Blockchain, Crypto and ICOs

A Legal Review of Leading Jurisdictions

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EXECUTIVE SUMMARY

The wave of interest around distributed ledger technologies (DLTs) has increased dramatically these past few years. As with any new technology, DLTs bring about opportunities as well as challenges when it comes to large-scale adoption. By definition, the technology itself is not subject to regulation but the different uses of distributed ledgers, especially when they comprise massive monetary involvement, require adequate supervision from authorities. At present, DLTs are considered the next big disruption in the financial services industry. While use of the technology can potentially bring far-reaching benefits to various industries, several legal uncertainties need to be addressed to enable the safe and secure adoption of the technology by the masses.

Attempts to provide comprehensive regulation for DLT applications, in particular, cryptocurrency trading, were initiated at the beginning of 2016. Currently, the regulatory landscape on the use of the technology is largely undeveloped and complex in most countries. Depending on the application of DLT- blockchain, cryptocurrencies, initial coins and tokens offering, shared ledgers, smart contracts- the regulatory treatment is different. The approach of regulating these components also differs from one jurisdiction to another. While some countries, including some European states, are relatively supportive of innovations, others still view this area with suspicion.

Overview of report

This report provides a legal overview of the existing regulations concerning DLTs in ten leading jurisdictions, and will sequentially cover the application of blockchain technology, cryptocurrency and initial coin offering (ICO), or initial token offering. The report gives insight into the overall legal framework, registration process, general taxation rules, the environment for market participants, as well as future considerations, revealing whether the authorities are planning to further develop the regulations or change them. The aim of this report is to compare different approaches of regulators towards blockchain-related business activities, based on the examples of the leading jurisdictions. The report does not focus specifically on cryptocurrencies, but it covers regulations of financial or non-financial use of the technology.

The choice of the jurisdictions is based on whether the country has a particular legal system in place related to the technology, or whether it is an attractive destination for blockchain or crypto businesses. For example, Russia and Thailand are countries that initially took a negative position towards crypto and then, realising the potential of the market, decided to regulate the related activities. Singapore and Australia were among the first countries which regulated ICOs. Japan, being the first country where cryptocurrencies were officially recognised as a form of payment, is the chief proponent in Asia's crypto industry.

Furthermore, the report includes the top favourable jurisdictions for innovative start-ups including Malta, Switzerland, Gibraltar and Estonia.

Considering the continuously evolving legal frameworks, as well as the fact that the existing laws in the observed jurisdictions are continously being amended, the information provided is based on data collected up till August 2018.

Main findings

The report shows that different countries take separate approaches to regulating the market. Among the examined jurisdictions, four regulators - Malta, Thailand, Gibraltar and Russia - have issued a specific law concerning blockchain, ICO or cryptocurrencies whilst the remaining countries issued guidelines on the application of the law.

Some countries, such as Australia and Estonia, amended their anti-money laundering and terrorism financing prevention laws adding specific clauses related to digital (or virtual) currencies. In several countries, such as Singapore regulators have developed specific sandbox solutions to assist innovative start-ups and provide regulatory support by relaxing specific legal and regulatory requirements.

It is noteworthy that while some countries, such as Malta provide specific and comprehensive licensing rules for market participants, others such as Gibraltar took a "light touch" approach providing principle-based regulations. In addition to this, most of the regulators commonly focus on regulating the application of blockchain in financial services, particularly ICOs and cryptocurrencies, while Malta is taking a wider approach by assessing the technology arrangement itself.

BLOCKCHAIN: EVOLUTION, REVOLUTION AND INNOVATION

The world is once again on the brink of change, as it was back in the 1990s with the advent of the Internet. Whilst it would be counterproductive to stifle progress with over-regulation, remaining idle will not allow the industry to grow in a sustainable manner either and would leave consumers and investors at the mercy of potentially unscrupulous operators. Regulation will inevitably trail some steps behind the brisk pace of business innovation and invention. Regtech, a blend of the words 'regulation' and 'technology', captures the struggle and the challenge which regulators worldwide face as technology continues to seep into every single aspect of everyday life, more so in the past two years, as Blockchain technology took the world by storm. However, when the regulations are designed in a way that acknowledge the importance of technology, and seek to exploit its benefits, they create the legal certainty needed within which business can thrive while at the same time empowering the ordinary citizen with knowledge on the topic and on the extent of his or her rights.

Blockchain technology steps away from a centralised approach. It lends itself more easily to regulation and introduces the concept of peer-to-peer transactions - an alien element which by its very nature excludes the intervention of third parties which may be regulated. A look at the past and a tentative venture into what the future may bring is of the essence to understand where we are, and where we are heading.

