

**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).

We are not aware of any specific and significant incidents so far.

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

The taxation depends on the specific characteristics of the asset and the transaction and must be considered on a case-by-case basis. There is no general tax exemption for investment or trading in crypto assets in Liechtenstein.

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

If the assets that are subject to trading or exchange services qualify as financial instruments, the respective regulatory framework applies.

# LIECHTENSTEIN

## GASSER PARTNER RECHTSANWALTE

**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.**

Liechtenstein is a first mover when it comes to crypto-related business, while at the same time maintaining a high-quality standard of services and investor protection.

Highlights are:

- The draft bill ‘Law on Transaction Systems Based on Trustworthy Technologies’ (TT) currently going through the legislative process in Liechtenstein. The bill not only addresses ICOs, but also deals with tokenisation of assets and generally seeks to provide for a functioning legal environment for businesses, transactions and investments related to cryptocurrencies.
- The open but professional approach of the FMA towards crypto-related products and services. The FMA has created a specialised practice group for fintech-related financial services ([www.fma-li.li/en/regulation/fintech-in-liechtenstein.html](http://www.fma-li.li/en/regulation/fintech-in-liechtenstein.html)) and is well known for its accessibility as well as for its swift and service-oriented approach.
- The short time to market of crypto-related projects in Liechtenstein, which is underlined by the fact that Liechtenstein has both provided for the first set-up of a regulated crypto fund and (unconfirmed) the first approved crypto prospectus in Europe.
- The professional and experienced legal advisers (such as Gasser Partner) and intermediaries (such as Bank Frick) in Liechtenstein, which have gained substantive knowledge and experience in crypto-related projects in the past years.

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

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# LUXEMBOURG

## BRUCHER THIELTGEN & PARTNERS, AVOCATS À LA COUR

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

ICOs and token sales are allowed in Luxembourg.

**2 Does your country regulate ICOs and Token Sales?**

A draft bill regarding the use of distributed ledger technologies for the issuance and circulation of securities has been submitted to the Luxembourg House of Representatives (Chambre des Députés) on 27th September 2018 (Draft Luxembourg Law 7363), and expressly foresees the use of blockchain-related technologies under Luxembourg law.

Moreover, it should be emphasized that Luxembourg's financial regulator, the Commission de Surveillance du Secteur Financier (CSSF) issued several communiqués and press releases based on the published European Securities and Markets Authority (ESMA) recommendations, in particular the 'Bitcoin Communiqué 2014', the 'CSSF Warning on virtual currencies (2018)' and the 'CSSF Warning on initial coin offerings ('ICOs') and tokens (2018)'. The latter two may be found on the CSSF's website (<http://www.cssf.lu/en/supervision/fintech/>).

These press releases and communiqués illustrate the constant will and work of the Luxembourg financial regulator to regulate ICOs and token sales in Luxembourg. In fact, the CSSF explains that, considering that ICOs are highly speculative investments, depending on how they are structured, they may fall outside of any regulated legal framework, in which case investors do not benefit from any protection. Therefore, in order to guarantee investors' protection, ESMA has determined that, depending on ICOs' structure, different UE financial regulations may apply (and their corresponding national laws) such as (i) the Prospectus Directive, (ii) the Markets in Financial Instruments Directive, (iii) the Alternative Investment Fund Managers Directive, (iv)

# LUXEMBOURG

BRUCHER THIELTGEN & PARTNERS, AVOCATS À LA COUR

the Market Abuse Regulation, (v) the Fourth Anti-Money Laundering Directive etc.

Finally, other national rules or regulations may also apply in addition to the aforementioned EU legislation, depending on the ICO's structure, which must be examined on a case-by-case basis.

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

The CSSF. In fact, the CSSF even invites ICO promoters to contact it before a potential launch in order to check the different legal frameworks that might apply. This discussion-based approach aligns with the CSSF's usual behaviour with respect to new technologies and innovation

**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.**

The above-mentioned draft Bill aims to enable the stakeholders of the financial marketplace to benefit, within a secured legal framework, from the new opportunities offered by technology.

In fact, this draft Bill would amend the methods available for recording the issuance and circulation of securities for Luxembourg entities whose securities are held or maintained by a financial actor. There is one article which would allow for the use of blockchain-type technologies for a decentralised management. According to this draft Bill, transfers would be considered equivalent to transfer between accounts, and securities would remain fungible.

The analysis of this draft Bill shows that the Luxembourg legislator embraces the token concept, stating that a token is 'essentially a digital asset stored in a blockchain which, like a paper security or a conventional dematerialized security, represents the 'security''. This is from a technological point of view new type of dematerialized security, but one that legally has attached to it the same rights as conventional dematerialized securities'.

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Finally, in order to have a broader analysis of the CSSF's view of ICOs and token sales, one can turn to the communiqués and press releases mentioned under question 2, which are available on the CSSF's website (<http://www.cssf.lu/en/supervision/fintech/>).

**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.**

Foreign entity conducting ICOs and token sales in Luxembourg

First of all, as explained under question 2, and further to the CSSF communiqués and press releases and the ESMA recommendations, the main question for issuers is to determine whether the coins or tokens offered in the course of an ICO shall be qualified as financial instruments. In such a case, it is likely that the issuer conducts regulated investment activities that could fall under the scope of UE financial regulations (and their corresponding national laws). Issuers themselves have a duty to analyse the regulatory framework, seeking the necessary permissions and meeting the applicable requirements when conducting their activities, and in particular when contemplating launching an ICO.

Moreover, we would like to point out that the CSSF stated that ICOs are subject to all current, existing laws, notably to AML/CTF regulation. The CSSF further emphasised that it does not wish to impede blockchain, acknowledging the benefits of distributed ledger technologies for innovation and increased transparency in financial markets.

It is important to note that the CSSF is known for its rigorous vetting process and will only authorise and

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## BRUCHER THIELTGEN & PARTNERS, AVOCATS À LA COUR

license companies which wish to proceed to ICOs or token sales and related activities that have proven their potential and commitment to strong KYC policies and AML/CTF checks.

Creating a Luxembourg entity to conduct ICOs and token sales in Luxembourg

(i) Payment institution licences:

Moreover, the CSSF foresees specific criteria and conditions which, if met, may lead to licensing as a payment institution under Luxembourg law:

a) Crypto trading platforms:

It should in fact be stressed that the CSSF licensed the first ever EU-licensed crypto firm, Bitstamp, the oldest crypto trading platform in the world. In fact, as one can see on the CSSF's website, Bitstamp is listed as a payment institution and is put into the register of payment institutions authorised in accordance with the law of 10th November 2009 relating to payment services. This step was highly innovative from a regulatory perspective, as the CSSF opted to grant a payment institution licence under the EU Payment Services Directive (EU 2015/2366) to Bitstamp.

Another well-known company, bitFlyer, originally from Japan, was granted the same license by the CSSF in 2018. Much like Bitstamp, bitFlyer is listed as a payment institution and is put into the register of payment institutions authorised in accordance with the law of 10th November 2009 relating to payment services.

As a result, bitFlyer is licensed in Japan, in the EEA (via Luxembourg) and in 43 out of 50 US states.

What advantages does such a licence offer? This licence gives recipients an EU passport for the whole European Economic Area (currently, all EU member states plus Iceland, Liechtenstein and Norway) and is highly attractive to global crypto players due to its broad territorial compliance coverage.

It should also be pointed out that the draft of the Fifth Anti-Money Laundering Directive (AMLD5)

# LUXEMBOURG

## BRUCHER THIELTGEN & PARTNERS, AVOCATS À LA COUR

specifies that providers of exchange services between cryptocurrencies and wallet providers offering custodial services of private keys may need to be registered or licensed in the European Union countries where they are established.

Finally, we need to stress that, as of today, being approved by the CSSF is not a mandatory requirement. This explains why, in August 2018, our law firm Brucher Thielgen & Partners could incorporate a special limited partnership company (*société en commandite spéciale*) investing in and trading cryptocurrencies without having to apply for such an explicit CSSF approval. The corporate object of that company is ‘the holding of investments of any kind, the acquisition by purchase, subscription or in any other manner, as well as the transfer by sale, exchange or otherwise of investments of any kind, and the ownership, administration, development and management of its portfolio’.

### b) Electronic money platforms:

Besides the two aforementioned EU payment institution licences, a third licence, namely an EU-compliant electronic money institution directive license (E-money Directive 2009/110/EC) was granted to Luxembourg-based firm Snapswap, which has a platform built on blockchain technology and which mirrors legal tender currencies, allowing for instant money transfers in daily life. On the CSSF website one may read that Snapswap is an electronic money institution.

### c) CSSF’s regulatory approach:

The contrasting treatments of crypto trading platforms and of electronic money platforms might indicate that the CSSF has a different regulatory approach for each. This could also be a reason why the CSSF took the ‘Bitcoin Communiqué 2014’ offline around mid-February 2018 without officially cancelling it. We may deduce that the ‘Bitcoin Communiqué 2014’ is still valid and that the CSSF still considers Bitcoin as scrip money.

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On 14th March 2018, four years after the release of its ‘Bitcoin Communiqué 2014,’ the CSSF issued two new press releases, as mentioned under question 2. The ‘CSSF Warning on virtual currencies (2018)’ warned cryptocurrency investors and token-holders about virtual currencies (i.e. cryptocurrencies), and the ‘CSSF Warning on initial coin offerings (ICOs) and tokens (2018)’ warned about ICOs and tokens, while highlighting associated risks for investors. The CSSF mainly based its warnings on the lack of specific investor protection regulation and the fact that these transactions were not counter-guaranteed by a government or a central bank.

d) Contacting Luxembourg’s financial regulator beforehand:

As set out under question 3, the CSSF invites ICO promoters to contact it before a potential launch in order to check the different legal frameworks that might apply. This discussion-based approach aligns with the CSSF’s usual behaviour with respect to new technologies and innovation.

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

The CSSF states in its above-mentioned ‘VC Warning 2018’ (and the Luxembourg direct tax administration (Administration des contributions directes) confirmed, in its circular dated 26th July 2018, ‘Ciculaire du directeur des contributions L.I.R. n°14/5-99/3-99bis/3 du 26 juillet 2018’) that cryptocurrencies are actually not currencies but rather a means of exchange. Bitcoin specifically, however, has been considered as a type of scrip money, according to the definition provided in the CSSF ‘Bitcoin Communiqué 2014’ four years ago.

**8 Has the government of your country prosecuted, civilly or criminally, any ICO issuers, token developers or crypto exchanges for violating**

N/A

# LUXEMBOURG

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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).

N/A

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

Yes, but certain nuances shall be underlined. While Luxembourg is among the first European countries to have recognised cryptocurrencies as means of exchange, the ACD underlines, in its above-mentioned circular dated 26th July 2018, that they 'do not constitute currencies' and further explains that 'unlike currencies, virtual currencies have no legal tender status and do not represent means of exchange whose value is guaranteed by a central bank'. As a consequence, Luxembourg taxpayers cannot prepare their annual accounts in Bitcoins, Ethereums and other XRP. All income obtained through cryptocurrencies must therefore be determined in euros or another currency recognised by the European Central Bank before being declared.

On this basis, the ACD distinguishes two situations:

- A commercial income: in the case of the mining of a virtual currency, the ACD considers that the income obtained comes from a commercial activity and is taxed as such. An identical scenario is used for the management of a virtual currency exchange platform, such as bitFlyer or Bitstamp.

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- Speculation: on the other hand, the purchase and sale of virtual currencies in a recognised currency or the use of a virtual currency to purchase a good or service are considered transactions. ‘Any profit or loss realized in such an exchange constitutes a speculative profit or loss’ and therefore falls into the category of miscellaneous net income.

In these cases, the taxpayer must therefore have consistent and continuous documentation on transactions and related costs when filing his return.

Finally, the ACD also reiterates that, like all capital gains related to speculation, this type of transaction will only be taxed if the interval in which it was carried out does not exceed six months and the amount is greater than €500. Otherwise, no taxation will be levied.

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

In progress: while the European Commission, European Parliament and European Court of Justice lean toward cryptocurrencies being interpreted as a means of payment, national governments – such as Luxembourg, through the CSSF and the ACD – advocate, on the other hand, for a legal definition that favours a means of exchange.

The difference in interpretations may seem trivial, but this distinction is crucial, as it will determine the tax treatment of cryptocurrencies. If cryptographic assets were defined legally as a means of payment, then cryptocurrencies would be treated the same as foreign currencies and thus be exempt from VAT. If, however, they were defined as a means of exchange, national VAT rates would apply.

We currently ascertain that no specific regulation in Luxembourg is in place. This might, however, change in view of the draft Bill 7363, the AMLD5, the communiqués and the press releases.

For further details, please refer to our answer to questions 2, 7 and 11.

# LUXEMBOURG

## BRUCHER THIELTGEN & PARTNERS, AVOCATS À LA COUR

**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.**

As already mentioned above, in order to incorporate a company acting in the cryptocurrency field in Luxembourg, a specific licence might need to be acquired/granted by the CSSF (for further details thereon, please refer to our answer to question 7).

If such a licence has been acquired, (i) the company will have an EU passport for the whole European Economic Area, granting a broad territorial compliance coverage, and (ii) the company will be subject to the Luxembourg law of 10th November 2009 on payment services. This ensures that the CSSF will have a homogeneous view of whoever wishes to create a company with a financial activity, whether tangible, electronic or virtual.

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

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# MALAYSIA

## AZMAND DAVIDSON

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

ICOs and token sales are allowed in Malaysia.

**2 Does your country regulate ICOs and Token Sales?**

An ICO which

- (a) is traded in a place or on a facility where offers to sell, purchase, or exchange the digital currency are regularly made or accepted;
  - (b) creates the expectation of a return from the trading, conversion or redemption of the digital currency, or from appreciation in the value of the digital currency; and
  - (c) is not issued or guaranteed by any government body or central bank as may be specified by the Securities Commission Malaysia;
- is prescribed as a security for the purposes of the securities laws.

A token sale which represents a right or interest of a person in any arrangement made for the purpose of, or having the effect of, providing facilities for the person, where

- (a) the person received the digital token in exchange for a consideration;
- (b) the consideration or contribution from the person, and the income or returns, are pooled;
- (c) the income or returns of the arrangements are generated from the acquisition, holding, management or disposal of any property or assets or business activities;
- (d) the person expects a return in any form from the trading, conversion or redemption of the digital token or the appreciation in the value of the digital token;
- (e) the person does not have day-to-day control over the management of the property, assets or business

# MALAYSIA

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of the arrangement; and  
(f) the digital token is not issued or guaranteed by any government body or central bank as may be specified by the Securities Commission Malaysia;  
is prescribed as a security for the purposes of the securities laws.

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

Offers of coins as 'digital currency' and tokens as 'digital tokens' are prescribed as securities which are regulated by the Securities Commission Malaysia.

**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.**

The legal framework will only be in place by the end of first quarter of 2019. However, the instruments and their associated activities must be first approved by the Securities Commission Malaysia, subject to compliance with the relevant securities laws and regulations.

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

The Ministry of Finance of Malaysia views digital assets, as well as their underlying blockchain technologies, as having the potential to bring about innovation in both old and new industries. It is an alternative fundraising avenue for entrepreneurs and new businesses, and an alternate asset class for investors.

Any person offering an ICO or token sale without the approval of the Securities Commission Malaysia may be

# MALAYSIA

AZMAND DAVIDSON

punished, on conviction, with imprisonment not exceeding ten years and a fine not exceeding RM10 million.

**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.

It is uncertain for the time being. There will be more certainty upon the availability of the legal framework.

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

It is a form of prescribed 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).

There has never been any prosecution.

**9** In your country, are

No.

# MALAYSIA

AZMAND DAVIDSON

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.

It is uncertain at this juncture. The regulatory framework will be issued by the end of the first quarter of 2019.

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

It is regulated under the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019. The framework will be in place by end of the first quarter of this year.

**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.

There will be clear regulatory guidance upon the availability of the framework by the end of the first quarter of 2019.

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

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# MALTA

## DF ADVOCATES

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

Malta allows and encourages ICOs and token sales to be conducted from and within the country. On 1st November 2018, Malta saw the entry into force of three main pieces of legislation aimed at creating a decentralised ecosystem providing legal certainty and a degree of investor protection whilst not stifling innovation, which is seen as being intrinsic to the sector regulated.

### 2 Does your country regulate ICOs and Token Sales?

Malta regulates ICOs, token sales, their issuers and related service providers mainly through the Virtual Financial Assets (VFA) Act (Chapter 590 of the Laws of Malta). The Malta Digital Innovation Authority (MDIA) Act (Chapter 591 of the Laws of Malta), on the other hand, sets out a new authority - the MDIA - specifically created to promote and develop the innovative technology sector in Malta through the proper recognition of relevant innovative technology arrangements and related services. The Innovative Technology Arrangements and Services (ITAS) Act (Chapter 592 of the Laws of Malta), deals with how the MDIA shall regulate and oversee certain innovative technology arrangements such as software, code, computer protocols and other architectures which are used in the context of DLT, smart contracts and related applications. The tripartite legal framework has been enacted with a view to offering a more complete and robust regulatory system.

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

ICOs, token sales, their issuers and related service providers are regulated by the sole financial regulator in Malta, the Malta Financial Services Authority (MFSA). However, innovative technological arrangements (ITA) which are used in the context of distributed ledger technology (DLT) and related applications are regulated by the newly set up Malta Digital Innovation Authority.

**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.**

As explained above in section 2, the regulatory framework is composed of the VFA Act, the MDIA Act and the ITAS Act.

The VFA Act aims to ensure investor protection and market consistency through robust regulation, with specific relevance to the issuing of DLT assets and intermediaries providing VFA services. The VFA Act distinguishes tokens into (i) virtual tokens, (ii) virtual financial assets, (iii) e-money or (iv) financial instruments. The legislative framework provides that, for a VFA to be offered from or within Malta, the issuer must be a legal entity, and it shall apply for registration with the MFSA. Such application must be done through a VFA agent and shall also include a white paper which, inter alia, must contain a detailed description of the sustainability and scalability of the proposed project. The issuer of an initial VFA offer shall appoint and retain a VFA agent at all times, and the role of such agent shall be, inter alia, to act as a liaison between the MFSA and the issuer of the VFA. The VFA agent must also consistently monitor and supervise the issuer of the VFA to ensure that it is in compliance with all the regulatory requirements and obligations. A number of ongoing obligations also subsist on the issuer, including, inter alia, record keeping, submitting of annual compliance, AML/CFT, and systems audit report on an annual basis. The issuer shall also be required to appoint a money laundering reporting officer, a systems auditor (should the issuer have innovative technology arrangements in place), a VFA agent, an auditor and a custodian.

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

In terms of the VFA Act, a VFA is defined as 'any form of digital medium recordation that is used as a digital medium of exchange, unit of account, or store of value.' The VFA Act requires prospective issuers to undergo the financial instrument test (FIT) in order to determine the nature of the DLT asset which is going to be offered. If, through the FIT, the DLT asset is classified as a

VFA, then any issuer of an ICO or any issuer of a VFA seeking admission to trading on a DLT exchange must apply, through a Malta-registered VFA agent, for the registration of its white paper with the MFSA. Should the issuer determine the instrument as being classified as either a financial instrument, electronic money or a virtual token (i.e. a pure utility token), the relevant applicable regulatory regime shall be adhered to.

**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.**

The offering of virtual financial assets, or the admission to trading on a DLT exchange, in a country outside Malta shall be subject to the laws of that country. However, any issuer seeking to offer DLT assets in or from within Malta is bound by the above-mentioned regulations.

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

The legal nature of a crypto asset is to be determined on a case-by-case basis, upon conducting the FIT. Crypto assets, in terms of the VFA Act, fall into four categories: (i) a virtual (utility) token which falls outside the scope of the VFA Act; (ii) a financial instrument which is regulated by MiFID II and the Investment Services Act (Chapter 370 of the Laws of Malta); (iii) electronic money which is regulated by the Financial Institutions Act (Chapter 376 of the Laws of Malta); and (iv) virtual financial assets which are regulated by the VFA Act.

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## DF ADVOCATES

**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).

Not to our knowledge.

**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).

Yes, to our knowledge a civil dispute has been registered in relation to a warrant of prohibitory in junction on crypto filed in the First Hall of the Civil Court in the names of Dr Paul Micallef Grimaud (ID 67579M) as a special mandatory of the British company Global Multimedia Investment (UK) Limited, as well as of Najib Abou Hamze, a Lebanese citizen (Lebanese passport number LR0198311) v Snapparazzi Limited (C86876) and Damien Larquey (French passport number 16CT48277) of 6 Lieu Dit Mouleyre, 33410 Cardan, France. Grimaud and Hamze (the plaintiffs) alleged that Snapparazzi and Larquey (the defendants), who were entrusted with information in relation to the plaintiffs' project entitled MoneyCam, which project involved the issuance of an initial coin offering, acted in bad faith and misappropriated the idea behind the MoneyCam project by proceeding with the issuance of their own project, Snapparazzi. Defendants, on the other hand, rebutted the allegations by claiming that there was no contractual or quasi-contractual relationship between themselves and the plaintiffs, that there were no fiduciary or any other obligations on the part of the defendants towards the plaintiffs, and that Snapparazzi was a product which was developed independently of MoneyCam, provided that the project Snapparazzi was set up in 2017, thereby prior to the alleged misappropriation of information

and/or property of Moneycam.

By virtue of the warrant, on 27th December 2018, the court inhibited the defendants from offering, issuing and assigning tokens to third parties in relation to the initial coin offering issued by the defendant company in relation to their product Snapparazzi. Furthermore, the court inhibited the defendants from publicising and commercialising further their product Snapparazzi or any other product which has similar functions thereto. In relation to the plaintiffs' product Moneycam, the court prohibited the defendants from using, usurping and/or distributing to third parties documentation obtained from the plaintiffs or in any other way violating their obligations as fiduciaries of the plaintiffs by accessing and/or transferring assets, including bank accounts, both physical and electronic accounts (including wallets) as well as money (fiat or e-money) in such accounts, which belong to the defendant company or any other benefits in connection to Snapparazzi.

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

According to the guidelines issued by the Inland Revenue Department, where a taxpayer accepts payment in cryptocurrency, such payment shall be treated, for income tax purposes, in the same manner as payment in any other currency. Payment made by the transfer of a financial or utility token shall be treated as a payment in kind.

The guidelines also provide for the income tax treatment on the following transactions.

Transactions in coins: profit realised from the business of exchanging coins is treated for income tax purposes in the same manner as profit realised from exchanging fiat currency, and any proceeds derived from the sale of coins held as trading stock in a business is taxed as ordinary income. Where the disposal of coins held as capital assets gives rise to capital gains, such gains fall outside the scope of capital gains taxation.

Return on financial tokens: where the owner of a financial

token derives a return on his holdings in a cryptocurrency or other currency, or in kind, such return is treated as income for tax purposes.

Transfers of financial and utility tokens: the tax treatment of proceeds from the transfer of a token depends on whether the token is held as a capital asset or whether it is held for the purposes of trading. Proceeds derived from the transfer of a token in the ordinary course of business are taxed as trading income. If a financial token is not considered as a trading transaction, it may still give rise to capital gains, provided such token satisfies the definition of a security in terms of article 5 of the Income Tax Act (Chapter 123 of the Laws of Malta). Transfers of utility tokens fall outside the scope of capital gains.

Initial offerings: where the initial offering of financial tokens involves the raising of capital, the proceeds of such issue are not treated as income of the issuer and the issue of new tokens is not treated as a transfer for capital gains purposes. In the case of utility tokens, the gains or profits realised by the issuer from the provision of the services or supply of goods to the token-holder represents income for the issuer.

#### Treatment of DLT Assets for Stamp Duty Purposes

In terms of the Maltese Duty on Documents and Transfers Act (Chapter 364 of the Laws of Malta) (DDTA), the amount of duty due (if any) is determined by the intrinsic nature and effects of the transaction to which it refers, regardless of the form or title. The guidelines outline that, where a transaction involves a DLT asset that has the same characteristics as marketable securities in terms of the DDTA, such transfer will be subject to duty in accordance with the provisions of the DDTA.

#### Treatment of DLT Assets for VAT Purposes

Coins: the Hedqvist decision (Case 264/14) established that payment in cryptocurrency is to be treated for VAT purposes in the same manner as traditional currency used as legal tender. Accordingly, the exchange of cryptocurrency against legal tender falls within the

exemption under item 3(4) of part two of the fifth schedule to the Malta VAT Act covering, inter alia, currency, banknotes and coins used as legal tender. The exchange of cryptocurrencies for other cryptocurrencies or fiat currency is also exempt from VAT.

Financial tokens: for VAT purposes, it is important to analyse what the investor gets in exchange for the token. Since the token gives rise to dividends or interest payments, one must examine whether the instrument falls within item 3 of part two of the fifth schedule to the VAT Act (Chapter 406 of the Laws of Malta) as an exempt without credit supply, which specifically states that ‘transactions, including negotiation, excluding management and safekeeping, in shares, interest in companies or associations, debentures and other securities, is treated as an exempt without credit supply’. Where a financial token is issued to simply raise capital, such issue does not give rise to any VAT implications in the hands of the issuer, as the raising of finance does not constitute a supply of services or goods for consideration.

Utility tokens: utility tokens are largely associated with vouchers for VAT purposes, and their VAT treatment is regulated by part nine of the fourteenth schedule to the VAT Act. Where a voucher is regarded as a single-purpose voucher (i.e. the place of supply and VAT due (if any) of the ultimate goods or services is known at the time the voucher is issued), the consideration payable for that voucher represents a payment for the supply of the underlying good or service to which the voucher relates, and VAT will be due in accordance with the rules established in the fourth schedule to the VAT Act. Multi-purpose vouchers may only be subject to VAT upon the redemption of the voucher.

**11 Separate from ICOs,  
does your jurisdiction  
regulate crypto trading**

Separately from ICOs, the VFA Act defines a VFA service as ‘any service falling within the second schedule of the Act when provided in relation to a DLT asset which has

or crypto exchanges?  
If so, please provide  
an overview of the  
regulation.

been determined to be a virtual financial asset'. The VFA regulations distinguish between four classes of licences in relation to the service sought to be provided.

#### VFA Class 1 Service

A class 1 VFA service provider licence granted by the MFSA would authorise the VFA service provider to provide one or more of the following services.

- a) Reception and transmission of orders: the reception from a person of an order to buy, sell or subscribe to virtual financial assets, and the transmission of that order to a third party for execution.
- b) Investment advice: giving, offering or agreeing to give, to persons in their capacity as investors or potential investors or as agent for an investor or potential investor, a personal recommendation in respect of one or more transactions relating to one or more virtual financial assets.
- c) Placing of virtual financial assets: the marketing of newly issued virtual financial assets, or of virtual financial assets which are already in issue but not admitted to trading on a DLT exchange, to specified persons and which does not involve an offer to the public or to existing holders of the issuer's virtual financial assets.

#### VFA Class 2 Service

A class 2 VFA service provider licence granted by the MFSA would authorise the VFA service provider to provide the services listed in class 1, together with one or more of the following services.

- a) Execution of orders on behalf of other persons: acting to conclude agreements to buy, sell or subscribe to one or more virtual financial assets on behalf of other persons.
- b) Portfolio management: managing or agreeing to manage assets belonging to another person, if those assets consist of or include one or more virtual financial assets or the arrangements for their management are such that the person managing or agreeing to manage those assets has a discretion to invest any of those assets

in one or more virtual financial assets.

c) Custodian or nominee services: acting as custodian or nominee holder of a virtual financial asset and/or private cryptographic key, or the holding of a virtual financial asset and/or private cryptographic key as nominee, where the person acting as nominee is so doing on behalf of another person who is providing any VFA service under the second schedule of the VFA Act or on behalf of a client of such person, and such nominee holding is carried out in relation to such service.

#### VFA Class 3 Service

A class 3 VFA service provider licence granted by the MFSA would authorise the VFA service provider to provide the services listed in class 1 and class 2, together with the ability to deal on own account, resulting in trading against proprietary capital resulting in conclusion of transactions in one or more virtual financial assets.

#### VFA Class 4

A class 4 VFA service provider licence granted by the MFSA would authorise the VFA service provider to provide the services listed in all of the abovementioned classes, together with the ability to operate a VFA exchange.

All four licence classes posit a number of requirements on the potential licence-holder, including but not limited to the setting up of the applicant as a legal person in Malta and appointing a VFA agent for the purposes of applying for the relevant licence. The application for authorisation to operate a VFA service must contain, *inter alia*, any documents and information that the MFSA would require, including a programme of operations setting out the system; financial projections; and information on the fitness, properness and competence of the beneficial owners, directors and senior management of the applicant; as well as evidence in relation to substance requirements in that the VFA service provider shall be operating from Malta. A number of ongoing requirements shall also be placed on the licence-holder, including the

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submission of financial information, risk management processes, internal governance policies and procedures, the submission of a compliance certificate to the MFSA on an annual basis, and security mechanisms.

**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.

Malta is one of the first and only countries offering clear and robust regulations on crypto focusing on safeguarding the investors and market integrity, together with providing a much-needed legal infrastructure that is and will continue to allow further development and expansion of this thriving industry.

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

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# MEXICO

## RAMOS, RIPOLL & SCHUSTER

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

ICOs are not expressly regulated in Mexico yet. However, they are not expressly prohibited, hence they could be allowed, provided that in some cases certain regulations are met.

### 2 Does your country regulate ICOs and Token Sales?

We do not have any regulations in Mexico expressly regulating ICOs yet. The type and nature of the crypto asset would determine the regulations applicable to the ICO or token sale.

In December 2017, the National Banking and Securities Commission (CNBV), the Bank of Mexico (Banxico) and the Secretariat of Finance and Public Credit (SHCP) issued a joint statement alerting the public about risks associated with the use of virtual assets and participation in investment schemes such as initial coin offerings.

In this statement, the three main financial authorities of Mexico recognised that there can be a wide variety of types or categories of tokens available in the market that can be obtained through an ICO, and that, depending on the characteristics and circumstances of each individual token, they could be considered securities under Mexican securities law, and therefore its offering should be subject to the conditions and limitations of said law.

On March 2018, the Law to Regulate Financial Technology Institutions (Ley para Regular las Instituciones de Tecnología Financiera) (the Fintech Law) came into force, which contains a chapter on transactions with virtual assets (which would be equivalent to what is commonly known as cryptocurrencies).

The Fintech Law mainly recognises two types of financial technology institutions (ITF):

1. (i) Crowdfunding institutions; and
2. (ii) Electronic payment fund institutions (e-money).

Both types of fintech institution can be authorised by the Bank of Mexico to operate with virtual assets, if they meet certain requirements.

According to the Fintech Law, pertinent regulations applicable to virtual assets must be issued by the Bank

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## RAMOS, RIPOLL & SCHUSTER

of Mexico by March 2019. It is likely that, in this secondary regulation, the Bank of Mexico could establish terms, conditions and even restrictions related to operating ICOs through fintech institutions (mainly crowdfunding institutions).

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

Mainly the Bank of Mexico, which is granted broad powers under the Fintech Law to regulate virtual assets, including specifying which virtual assets financial entities can operate with within the country; defining the characteristics of virtual assets; establishing the terms, conditions and restrictions applicable to transactions involving virtual assets; and authorising financial entities to perform transactions with virtual assets.

Other relevant government agencies are the National Banking and Securities Commission and the Secretariat of Finance and Public Credit.

**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.**

We do not have any regulations in Mexico expressly regulating ICOs yet. However, since they are not forbidden, the type and nature of the crypto assets would determine the current regulations applicable to the specific ICO or token sale.

If the ICO or token sale involves the sale of a security, then the offering must comply with securities market law.

By general rule, any security to be publicly offered within the Mexican territory must be registered in the National Securities Registry.

Securities offered within Mexico can be exempt from registration, provided that the person conducting the offering meets any of the following requirements: 1) it is made exclusively to institutional or qualified investors; 2) representative values of the corporation's capital stock, or their equivalents, are offered to less than a hundred people, regardless of whether they are of one or more classes or series; 3) it is carried out under the

# MEXICO

## RAMOS, RIPOLL & SCHUSTER

scope of plans or programmes generally applicable to employees or groups of employees of the company that issues the securities or legal entities that it controls or controls it; 4) it is made to shareholders or partners of legal entities that exclusively or predominantly perform their corporate purpose with them.

The National Banking and Securities Commission, in accordance with the guidelines approved by its governing board, is authorised to approve any type of private offering different from those indicated above.

The offer abroad of securities issued in Mexico or by Mexican legal entities, directly or through trusts or similar or equivalent, is also exempted from registration, but its offering must be notified to the National Banking and Securities Commission describing the main characteristics of such offer. Its prospectus must comply with certain characteristics, including the express statement that the securities that are subject of the offer cannot be offered publicly in the Mexican territory.

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

Please refer to answer 4.

**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**

If the foreign entity intends to offer and promote tokens actively within Mexico, they need to comply with the same regulations as any other entity issuing tokens from Mexico, including securities law.

Despite the above, there is no legal restriction for a Mexican citizen or resident to participate in an ICO or token sale that is being offered and conducted in a country outside of Mexico. In such cases, the resident would need to comply with the rules and regulations of that country where the token is issued.

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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.)?

The legal nature of crypto assets must be determined on a case-by-case basis, depending on the characteristics of the token or coin.

According to the Fintech Law, crypto assets that are used by the public as means of payment (cryptocurrencies) are considered virtual assets. The Fintech law expressly provides that virtual assets are not currencies and are not legal tender in Mexico.

However, since the concept of virtual assets provided by the Fintech Law does not include all type of crypto assets available, it can be determined that in some cases they can be deemed to be securities, intangible assets or even commodities.

**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).

Not to our knowledge.

**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

Not to our knowledge.

# MEXICO

## RAMOS, RIPOLL & SCHUSTER

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.**

There is no specific regulatory framework yet for crypto transactions. However, this does not mean they are not taxed.

As there has not been a positioning from the tax authority, most experts have been inclined to consider crypto assets as intangible assets for taxing purposes.

As an asset, all transactions involving crypto should include value added tax (VAT). Any profit arising from the purchase and sale of crypto should be subject to a corporate income tax of 30%. Individuals, depen

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

Yes, the Fintech Law regulates crypto exchanges and most crypto-related activities.

Crypto exchanges must obtain authorisation from the National Banking and Securities Commission and the Bank of Mexico to act as an electronic payment fund institution that operates with virtual assets.

Crypto exchanges legally operating in Mexico will need to, among other things: 1) comply with certain cybersecurity standards; 2) have segregated accounts from its customers; 3) have customer funds always available; 4) have a record of clients' movements and balances; 5) comply with anti-money laundering (AML) and know your customer (KYC) requirements; 6) have an external audit; 7) comply with the measures established by the Bank of Mexico related to custody and control of virtual assets in their possession; 8) operate only with crypto assets authorised by the Bank of Mexico.

All crypto exchanges operating in Mexico will be supervised by the National Banking and Securities Commission, as well as by the Bank of Mexico.

Secondary regulations applicable to activities with virtual assets must be issued by the Bank of Mexico no later than March 2019. These regulations will include more

# MEXICO

## RAMOS, RIPOLL & SCHUSTER

detailed information regarding the terms, conditions and restrictions related to activities with virtual assets.

**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.**

Mexico is one of the first countries in the world offering a clear regulatory framework for crypto companies and crypto-related activities, focused on consumer protection, anti-money laundering, technological improvement and financial inclusion.

Since most crypto-related activities are regulated, there is no regulatory obstacle for banks and other financial institutions to engage with crypto-related companies. Banks and other financial entities will also be authorised to operate directly with crypto assets.

In Mexico, not only is it allowed for a crypto company to have a bank account, but it is also required to have it. This brings certainty for many companies that intend to carry out activities with cryptocurrencies. The current regulatory framework intends to be a bridge between traditional financial activities and crypto-related activities.

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

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# NEW ZEALAND

## LOWNDES

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

New Zealand allows ICO and Token Sales

**2 Does your country regulate ICOs and Token Sales?**

Yes. As set out below, ICOs and Token Sales conducted in New Zealand or offered to New Zealand Residents should be regulated as if they are any other security.

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

Primarily, the Financial Markets Authority (FMA) and, in some instances, the Financial Service Providers Register (FSPR) and the Companies Office.

**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.**

**(a)** The extent to which an ICO is regulated depends on whether a ‘financial product’ is being offered to retail investors in New Zealand and thus a ‘regulated offer’ is being made. Whether a token offered via an ICO is a particular type of financial product depends on its specific characteristics and economic substance.

**(b)** The Financial Markets Conduct Act 2013 (FMC Act) contains a list of situations where an offer is not being made to retail investors. Offers conducted in accordance with these exceptions are far less regulated.

**(c)** The FMC Act sets out four types of regulated offer:

- i. Debt securities;
- ii. Equity securities;
- iii. Managed investment products; and
- iv. Derivatives.

Debt securities

**(d)** A token is a debt security if investors have the right

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to be repaid money or interest by an entity making a token offer.

**(e)** To make a regulated offer of debt securities, and ICO offer or must:

- i. register a product disclosure statement (PDS);
- ii. appoint a licensed supervisor;
- iii. have a trust deed that sets out investor rights and the supervisor's role; and
- iv. meet financial reporting and fair dealing obligations.

Equity securities

**(f)** A token is an equity security if investors buy, or have the option to buy, a share in a company. If an ICO amounts to a regulated offer of equity securities, the offeror must register a PDS and set out certain investor interests and in their constitution. Financial reporting and fair dealing obligations also apply.

Managed investment products

A token is a managed investment product if:

- i. Investors contribute funds to receive interests (tokens) in a scheme (a structure or project that allows investors to pool their money);
- ii. Returns, income and rewards to investors from the scheme are principally produced by someone else; and
- iii. Investors do not have any day-to-day control over the operation of the scheme/its investments.

**(g)** The manager of a scheme must be licensed by the FMA in order to make offers to retail investors in New Zealand. The manager is the person, company, or unincorporated entity issuing the tokens. If an ICO amounts to a regulated offer of managed investment products, the manager must also:

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- i. register a PDS;
- ii. appoint a licensed supervisor;
- iii. have a trust deed that sets out investor rights and the supervisor's role; and
- iv. meet financial reporting and fair dealing obligations.

### Derivatives

**(h)** A token may be a derivative if, under the terms of the token, the issuer or holder may be required to pay an amount or provide something else in the future, and the amount to be paid or the value of the token is derived from the value or amount of something else, such as a commodity or asset.

**(i)** The issuer of the tokens must also be licensed by the FMA in order to make offers to retail investors in New Zealand. If the issuer makes a regulated offer of derivatives, it must register a PDS and meet financial reporting and fair dealing obligations.

### Other Obligations

**(j)** Even if the token or cryptocurrency is not a financial product or financial service, the issuer/manager will need to comply with the Fair Trading Act 1986 to the extent that the issuer is in 'trade'.

**(k)** The Fair Trading Act also applies to overseas-based tokens and cryptocurrencies offered in New Zealand.

**(l)** It is important to note that all tokens or cryptocurrencies are securities under the FMC Act – even those that are not 'financial products'. A security is any arrangement or facility that has, or is intended to have, the effect of a person making an investment or managing a financial risk.

**(m)** If appropriate, the FMA can designate any security to be a particular financial product based on its economic substance.

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

(1) It is important to note that all tokens or cryptocurrencies are securities under the FMC Act – even those that are not ‘financial products’. A security is any arrangement or facility that has, or is intended to have, the effect of a person making an investment or managing a financial risk.

(m) If appropriate, the FMA can designate any security to be a particular financial product based on its economic substance.

**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.**

Yes. Part 3 of the FMC Act (discussed in our response to question 4 above) applies to ‘offers of financial products in New Zealand’. Financial products are offered in New Zealand (subject to some exceptions) if an offer of the financial products is received by a person in New Zealand, unless the offerer demonstrates that it has taken all reasonable steps to ensure that persons in New Zealand may not accept the offer. This applies even if the issue or transfer occurs outside of New Zealand and even if the issuer or offerer is based outside of New Zealand.

Issuers of cryptocurrency and offer tokens based outside New Zealand will also be subject to other New Zealand laws, including those discussed in our response to question 12 below.

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

The legal nature of cryptocurrency is context-specific. For tax purposes, cryptocurrency is treated as property, not currency. Cryptocurrency can also be treated as a financial product in other contexts. (Please refer to our response to question 4 above.)

**8 Has the government of your country prosecuted, civilly or criminally, any ICO issuers, token**

We are not aware of any prosecutions against ICO issuers, token developers or crypto exchanges.

However, in 2017 the FMA raised concerns about a

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developers or crypto exchanges for violating your country's laws? If so, please provide an executive summary of the most significant prosecution(s).

proposed ICO by Sell My Good and issued a notice advising New Zealanders not to invest in the scheme. After discussions with the FMA, Sell My Good stopped the ICO voluntarily and agreed to refund all money to investors.

There are also reported criminal cases where cryptocurrency was used to facilitate crimes, but the providers of cryptocurrency were not defendants in those cases.

**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).

We are not aware of any such cases.

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

There are no special tax rules for cryptocurrencies. Ordinary New Zealand tax rules have been interpreted to apply to cryptocurrencies.

Cryptocurrency received as payment for goods or services is business income, which is taxable. The value of the cryptocurrency must be converted into New Zealand dollars at the time it is received.

If a person purchased cryptocurrency for the purpose of disposal (selling or exchanging it, for example, to exchange it for another cryptocurrency) then the proceeds are taxable.

New Zealand's tax authority, the Internal Revenue Department (IRD), has not provided guidance on goods

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and services tax (GST) (New Zealand's value-added tax), but is reportedly working on the issue. It is likely that the view taken that cryptocurrency is property means that technically GST is payable on all purchases and sales of cryptocurrency in New Zealand. If GST is charged when businesses accept cryptocurrencies as payment for goods and services, double taxation will occur. Therefore, there have been recommendations (not yet acted upon) that GST be removed from cryptocurrency payments.

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

New Zealand does not currently have any laws drafted specifically with regard to the trading of cryptocurrency or cryptocurrency exchanges. However, existing laws apply to cryptocurrency, as discussed below.

Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act): The FSP Act requires everyone who provides, or offers to provide, a 'financial service' in New Zealand, or from New Zealand to other countries, to register as a financial service provider on the Financial Service Providers Register and (in some circumstances) to belong to a recognised dispute resolution scheme. The FMA has indicated that issuers of asset-backed tokens will be offering a financial service and other ICOs might also involve the provision of financial services, depending on the specific characteristics and economic substance of that token.

Fair Trading Act 1986 (FTA): The FTA prohibits 'misleading and deceptive conduct'. Issuers of cryptocurrencies will need to ensure that they provide honest disclosure both during and after the ICO or token-generating event.

Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML Act): The AML Act requires reporting entities (i.e. those conducting certain financial activities) to undertake 'know your client' procedures designed to detect and trace money laundering and the financing of terrorism. It also requires reporting entities to have procedures in place to identify and report

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suspicious activities. Some banks, citing anti-money laundering concerns, have closed bank accounts used to trade cryptocurrency.

Non-bank Deposit Takers Act 2013: This Act regulates ‘non-bank deposit takers’ and could apply in some circumstances to an ICO issuer if its ‘regulated offer’ involves ‘debt securities’. (See discussion of the FMC Act in our response to question 4 above.)

Financial Advisers Act 2008: This Act requires financial advisers (persons who give financial advice, provide investment planning or provide investment management services) to take an appropriate degree of care in providing services to investors and consumers.

**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 New Zealand regulators, including the FMA and IRD, have shown a willingness to work with entities planning on conducting an ICO or token-generating event in New Zealand. The involvement of the regulators at an early stage will save compliance costs.

New Zealand is in the process of reviewing the application of its laws to cryptocurrency, and there may be some significant developments in this area of law in the future.

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

# PERU

## HERNÁNDEZ & CÍA

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

ICOs and token sales are not explicitly allowed nor expressly prohibited under Peruvian law.

**2 Does your country regulate ICOs and Token Sales?**

While ICOs and token sales are not expressly regulated in Peru, it is necessary to bear into consideration that under the Peruvian Securities Market law (Legislative Decree No. 861) there could be an interpretation that may consider cryptocurrency as a “security”, given the broad definition of the latter. If this is the case, then ICOs could be considered to be regulated under the terms of the cited regulation. Notwithstanding the aforementioned, up to this date the Peruvian regulator of the securities market (the Superintendencia del Mercado de Valores) has not issued any opinion to this effect nor has it issued any project suggesting any amendments to the cited regulation in order to include ICOs and token sales within the scope of the securities market regulatory framework.

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

Currently, there are no government agencies responsible for regulating ICOs and token sales as they are not expressly regulated in Peru.

**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.

# PERU

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

While there is no current regulation in Peru regarding ICOs and token sales, cryptocurrencies are experiencing increasing demand in Peru, with several companies exploring the possibility of using them in a complementary way for its operations. In the same vein, the Peruvian banking and finance regulator has been monitoring cryptocurrency activities in the Peruvian market. We have not yet seen any ICOs nor any token sales in the domestic market.

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

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# POLAND

FKA

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

ICOs and token sales are generally allowed in Poland as there is no provision of law explicitly prohibiting such offerings or sales.

**2 Does your country regulate ICOs and Token Sales?**

There is no specific regulation regarding ICOs and token sales in Poland. The only document issued by the official state agency on ICOs and token sales is the KNF's [Polish Financial Supervision Authority] 'Statement on selling so-called coins or tokens (Initial Token Offerings (ITOs) or Initial Coin Offerings (ICOs))'. In this statement, the KNF points out risks associated with investing in ICOs and ITOS. It also stresses that, although ICOs and ITOS generally are not regulated, depending on how they are structured, they might fall within the scope of some existing regulations. Especially, some coins and tokens might be qualified as financial instruments. Such qualification would result in an entity involved in particular ICOs being obliged to comply with the EU and Polish capital markets regulations (the KNF's statement: <https://www.knf.gov.pl/knf/pl/komponenty/img/Komunikat ICO.pdf>).

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

As explained in 2), there are no specific regulations regarding ICOs and Token Sales, therefore none of the government agencies was designated to supervise such actions. Nevertheless, questions regarding ICOs and ITOS, especially questions on whether given ICO or ITO are subject to any existing legal requirements should be directed at the KNF's Office (<https://www.knf.gov.pl/en/>)

**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**

Poland regulates the offering of financial instruments, which is also subject to extensive EU regulations. If a coin or a token is qualified as a financial instrument, the entity involved in its public offering should draw up a prospectus to be presented for KNF's acceptance.

# POLAND

## FKA

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.**

There are several groups focused on blockchain, fintech and other new technologies in Poland.

In 2018, the Polish Blockchain and New Technology Chamber of Commerce was founded, which has already more than 150 members. One of the major activities of the chamber is organisation of the Court of Arbitration for Blockchain and New Technologies, which is the first such court in Europe and the second in the world. The chamber will also gather a group of expert court witnesses and conduct educational activities popularising blockchain, cryptocurrencies and new technologies. (see <https://igbint.pl/en/chamber/>).

In January 2019, the first meeting of the Working Group on Distributed Registers and Blockchain at the Ministry of Digital Affairs took place, as well as the first meeting of the Inter-Ministerial Steering Committee for Fintech.

**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.**

There is no specific regulation regarding ICOs conducted by foreign entities.

Depending on their nature, if tokens or coins can be qualified as financial instruments, certain EU and Polish regulations on capital markets will apply. In such cases, an entity conducting an ICO will be required to draft a prospectus before the offer of transferable securities to the public or the admission to trading of such securities. Such a prospectus should contain necessary information for the investors and is subject to the approval of the KNF.

# POLAND

FKA

Moreover, if the tokens or coins qualify as financial instruments under the Markets in Financial Instruments Directive (MiFID), an entity will be required to comply with its regulations. Depending on how it is structured, an ICO scheme could qualify as an alternative investment fund within the meaning of the Alternative Investment Fund Managers Directive (AIFMD), and therefore such operation will fall within the scope of its regulations.

The Polish Anti-Money Laundering Act provides expressly that entities conducting business activity in the area of exchange of virtual currencies (such as coins and tokens) are covered by its provisions. This means that they must accurately identify and verify the identity of their customers, but also verify the exchanges and keep records of suspicious and above-threshold transactions. In certain cases of Polish residents making financial settlements outside the EU/OECD countries as a result of transactions, the Polish Act on Foreign Currency may need to be consulted.

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

Under Polish law, crypto is not considered as a currency. According to the latest decision of the Polish Supreme Administrative Court, a crypto is considered as a property right. It means that it can be disposed freely by its owner and is subject to legal protection. From 2018, the new Anti-Money Laundering Act contains the first statutory definition of a virtual or digital currency. The Act defines 'virtual currency' in article 2, section 2, item 26 as 'digital representation of a value which is not: a) a legal tender issued by NBP (the National Bank of Poland), foreign central banks or other public administration authorities; b) an international clearing unit established by an international organization and accepted by individual countries belonging to or cooperating with such organization; c) electronic money within the meaning of the Act of 19 August 2011 on Payment Services; d) a financial instrument within the meaning of the Act of

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29 July 2005 on Trading in Financial Instruments; e) a bill of exchange, a promissory note or a cheque - and is convertible in business dealings for legal tenders and accepted as the means of exchange and also may be electronically stored or transferred or may be the object of electronic trade', and characterises it in article 2, section 2, item 27 as one of the 'property right'. However, the introduction of this definition does not terminate conclusively the doctrinal dispute regarding the classification of virtual currencies within specific branches of Polish 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).**

The most significant prosecution in Poland regards the disappearance of funds on the Bitcurex exchange and the exchange itself. In October 2016, within two seconds, BTC worth US\$1.5 million was stolen, along with personal data of users. There is an ongoing investigation in this matter and, according to publicly available knowledge, no user has recovered lost funds.

Another ongoing investigation concerns the cryptocurrency DasCoin. In this case, the Trading Jam Foundation notified the prosecutor's office about the possibility of committing a crime under article 286 §1 of the Polish Penal Code (unfavourable disposal of property) by persons urging to purchase licenses which, according to the programme owners, were to authorise the extraction of the cryptocurrency DasCoin. Over 12,000 people have invested in this programme. The Central Bureau of Investigation secured funds in the amount of PLN 44 million

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

N/A

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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.**

In Poland, new regulations regarding the taxation of cryptocurrencies came into force as of January 2019. In the case of personal income tax, virtual currency sale transactions are considered as revenues from financial money capital and taxed at 19% (the Personal Income Tax Act). In the case of corporate income tax, revenues from the exchange of a virtual currency into a payment instrument, goods, service or property right, other than a virtual currency or from settling other liabilities with virtual currency, are treated as income from capital revenue and taxed at 19%.

Civil law transactions tax has been waived by the regulation of the Minister of Finance of 11th July 2018 on the waiver to collect the civil law transactions tax (amounting to 1%) from the sale or exchange of a virtual currency, whereby such a tax is not collected from persons/entities acquiring the virtual currency under a sale or exchange agreement. This regulation and waiver will expire on 30th June 2019. The Polish Ministry of Finance plans to regulate this area in the future.

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

In Poland, there is no comprehensive regulation related directly to the trade or exchange of cryptocurrencies. From 13th July 2018, entities operating in the field of exchanges and cantors of cryptocurrencies became 'obligated institutions' within the meaning of the Anti-Money Laundering Act and must perform all the duties indicated in this Act. In addition, conduction of this type of activity may be related to the performance of activities covered by relevant provisions regulating the activities of entities in the financial market. This means that these entities will be obliged to obtain the relevant permits

# POLAND

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from the KNF, e.g. authorisation to perform payment services in the scope of keeping payment accounts (so-called virtual wallet) and execution of payment transactions specified in the Act of 19th August 2011 on Payment Services.

**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 such benefits are offered at the moment.

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

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# PORTUGAL

## SÉRVULO & ASSOCIADOS

**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, as 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

# PORTUGAL

## SÉRVULO & ASSOCIADOS

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

# PORTUGAL

## SÉRVULO & ASSOCIADOS

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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## SÉRVULO & ASSOCIADOS

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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# SINGAPORE

## BRADDELL BROTHERS LLP

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

ICOs and Token sales are not prohibited under Singapore law. A few ICOs have been launched here including TenX's SGD80 million raise.

**2 Does your country regulate ICOs and Token Sales?**

Depending on how the ICOs and token offerings are structured (i.e if the offerings are considered capital markets products), they are subject to the existing securities laws in Singapore.

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

The Monetary Authority of Singapore is the regulatory authority.

**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.**

**(a)** A guide issued by the Monetary Authority of Singapore seven days ago, on 14 November 2017 provides clarity and A proposed ICO or token offer which constitutes a capital market product, i.e, it is a share, ownership interest in, and tags on the token holder's liability and mutual covenants with other token holders in a corporation, or a debenture, a collective investment scheme unit, and as defined under the Singapore securities legislation, is subject to licensing requirements under the Securities and Futures Act (Cap 289) and its regulations ("SFA").

**(b)** Any offers of ICOs/digital tokens must be made in or accompanied by a prospectus, prepared in accordance with the SFA requirements and registered with the Monetary Authority of Singapore unless the offer is exempted under legislation (for example, small offers which do not exceed SGD 5 million within a 12 month period, private placements not more than 50 persons within a 12-month period or offers to institutional investors or accredited investors, subject to the specified conditions.

# SINGAPORE

BRADDELL BROTHERS LLP

**(c)** In addition, the offeror, issuers or intermediaries (who provide a platform, or who are financial advisers or operates the trading platform) carrying on the regulated activities must hold a capital markets services license under the SFA and the Financial Advisers Act, and be an MAS-approved exchange or recognized market operator, unless exempted under the law.

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

There will be a new legislation for a new payments services framework which includes regulating virtual currency services and e-money issuance. We are following the consultation process currently ongoing.

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

Elaine Seow - [Elaine.seow@braddellbrothers.com](mailto:Elaine.seow@braddellbrothers.com)

# SLOVAK REPUBLIC

PAUL Q LAW

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

In Slovakia, there is no official stance about regulation.

**2 Does your country regulate ICOs and Token Sales?**

No. Slovakia does not yet regulate any form of cryptocurrencies such as 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?**

Even though the Slovak Republic does not regulate cryptocurrencies, the responsible national authority for such conduct is the National Bank of Slovakia as well as the Department of Finance. Under the auspices of the Department of Finance, the Centre for Financial Innovation was established to provide support for fintech in Slovakia.

**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.**

Due to gaps in regulation it can only be decided on a case-by-case basis.

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

There is no additional information than the above mentioned so far.

# **SLOVAK REPUBLIC**

PAUL Q LAW

**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.

Not available.

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

Due to lack of regulation, there is no legal nature for cryptos in Slovakia.

**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-

No.

# **SLOVAK REPUBLIC**

PAUL Q LAW

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.

Yes. The Slovak Internal Revenue Service considers transactions or trading through cryptocurrencies as an income from capital gains. Therefore, crypto transactions are taxed under the same regime as capital gains. The current rate of taxation for capital gains is a flat 19%.

**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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# **SOUTH AFRICA**

## **FLUXMANS INC.**

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

There is at present no prohibition on ICOs and token sales.

**2 Does your country regulate ICOs and Token Sales?**

No regulation yet. A regulatory working group (referred to in 5 below) has been established in order to consider available regulatory approaches.

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

Likely to be the South African Reserve Bank (SARB), the Financial Intelligence Centre (FIC) and the Financial Sector Conduct Authority (FSCA).

**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.**

Not applicable yet.

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

In 2016 an intergovernmental fintech working group (IFWG) was established comprising members from the National Treasury, SARB, FSCA and FIC. The aim of the IFWG is to develop a common understanding among regulators and policymakers of fintech developments, as well as policy and regulatory implications for the financial sector and the economy. At the beginning

# SOUTH AFRICA

## FLUXMANS INC.

of 2018 a joint working group was formed under the auspices of the IFWG to specifically review the position on crypto assets. The working group is represented by members of the IFWG and the South African Revenue Services (SARS) and is referred to as the crypto assets regulatory working group.

**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.**

Not applicable at present.

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

According to the consultation paper on policy proposals for crypto assets, published by IFWG it has been suggested that the definition of crypto assets be as follows: 'Crypto Assets are digital representations or tokens that are accessed, verified, transacted and traded electronically by a community of users. Crypto Assets are issued electronically by decentralized entities and have no legal tender status and consequently are not considered as electronic money either. It therefore does not have statutory compensation arrangements. Crypto Assets have the ability to be used for payments (exchange of such value) and for investment purposes by Crypto Asset users. Crypto Assets have the ability to function as a medium of exchange and/or unit of account and/or store or value within a community of Crypto Asset users.'

# **SOUTH AFRICA**

FLUXMANS INC.

**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).

Not as far as we are aware.

**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).

Not as far as we are aware.

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

Profits and income derived from dealing in crypto assets will attract tax, including capital gains tax and income tax, at the taxpayer's applicable rate. The corporate tax rate is currently 28%. Individual tax rates depend on the annual income of the individual taxpayer. The marginal tax rate is currently between 18% and 45%, depending on the annual income earned by the particular taxpayer.

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

Not at present.

# **SOUTH AFRICA**

## FLUXMANS INC.

**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.

Not at present.

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

Danie Pretorius - [dpretorius@fluxmans.com](mailto:dpretorius@fluxmans.com)

# SOUTH KOREA

## BARUN LAW

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

ICOs and token sales are prohibited in Korea. The Korean government has set up a joint task force consisting of the Financial Services Commission and other related agencies to study and analyse matters related to virtual currencies and announced its decision to ban all forms of ICOs on September 29, 2017.

**2 Does your country regulate ICOs and Token Sales?**

No.

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

None.

**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.**

None.

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

Given the strong position of the Korean government, ICOs and token sales are unlikely to be allowed in Korea for the time being.

# SOUTH KOREA

## BARUN LAW

**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.

No.

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

There is no local law or regulation that defines the legal nature of crypto in Korea.

**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).

An executive of a company that specialises in selling cryptocurrency who received around KRW 7 billion through a multi-level marketing scheme by alleging up to ten times rate of return on investment in cryptocurrency was indicted and detained for violating the Act on Door-to-Door Sales. In addition, a person who deceived victims by guaranteeing more than twofold return on investment within six to seven months and defrauded 35,000 victims of about KRW 150 billion through a multi-level marketing scheme was arrested for fraud etc.

**9** In your country, are there any significant commercial disputes or civil cases (non-

On 18th December 2018, a Korean court acquitted a Korea-based cryptocurrency exchange in a civil case seeking damages over the theft of the plaintiff's crypto holdings held in a Korea-based cryptocurrency exchange

# SOUTH KOREA

## BARUN LAW

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.

by a hacker who used the stolen personal information of the plaintiff, as a causal link between such theft and earlier hacking attacks on the cryptocurrency exchange was not established.

In Korea, if a corporation earns profits from cryptocurrency transactions, the corporate income tax will be levied at the rate of 10% to 25%. As for individuals, the Korean government seems to have decided to treat profits arising from cryptocurrency transactions as taxable income and plans to impose a capital gains tax of around 10% thereon, but the actual effective date of this policy has not been announced yet.

There is no law or regulation that directly regulates crypto trading or crypto exchanges in Korea, but such transactions have been regulated through the relevant laws and regulations concerning personal information protection and prohibiting illicit fundraising, illegal multi-level marketing schemes and financial frauds, among others.

No.

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# SPAIN

## VENTURA GARCÉS & LÓPEZ-IBOR ABOGADOS

### 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:

# SPAIN

## VENTURA GARCÉS & LÓPEZ-IBOR ABOGADOS

- Inclusivity: <http://inclusivity.network/es/sc-our-team/>
  - Real: <https://www.real.markets/>
  - Hearthy: <https://hearthy.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/](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

# SPAIN

## VENTURA GARCÉS & LÓPEZ-IBOR ABOGADOS

### 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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## VENTURA GARCÉS & LÓPEZ-IBOR ABOGADOS

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

# SPAIN

## VENTURA GARCÉS & LÓPEZ-IBOR ABOGADOS

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.

# SPAIN

## VENTURA GARCÉS & LÓPEZ-IBOR ABOGADOS

**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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# **SWEDEN**

## HELLSTROM

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

ICOs and Token Sales are currently not specifically regulated in any form in Sweden, and definitely not specifically prohibited. ICOs and Token Sales must therefore be regarded as allowed.

**2 Does your country regulate ICOs and Token Sales?**

As stated under Q 1, there are no regulations in place specifically covering ICOs and Token Sales. Depending on how an ICO or Token Sale is structured the coins or tokens may perhaps qualify as financial instruments, in which case the ICO or Token Sale may be regarded as a regulated investment activity. This must be analysed on a case by case basis.

Of some interest may be that the Swedish Financial Supervisory Authority (Sw. Finansinspektionen, FI) has issued a warning related to risks involved with participation in ICOs. The risks identified are e.g. that since most ICOs are unregulated there are no guarantees that the token or crypto currency issued actually confer any rights to the holder against the issuer, that there is no guaranteed market available for the issued asset to be traded on, that information regarding the asset may be misleading or not provided to all investors simultaneously, and that there is a significant risk for fraud.

The European Securities and Markets Authority (ESMA) has further just recently issued two statements or alerts regarding ICOs, one directed towards investors and one towards firms involved in ICOs. These two statements are available at the following link:

<https://www.esma.europa.eu/press-news/esma-news/esma-highlights-ico-risks-investors-and-firms>.

**3 If your country regulates ICOs and Token Sales, what are the names of the**

In the event any specific regulation is enacted, the responsible agency will be the Swedish Financial Supervisory Authority. This agency will also oversee and have under supervision any ICO or Token Sale which may

# **SWEDEN**

## HELLSTROM

government agencies responsible for regulating them?

become regarded as a regulated investment activity, as mentioned in the answer to Q 2 above.

**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.

Not applicable, see answer to Q 3.

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

For some additional information, please see answer under Q 3. We are seeing a significant increase in interest in ICOs and issues related to crypto currencies more generally.

**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.

There are currently no regulations in place on this issue.

# **SWEDEN**

## HELLSTROM

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

In terms of tax, crypto is considered a capital investment asset, which was recently confirmed by the Supreme Administrative Court in case 2674-18, stating that crypto is not to be considered currency, part-ownership rights or personal assets.

**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.

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

Individuals selling, exchanging and paying with crypto must report such transactions to the Swedish Tax Agency (Skatteverket). Reporting should be done in connection with submission of the annual income tax return. In case of profit on a crypto transaction, capital gains tax liability arises with a tax rate amounting to 30%. A loss originating from a crypto transaction is deductible up to 70%.

# **SWEDEN**

## HELLSTROM

A legal entity obtaining cryptocurrency as payment in its business is normally taxed on the subsequent change in value as income from capital, with a tax rate of 30%. However, this does not apply where crypto is considered as inventory. In such cases the income generated will be considered as income from business profits. The corporate income tax rate is currently 21.4%.

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

In Sweden there are currently no specific regulations in place on crypto trading or crypto exchanges.

**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.**

In our view, there are no unique or important benefits offered to crypto-focused companies in Sweden.

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

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# **SWITZERLAND**

BRATSCHI LTD.

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

Yes, ICO's and Token Sales are allowed and so far not specifically regulated. FINMA, the Swiss Financial Market Authority issued recently a guidance on how FINMA intends to deal with such transactions in a regulatory manner (FINMA Guidance 04/2017 of September 29, 2017, see annex). Depending on how an ICO is structured, however, some parts of the procedure may already be covered by existing regulations. This concerns the following areas in particular:

- provisions on combating money laundering and terrorist financing;
- banking law provisions;
- provisions on securities trading;
- provisions set out in collective investment scheme legislation.

**2 Does your country regulate ICOs and Token Sales?**

See answer 1), ICOs are currently not governed by any specific regulation in Switzerland.

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

See answer 1), FINMA is responsible to apply the above mentioned regulations on cryptocurrencies or ICOs, if necessary and indicated.

# **SWITZERLAND**

## BRATSCHI LTD.

**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.

See again answer 1); depending on the structure the transactions may be subject to one of the above mentioned regulations. In most cases AML-legislation will be applicable, provided certain thresholds values per investor are exceeded.

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

See FINMA Guidance 04/2017 in the annex.

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

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# TURKEY

GUN + PARTNERS

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

There is no specific regulation on this issue. Therefore, it can be said that it is currently allowed in Turkey in principle. However, this also depends on how the courts and regulatory bodies would interpret one of the general provisions under the Turkish Commercial Code (TCC). Article 552 of the TCC sets forth that no one can collect money from the public by making an invitation to the public to become shareholders in a company to be established or to contribute to capital increases in already established companies (except for publicly listed companies). The Banking Regulatory Authority in Turkey does not currently consider Bitcoin, altcoins and tokens as money. However, the courts are not bound by this categorisation and there is a risk that a court may interpret the ICOs or token sales under the scope of article 552 of the TCC by considering the tokens as money. The main aim of this article is to prevent fraudulent activities. As ICOs and token sales are sometimes used for fraudulent activities (such as fabricating a project that is not going to happen and collecting Bitcoins without giving any tradable tokens), in the case of a fraudulent ICO, a court may decide to apply article 552 of the TCC.

There is also another point to be taken into consideration: if an ICO is structured as crowdfunding, it will be subject to the Capital Markets Law 6362 (CML). The concept of crowdfunding was included in the CML with an amendment made at the end of 2017. The definition of crowdfunding in the CML is 'collecting money from the public via crowdfunding platforms in accordance with the rules and principles determined by the Capital Markets Board, in order to provide the fund required by a project or a start-up'. This definition is vague and no secondary legislation has been issued yet. Therefore, it is not clear whether an ICO can be considered a crowdfunding project. In some cases, based on the structure of the ICO, it may fall under the definition of crowdfunding, and a resolution of the Capital Markets Board dated 27th September 2018 supports this view.

# TURKEY

GUN + PARTNERS

In that decision, the board stated that ICOs or token sales which can be considered crowdfunding should not be made until the secondary legislation is issued. As currently no secondary legislation is in place, ICOs which can be considered crowdfunding are prohibited.

**2 Does your country regulate ICOs and Token Sales?**

No, but this issue is coming to the attention of the regulatory bodies. Please see our explanations above in our response to question 1 related to crowdfunding.

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

For ICOs and token sales which can be considered crowdfunding, the regulatory body will be the Capital Markets Board.

**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 no omnibus bill or specific regulation on ICOs or token sales. Please see our explanations above in our response to question 1 related to crowdfunding.

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

Based on the decision of the Capital Markets Board mentioned in our response to question 1 above, we can say that this issue is under the scrutiny of the Capital Markets Board. It would be reasonable to expect more decisions in that regard from the Capital Markets Board in the near future.

# TURKEY

GUN + PARTNERS

**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.

There are currently no regulations in place on this issue.

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

It is not clear yet; there has been discussions on this topic which have not borne any definitive result. Crypto is not considered currency. However, it may be regarded as a commodity or, sometimes, a security, based on whether the relevant crypto represents another asset.

**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-

No.

# TURKEY

GUN + PARTNERS

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.

There is no specific regulation on taxation of crypto transactions. All of the income of companies is regarded as commercial income, and therefore any profit of a company arising from the sales of crypto is subject to 20% corporate income tax. For individuals, the issue is complicated; it is still not clear whether crypto should be considered a commodity or a security, and therefore the type of income of an individual arising from crypto transactions is not clear either. If it can be considered commercial income, it will be taxed at a rate varying between 15% and 35% based on the amount of profit made from the transactions.

**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.

# TURKEY

## GUN + PARTNERS

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

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# UKRAINE

## ASTERS

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

ICOs and token sales are neither prohibited, nor specifically allowed or regulated in Ukraine.

However, the financial authorities in Ukraine consider the possibility of regulating cryptocurrency and related activity, including ICOs, given the current technology developments and approaches of regulators from other countries. The financial authorities declare that the main purposes of such regulation are as follows: protecting consumers, fighting against money laundering and other criminal activity, and setting up clear procedures for taxation of cryptocurrencies. The Ukrainian financial authorities also voice concern about the possible chilling effect that such regulation may have on the development of new technologies in the financial sector.

**2 Does your country regulate ICOs and Token Sales?**

No.

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

N/A

**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;**

N/A

# UKRAINE

## ASTERS

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.**

Although there is no specific ICO and token sale regulation in Ukraine, organisers of ICOs and token sales should be mindful of the broader traditional legal framework that may apply. Depending on how ICOs/token sales are promoted, what commitments are made and how offerings are structured, the following aspects should be considered.

**1.**The ICO/token sales prospectus may be regarded as a form of public contract and thus be subject to the usual civil treatments of contracts. Accordingly, organisers may be recognised as being contractually bound by the undertakings they assume.

**2.**Usually, ICOs/token sales are ways of raising capital for financing projects or enterprise. However, given that ICOs/token sales do not fall under the established forms of raising of capital and crypto assets have no particular legal status, crypto assets can be treated as a form of property. If so, transactions with crypto assets may have taxable consequences that differ from those resulting from the use of established forms of raising capital.

**3.**In the course of the activity, funds raised in the form of cryptocurrency will generally need to be converted to fiat currencies, and spending will have to be made, accounted for and taxed. Unless a proper structure is established for this and duly administrated (in many practical instances we observed, it is not), there may be associated tax or compliance risks.

**4.**It is conceivable that ICOs/token sale offerings may be subject to consumer protection laws. The disclaimers and liability limitations specified by organisers in their prospectus papers may be not fully enforceable

**5.**If crypto assets offered in an ICO are to be treated as debt obligations giving the right to claim the return of

# UKRAINE

## ASTERS

debt to a crypto asset holder, then such ICO/token sale may fall within the scope of financial services regulation and be subject to licensing requirements.

**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.**

There are no specific regulations in place on this issue. However, offerings and acceptance of such tokens to/from residents of Ukraine may have a number of legal implications under general Ukrainian law, depending on the facts and circumstances of each such ICO.

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

The legal nature of cryptocurrency is not defined yet.

In 2017 the National Bank of Ukraine, the National Commission for State Regulation of Financial Services, and the National Securities and Stock Market Commission made a common statement regarding the status of cryptocurrencies in Ukraine.

In particular, Ukrainian financial authorities have stated that, because of their complicated legal nature, cryptocurrencies cannot be defined under Ukrainian law as legal tender, foreign currency/asset, currency substitute, e-money or securities.

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**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).

We are not aware of such cases.

**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).

We are not aware of such cases.

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

There is no specific regulation applicable to taxation of crypto transactions.

As for corporate income taxation, all taxable income shall be taxed at 18%.

As for individual income taxation, all taxable income is subject to tax at the rate of 18%. Also, an individual is required to pay a martial tax on taxable income at the rate of 1.5%.

There is no specific VAT law or guidance on the VAT treatment of cryptocurrencies. However, it is possible that Ukrainian courts may use the CJEU case of Skatteverket v David Hedqvist (C-264/14), where the CJEU held that

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VAT exemption extends to Bitcoin exchange activity even though it is not legal tender.

**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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# UNITED KINGDOM

## WEIGHTMANS

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

Whether or not the whole of any particular ICO or token sale process or activity is free of prohibition will depend on the circumstances and will need to be considered on a case-by-case basis.

ICOs (also called coin sales or token sales, particularly before 2017) can involve raising money from the public in return for issuing virtual currency (cryptocurrency) through blockchain technology (which is essentially a growing chain of digital records linked through cryptography). However, often there are other purposes as well. For example, there is increasing marketing to consumers of arrangements in futures contracts (also known as contracts for difference or CFDs), such as financial spread bets, whereby differences in settlement are made through issuing of cryptocurrency as opposed to cash payments or the delivery of physical goods or securities.

Therefore, whilst the issuing of cryptocurrency in its own right is technically permitted:

- If the ICO or token sale involves any linked ‘regulated activity’, or a ‘financial promotion’ (essentially a communicated invitation or inducement to engage in investment activity), then it will be prohibited under legislation generally known as FSMA unless it complies with applicable regulatory requirements.
- Other regulations and laws may also make some crucial aspect of the ICO or token sale a prohibited act (e.g. prospectus regime for transferable securities, rules around alternative investment funds, laws around criminal or fraudulent activity, laws around e-commerce and marketing, laws around data protection etc.).

# UNITED KINGDOM

## WEIGHTMANS

**2 Does your country regulate ICOs and Token Sales?**

It depends on the circumstances.

The actual issuing of cryptocurrency itself through blockchain technology is not directly regulated. However, linked activity that involves regulated activity or a financial promotion under legislation generally known as FSMA is regulated.

See answers to question 1 above, and the various questions below, for further information.

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

The Financial Conduct Authority (FCA) – to the extent applicable in the ICO or token sale process.

The FCA replaced the Financial Services Authority (FSA), and its principal office is in London. It has published regulatory frameworks and guidance through something known as the FCA Handbook (accessible via <https://www.handbook.fca.org.uk/handbook>).

**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 no specific or overarching regulation dealing with an ICO or token sale in the UK. Accordingly, there is no registration requirement for an ICO or token sale or a direct restriction on who can be sold a cryptocurrency.

If applicable, the direct regulator is the FCA, but other regulators may also be involved depending on which entity is raising money from the issuing of cryptocurrency.

The FCA has stated that ‘crypto assets designed primarily as a means of payment or exchange would not generally sit within the scope of FCA authority.’ However, where applicable, the Financial Conduct and Markets Act 2000 (FSMA), laws made under that legislation, and the regulatory rules and guidance published by the FCA through the FCA Handbook, for example the Perimeter Guidance manual (PERG), would be a good starting point to determine if a crucial element of raising

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## WEIGHTMANS

or using money from the issuing of cryptocurrency is prohibited or whether the cryptocurrency involves a regulated activity.

A regulated activity in an ICO or token sale context may, for example, involve any of the following, but the regulations will need to be considered on a case-by-case basis to see if an exemption applies:

- Accepting deposits of money;
- Issuing electronic money;
- Dealing in investment as a principal or agent;
- Arranging deals in investments;
- Establishing a collective investment scheme;  
or
- Advising on investments.

An investment covered by a regulated activity could be, for example:

- A deposit of money;
- Electronic money;
- Shares or stock in share capital of a company or other body corporate or a non-UK overseas unincorporated body;
- Options;
- Futures;
- Instruments creating or acknowledging indebtedness;
- Alternative finance investment bonds;
- Government or public securities;
- Instruments giving entitlement to investments; or
- Rights to or interests in other investments.

A financial promotion may typically involve an invitation or inducement in a flyer, pitch deck, presentation, correspondence, business plan, information memorandum, white paper or offering (or even a verbal communication over a telephone or video call or in a face-to-face meeting) for one or more of the above investments being acquired.

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## WEIGHTMANS

Any person that carries on a regulated activity without an exemption applying or without due authority can face being convicted of a criminal offence, with the sentence involving a fine, imprisonment or both.

Therefore, it is important to look at the position from an overall perspective. Some questions to assist in the analysis:

- Who is raising the money, when and where?
- Who is the money being raised from?
- What is being said for or during the raising of money?
- What will the raised money be used for?
- Are you the seller, buyer or someone helping or advising the seller or buyer of the cryptocurrency/token?
- If any aspect of the activity amounts to regulated activity or a financial promotion under FSMA, then does an exemption apply or will someone with appropriate authority and credentials be carrying on the relevant activity to assist the party raising money by issuing cryptocurrency?

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

The FCA is generally cautious and has, amongst other things, warned that:

- The buyer of cryptocurrency is ‘extremely unlikely to have access to UK regulatory protections like the Financial Services Compensation Scheme or the Financial Ombudsman Service’.
- There is a potential for fraud: some entities raising money from cryptocurrency sales ‘might not have the intention to use funds raised in the way set out when the project was marketed’. In fact, the FCA has issued a ‘Dear CEO’ letter openly on crypto assets and financial crime (<https://www.fca.org.uk/publication/correspondence/dear-ceo-letter-crypto-assets-financial-crime.pdf>).

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- The value of cryptocurrencies may be ‘extremely volatile – vulnerable to dramatic changes.’
- Documentation involved in an ICO may be ‘unbalanced, incomplete or misleading.’
- Typically ICOs, often based outside of the UK, are for projects that are in an early stage of development and ‘their business models are experimental’.

A suspected scam ICO can be reported to the FCA via <https://www.fca.org.uk/consumers/report-scam-unauthorised-firm>.

**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.**

A non-UK entity seeking to conduct ICO or token sale activity in the UK would generally be in the same position as a UK entity. However, there are certain exclusions that apply to overseas persons involved in certain regulated activity under legislation made under FSMA often referred to as the Regulated Activities Order (RAO).

Other exclusions under the RAO etc. may also apply.

So the factual matrix of the project would need to be carefully considered to see if a regulated activity applies and, if so, whether the non-UK entity has the benefit of any exclusion(s).

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

By itself, cryptocurrency is unregulated and treated as foreign currency. Accordingly, it can be taxable depending on the circumstances. For example, HMRC (the tax authority in the UK) has stated that ‘The profits or losses on exchange movements between currencies are taxable. For the tax treatment of virtual currencies, the general rules on foreign exchange and loan relationships apply. We have not at this stage identified any need to consider bespoke rules.’

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## WEIGHTMANS

More generally, cryptocurrency can be considered as:

- an asset (in the sense of an item owned through acquisition or otherwise);
- a virtual/digital form of payment (but not legal tender); or
- a combination of both.

Cryptocurrency does not give any voting, dividend or capital rights (or rights or options to acquire such rights) concerning entities that raise cash in issuing cryptocurrency or tokens (unless parties to a transaction seek to agree otherwise contractually).

**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).**

The issuing of cryptocurrency itself, as a stand-alone activity, is not known to have been prosecuted as it is not regulated or prohibited.

The FCA is known to have opened several investigations in the past into cryptocurrency businesses to determine whether they might be carrying on regulated activities that require FCA authorisation.

The action the FCA may take can be as follows:

- issuing a consumer alert through the FCA's own website, as a warning about a particular individual, activity or firm;
- taking civil court action to stop activity and freeze assets;
- pursuing insolvency proceedings;
- criminal prosecution; or
- a combination of the above.

The UK Crown Prosecution Service's proceeds of crime unit has also been reported to have secured confiscation orders for digital currency assets found to involve criminal conduct.

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A 26-year-old known as Charlie Shrem was convicted and imprisoned as he had ‘knowingly transmitted money intended to facilitate criminal activity- specifically, drug trafficking on Silk Road’.

**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).

Commercial disputes and civil cases are likely to be private unless and until a UK court makes an order or conviction.

No particular order or conviction stands out as sufficiently significant to summarise here. However, on the facts, a circumstance for a particular client may be significant and so case-specific legal advice should be sought.

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

Please see answer to question 8.

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

There is no specific regulation of crypto trading unless it involves a regulated activity. See answers to above questions for more information.

**12** Does your country offer any unique or important benefit to crypto-focused companies (for example, clear regulatory guidance)? If so, please

The FCA has set up a regulatory sandbox regime allowing technology businesses (as well as already FCA-authorised firms or unauthorised firms that require FCA authority concerning regulated activity) to test innovative propositions in the market with real consumers. A range of tools were provided to sandbox firms to facilitate the testing.

# UNITED KINGDOM

## WEIGHTMANS

describe the unique/  
important benefit.

Typically each year the FCA has two windows for applications for the regulatory sandbox, but it is best to check with the sandbox team at the FCA on 0044 2070664488 or [sandbox@fca.org.uk](mailto:sandbox@fca.org.uk) if there is an active window open for applications, or, if no window is then open, when the next window is likely to open.

In July 2018, for example, 11 of 29 businesses that were accepted concerned testing of crypto asset-related propositions

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

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# UNITED STATES

BELL NUNNALLY

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

The United States (U.S.) allows ICOs and Token Sales.

**2 Does your country regulate ICOs and Token Sales?**

Yes, the U.S. regulates 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?**

U.S. Securities and Exchange Commission (SEC)  
U.S. Department of the Treasury, Financial Crimes Enforcement Network (FinCEN)  
U.S. Commodities Futures Trading Commission (CFTC)  
U.S. Department of Justice (DOJ)  
Individual states.

**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.**

How coin and token offerings are structured will determine how they are regulated. If an ICO or Token Sale involves the sale of a “security,” then the offering and participants in the offering are subject to SEC jurisdiction and must comply with U.S. federal securities laws. Traditionally, whether an ICO or Token Sale involves a security was likely to depend on whether the offering involves: (1) an investment of money; (2) in a common enterprise; (3) with a reasonable expectation of profit; and (4) through the managerial efforts of others. If the offering satisfied this decades-old, four part test, then it was generally expected that it would be considered a security. If it did not satisfy all four parts, then it was expected that the offering likely would not be considered to involve a security. When the SEC analyzes whether a security is involved, it will look at the specific facts and circumstances of the offering and will look at the true nature of the offering.

On April 3, 2019, the SEC provided a crucial piece of guidance through a “no-action letter” it issued to Turnkey Jet, Inc. (“TKJ”). The letter states the SEC would not recommend any enforcement actions against TKJ regarding tokens

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it intends to offer and sell without registering them as securities with the SEC. In reaching that position, the SEC noted the following regarding TKJ's token and program:

- TKJ will not use any funds from token sales to develop its platform, network, or app, and each of those will be fully developed and operational at the time any Tokens are sold;
- the tokens will be immediately usable for their intended functionality (purchasing air charter services) at the time they are sold;
- TKJ will restrict transfers of tokens to TKJ wallets only, and not to wallets external to the platform;
- TKJ will sell tokens at a price of one USD per token throughout the life of the program, and each token will represent a TKJ obligation to supply air charter services at a value of one USD per token;
- If TKJ offers to repurchase tokens, it will only do so at a discount to the face value of the tokens (one USD per token) that the holder seeks to resell to TKJ, unless a court within the United States orders TKJ to liquidate the tokens; and
- The token is marketed in a manner that emphasizes the functionality of the token, and not the potential for the increase in the market value of the token.

The SEC's letter is careful to state that “[a]ny different facts or conditions might require” a different conclusion, and that the letter does not express a legal conclusion. Nevertheless, practitioners are looking to the letter as helpful guidance in determining what the SEC may or may not consider to be a security when it comes to cryptocurrency. The attorney who communicated with the SEC on TKJ's behalf to obtain the ruling noted that it involved an extensive letter

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writing campaign between himself and the SEC, along with numerous long calls. The letter can be read here: <https://www.sec.gov/divisions/corpfin/cf-noaction/2019/turnkey-jet-040219-2a1.htm>.

If the ICO involves a security, then the offering will either need to be registered with the SEC or exempt from registration. A registered offering (also known as a public offering) requires, under the Securities Act of 1933 (Securities Act), as amended, the issuer to file a registration statement with the SEC before it offers its securities for sale. The issuer is prohibited from actually selling the securities until the SEC staff declares the registration statement “effective.” Registration statements have two principal parts. Part I is the prospectus, the legal offering or “selling” document. The issuer of the securities must describe in the prospectus important facts about its business operations, financial condition, results of operations, risk factors, and management. It must also include audited financial statements. The prospectus must be delivered to everyone who buys the securities, as well as anyone who is made an offer to purchase the securities. Part II contains additional information that the company does not have to deliver to investors, but must file with the SEC, such as copies of material contracts.

If an issuer seeks to rely on an exemption from registration, the level of disclosure required to be made to prospective investors will depend heavily on whether the prospective investors qualify as “accredited investors.” For individual investors, an investor will be considered an “accredited investor” if he or she: (1) earned income that exceeded USD \$200,000 (or USD \$300,000 together with a spouse) in each of the prior two years, and reasonably expects the same for the current year, or (2) has a net worth over USD \$1 million, either alone or together with a spouse (excluding the value of the person’s primary residence). If non-accredited investors are involved, the issuer must disclose certain

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information about itself, including its financial statements, similar to what would be required for a registered offering. If an issuer is selling only to accredited investors, the issuer disclosure obligations are more limited. Issuers relying on a Regulation D exemption, which is set forth in the Securities Act, are required to file a document called a Form D with the SEC no later than 15 days after they first sale of the securities in the offering. The Form D will include brief information about the issuer, its management and promoters, and the offering itself. The issuers will also be required to make notice filings, as required by the laws of the individual states within the U.S. in which their investors reside. State notice filings, and the associated fees that must be paid in connection therewith, differ on a state-by-state basis.

FinCEN also may regulate ICOs and Token Sales if the sales involve a “virtual currency.” FinCEN defines a “virtual currency” as a “medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction.” Under FinCEN regulations, if a person is engaged in the business of issuing (putting into circulation) a virtual currency, and the person has the authority to redeem (to withdraw from circulation) such virtual currency, the person is considered a currency or virtual currency “administrator,” and must register with FinCEN as a “money transmitter,” unless an exemption from registration is available. Note, FinCEN also requires registration if the person is an “exchanger”—a person engaged as a business in the exchange of virtual currency for real currency, funds, or other virtual currencies.

To the extent the ICO or Token Sale involves a “commodity,” the CFTC has jurisdiction, although it may be limited to situations involving fraud and manipulation. Since 2015, the CFTC has considered bitcoin and other virtual currencies to be commodities.

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The DOJ can regulate ICOs and Token Sales by prosecuting violations of U.S. federal civil and criminal laws. For example, the DOJ could prosecute persons for failing to comply with FinCEN regulations or engaging in mail, wire, or securities fraud.

Finally, individual states within the U.S. may have jurisdiction to regulate ICOs and Token Sales, depending on each state's laws. It is common for individual states to regulate securities purchased or sold and currencies exchanged within their state borders.

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

The SEC has been moving aggressively to regulate this space. In July 2017, the SEC issued an Investigative Report on The DAO. In its report, the SEC concluded that tokens issued by The DAO were, in fact, securities, and warned that other coins and tokens could be considered securities under the U.S. federal securities laws. Since then, the SEC has: (1) halted trading in securities of certain publicly-traded companies due to concerns about the companies' claims regarding their involvement in the cryptocurrency space; (2) launched an Enforcement Initiative to Combat Cyber-Based Threats and Protect Retail Investors by targeting, among other things, violations involving ICOs; and (3) filed enforcement actions to shut down ICOs that failed to comply with U.S. federal securities laws. It should be noted that U.S. regulators and law enforcement often work collaboratively and sometimes conduct parallel investigations. As a result, understanding the interplay among the various agencies is important.

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

**Christopher Trowbridge Chris** is a commercial litigator with extensive experience in securities litigation, FINRA and other arbitrations, and broker-dealer industry and customer disputes. Chris and his team have advised cryptocurrency investors in disputes, including the MtGox bitcoin exchange bankruptcy pending in Japan and the related bitcoin bankruptcy proceeding pending in Texas.

# UNITED STATES

## BELL NUNNALLY

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**Ross Williams** is a commercial litigator with experience in several different types of cryptocurrency disputes, from misappropriation of cryptocurrency assets by investment managers, to defense against negligence class action allegations arising from a digital wallet hack, to working with a team from the firm to advise on a potential ICO, to prosecuting allegations of securities fraud against a would-be ICO issuer. Ross has been a frequent speaker on cryptocurrency litigation issues at conferences on the topic.

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# URUGUAY

## HUGHES & HUGHES

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

Act 19,210 dated April 29, 2014 sets forth the possibility of making payments through the use of electronic money or cryptocurrency in Uruguay. In addition, the act defines what is meant by electronic money and that ICOs can only be issued by electronic money institutions, duly authorized for this purpose by the Central Bank of Uruguay.

**2 Does your country regulate ICOs and Token Sales?**

Uruguay allows the use of electronic money and regulates how they should be issued. However, the sale between authorized agents and private buyers does not have any special formality beyond the fulfillment of minimum standards, such as KYC and AML controls.

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

The Uruguayan Central Bank and Ministry of Economy and Finance

**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.**

As a consequence of the Act of Financial Inclusion No. 19210 that establishes the possibility of the use of cryptocurrencies or electronic money, Circular No. 2198 was issued on September 8, 2014 by the Central Bank of Uruguay. The Circular regulates the requirements, deadlines and other aspects related to the prior authorization of the UCB, necessary for the issuers of cryptocurrencies to carry out their activities. For issuing the authorizations, the UCB may take into account reasons of legality, opportunity and convenience. The authorization of issuers of cryptocurrencies shall be granted by the Board of Directors after obtaining a report from the Payment System Area. In order to grant authorization to operate, the Payment System Area will evaluate: the quality of the administration and the technology to be used to provide the service; level of risk

# **URUGUAY**

## HUGHES & HUGHES

management development and cash withdrawal network for issuers of (which may be owned or contracted) or the number and geographical distribution of commercial establishments.

The UCB must be pronounced within a maximum of 150 working days from the date of submission of the corresponding application. However, this term can be suspended when it is necessary to expand information and / or supply documentation.

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

The president of the Uruguayan Central Bank (UCB), Mario Bergara, said that the possibility of having a digital currency is being studied and that a pilot test will be carried out by the end of the current year.

**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.**

The Foreign entity will have to comply with the same requirements as any other local entity as set forth in section 4.

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

According to Act 19,210 Electronic money will be understood as the instruments representing a monetary value enforceable against its issuer, such as prepaid cards, electronic wallets or other analogous instruments, with the following characteristics:

# URUGUAY

## HUGHES & HUGHES

- A)** The monetary value is stored in electronic media, such as a chip on a card, a mobile phone, a hard disk of a computer or a server.
- B)** It is accepted as a means of payment by entities or persons other than the issuer and has a cancellation effect.
- C)** It is issued for a value equal to the funds received by the issuer against its delivery.
- D)** It is convertible to cash by the issuer, at the request of the holder, according to the monetary amount of the electronic money instrument issued not used.
- E)** Does not generate interest.

Furthermore, the President of the Uruguayan Central Bank stated that the Crypto are no currencies under Uruguayan 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, it has not.

**9** In your country, are there any significant commercial disputes or civil cases (non-government) involving

No, there are not.

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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.

Uruguayan jurisdiction does not specifically tax crypto transaction. The latter have the same treatment as the regular currencies transactions.

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

Uruguay does not prohibit the Crypto treading or crypto exchange. However there is a legal vacuum without specific rules in this sector.

**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 it does not. It is an undeveloped sector with no specific regulation yet.

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

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# VIETNAM

## INDOCHINA LEGAL LAW FIRM LIMITED

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

As of 1st January 2018, all crypto transactions, including ICOs and token sales, are banned. Anyone issuing, supplying or using cryptocurrencies will be subject to administrative fines and, potentially, criminal prosecution. Since 2014, the State Bank of Vietnam (SBV) has considered virtual/cryptocurrencies as neither money nor a form of legal payment in Vietnam. A formal ban on the use of cryptocurrencies, including ICO and token offerings, was finalised in September 2017 pursuant to Decree 80/2016/ND-CP. Pursuant to a previous decree, Decree 96/2014/ND-CP, the act of issuing, supplying and using illegal forms of payment (now including cryptocurrencies) is subject to a fine for each instance. Furthermore, in 2018 the Prime Minister issued a directive on tightening management activities related to cryptocurrencies, which instructed various government bodies to restrict the use thereof. As a result, the SBV and the State Securities Commission banned public companies, securities companies, fund management companies and securities investment funds, as well as credit institutions and intermediary payment service firms, from conducting transactions related to cryptocurrencies. Subsequently, a ban was issued on the importation of cryptocurrency mining machines. Pursuant to the 2018 directive, the Ministry of Justice is responsible for studying the issue and proposing a legal framework on the management and settlement of cryptocurrency/crypto assets. To date, no such framework has been introduced.

### 2 Does your country regulate ICOs and Token Sales?

All crypto transactions are currently prohibited. See question 1, above.

### 3 If your country regulates ICOs and Token Sales, what are the names of the

The State Bank of Vietnam (SBV), State Securities Commission of Vietnam (SCC) and Ministry of Justice (MOJ).

# VIETNAM

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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.

All crypto transactions are currently prohibited. See question 1, above.

**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.

All crypto transactions are currently prohibited. See question 1, above.

# VIETNAM

## INDOCHINA LEGAL LAW FIRM LIMITED

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

Crypto is not considered a form of money or legal payment in Vietnam. Use of crypto is illegal (see response to question 7). There are arguments, purely academic at this point, that crypto in Vietnam should be classified as a commodity. However, the government has not yet issued any guidance on the classification of crypto. As stated in question 1, above, the MOJ has been tasked with developing a framework for the management and regulation of crypto.

**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).**

Following the coming into force of new laws banning cryptocurrencies in January 2018, the government sanctioned Bitcoin Vietnam Company VND 40 million (approximately USD\$1,720) and seized the company's website for operating a cryptocurrency platform illegally. Pursuant to the new laws, issuers, suppliers and users of cryptocurrencies can be fined up to VND 200 million (approximately US\$9,000) for transacting in cryptocurrencies. Other penalties, such as criminal prosecution, domain seizure etc. may be levied as well.

**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).**

Not applicable.

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

Not applicable.

# VIETNAM

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**11** Separate from ICOs, does your jurisdiction regulate crypto trading or crypto exchanges?

If so, please provide an overview of the regulation.

Currently, all crypto transactions are banned in Vietnam, though the Ministry of Justice has been tasked with developing a legal framework for crypto. See question 1.

**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.

Not applicable.

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

Ben Lambert

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## ANNEX

# **FINMA Guidance 04/2017**



# FINMA Guidance

## 04/2017

### Regulatory treatment of initial coin offerings

29 September 2017

## 1 Background

FINMA recognises the innovative potential of distributed ledger/blockchain technology. It welcomes and supports all efforts to develop and implement blockchain solutions in the Swiss financial centre.

Recently there has been a marked increase in initial coin offerings (ICOs), either conducted in or offered from Switzerland. ICOs are a digital form of raising funds from the public. They exclusively take place using distributed ledger or blockchain technology. "Token sale" or a "token-generating event" are other terms used.

Under the usual procedure for ICOs, financial backers will transfer a certain amount of cryptocurrency to a blockchain-generated address supplied by those organising the ICO campaign. In return, financial backers receive blockchain-based coins or other tokens connected with a specific project or company run by the ICO organisers.

How ICOs are structured from technical, functional and business standpoints varies markedly from offering to offering. There is no catch-all definition.

## 2 Regulation

ICOs are currently not governed by any specific regulation, either globally or in Switzerland. Equity and debt capital-raising, deposit-taking and the activities of financial intermediaries are controlled by existing laws that protect creditors, depositors and investors and which ensure that financial markets function properly. Swiss legislation on financial markets is principle-based; one such principle is technology neutrality. Consequently, collecting funds for one's own account without a platform or issuing house acting as an intermediary is unregulated from a supervisory standpoint in cases where repayment is not obliged, payment instruments have not been issued and no secondary market exists.

However, due to the underlying purpose and specific characteristics of ICOs, various links to current regulatory law may exist depending on the structure of the services provided. This concerns the following areas in particular:

- Provisions on combating money laundering and terrorist financing: the Anti-Money Laundering Act applies where the creation of a token by an ICO vendor involves issuing a payment instrument. If this is the case, other supervisory issues may be effective for third parties, especially for professional cryptobrokers or trading platforms which carry out

exchange transactions or transfers with tokens (secondary trading with tokens).

- Banking law provisions: accepting public deposits where an obligation towards participants arises for the ICO operator because of the ICO generally necessitates a banking licence.
- Provisions on securities trading: a licensing requirement to operate as a securities dealer may exist where the tokens issued qualify as securities (e.g. derivatives).
- Provisions set out in collective investment schemes legislation: potential links to collective investment schemes legislation may arise where the assets collected as part of the ICO are managed externally.

Due to the close proximity in some areas of ICOs and token-generating events with transactions in conventional financial markets, the likelihood arises that the scope of application of at least one of the financial market laws may encompass certain types of ICO model. This is also the case for ICO activities which aim to circumvent those provisions. Owing to the wide variety in structure of ICO models, FINMA can only carry out a conclusive regulatory assessment in specific cases. Currently, FINMA is assessing a number of such cases. Where financial market legislation has been breached or circumvented, enforcement proceedings will be initiated.

FINMA does not carry out legal assessments of ICOs beyond the area of financial market legislation (e.g. the Swiss Code of Obligations and/or tax law).

## Launching ICOs

Companies or individuals who intend launching an ICO have to ensure that they comply with the requirements set out in the relevant financial market laws. FINMA therefore recommends parties interested in launching an ICO to inform themselves in time about the statutory provisions applicable to their business plan as set out in financial market legislation.

For further information about ICOs, interested parties are welcome to contact FINMA's FinTech Desk ([fintech@finma.ch](mailto:fintech@finma.ch)).

## Information for investors

Coins or tokens acquired as part of an ICO may be subject to high price volatility. Often ICO projects are at an early stage of development, which results in a number of uncertainties regarding the financial and implementation aspects involved.

FINMA cannot rule out that ICO activities may be fraudulent, especially in light of current market developments. It has therefore issued a general warning about increased fraudulent activities by providers of fake cryptocurrencies.<sup>1</sup>

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<sup>1</sup> See FINMA's press release dated 19 September 2017 "FINMA closes down coin providers and issues warning about fake cryptocurrencies" at <https://www.finma.ch/en/news/2017/09/20170919-mm-coin-anbieter/>.



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