1. Origin of Blockchain

Blockchain originally generated interest because of its controversial ability to anonymise transactions, such as in the case of certain cryptocurrencies. This had initially cast a shadow over the technology which was immediately associated with cryptocurrencies and their potential for facilitating payments in illicit activity, however, upon closer inspection of its potential uses, the real appeal of the blockchain technology is its immutability and complete transparency when deployed with good motives. In truth, like any other powerful piece of technology, both cryptocurrencies and blockchain technology itself can solve a number of issues which we face in our day-to-day lives, but can also be used maliciously and fraudulently. Anti-cybercrime units all over the world are making excellent progress towards using the traceability inherent in blockchain to track and trace payments and squeeze out those using cryptocurrencies for illegal activities.

Blockchain technology made its public debut back in 2008, when the whitepaper 'Bitcoin: A Peer-to-Peer Electronic Cash System' was released, which created the possibility of a direct online payment from one party to another without the use of an intermediary third-party. The paper sought to solve the problem of 'double spending', the phenomenon by which the same funds are used for more than one transaction. The very nature of digital currency allows it to be easily duplicated and spent more than once. In order to prevent the problem of 'double spending' a public ledger was conceived. This ledger provided a network of different computers or "nodes" that examine the transaction history of an electronic coin that a user submits for payment. This then confirm that the coin has not already been spent, thereby preventing the "double spending" problem. The ledger can be written onto it with new information, but the previous information which is stored in blocks cannot be changed, which gives rise to its name as an unbroken chain of blocks.

Thus, blockchain technology provided the answer to the lack of trust between contracting parties as it records important information in a public space, which is subsequently transparent, time-stamped and decentralized. Cryptocurrencies such as bitcoin are but one of the many uses to this technology which may serve as a foundation or platform on which various applications may be built. Bitcoin represents the first major blockchain innovation now used by millions of people as means of payments, or as an investment asset.

Following the launch of Bitcoin, there came the realization that the underlying technology that operated bitcoin could be separated from the currency and used for all kinds of other inter-organisational cooperation. Shortly after, "smart contracts" started gaining traction after having been first proposed by Nick Szabo back in 1994. Smart contracts are contracts written in programming code with limited outcomes (such as yes or no) that are self-fulfilling and need no human intervention.

Within a decade, the technology has developed remove to address weaknesses inherent to the first blockchains- issues such as transaction processing speed and scalability. Blockchain is only one kernel of the unfolding story. Other innovations in the IT sphere include IoT (the Internet of Things) and AI (artificial intelligence). As these become more sophisticated by the day, and advances in one area open up possibilities in others, one can only wonder what the future will bring.

2. Why Regulators Sought to Regulate this Space

There are those who claim that an attempt to regulate a decentralised technology created specifically with the aim to circumvent onerous regulations and a system which has failed many, is a fallacy in and of itself. Indeed, Bitcoin and the blockchain technology which underlies it, were created as an answer to the collapse of the banking and financial system in 2008. While technologies such as cryptocurrencies do address a number of flaws tied with centralised institutions such as banks, their volatility and a lack of agreed standards presents a number of concerns from an investor protection point of view. Additionally, the potential of coding these virtual currencies in a way that anonymises the identity of the holder of the coin or wallet will also raise eyebrows from an AML/CTF perspective.

2.1 Protection for ICO Investors

ICOs became a popular way to raise finance for start-ups - over the course of 2017 over $5.6 Bn was raised, while in Q1 2018 the total was already $6.3 Bn. However, there are no safeguards for investors backing these huge projects; researchers have claimed that over 80% of ICOs proved to be scams, and that only a mere 8% will ever become successful enough to be traded on an exchange. With these alarming statistics, pressure is growing on governments to create a regulatory framework for ICOs and supporting service providers. Regulating ICOs will make the industry safer for both businesses and investors by providing a known rulebook and a legal means of resolving disputes.

In July 2018, Malta became the first jurisdiction in the world to provide a comprehensive legal framework. Indeed, the islands now have laws which comprehensively that comprehensively cover the treatment of cryptocurrencies, the launch of initial coin offerings (ICOs) and subsequent treatment of virtual assets once these are placed on an exchange. Malta's efforts are particularly commendable due to the fact that it has created a framework which is fully compliant with its obligations as an EU member state. It ensured that assets which would be considered as financial instruments or electronic, and which should be regulated under the Markets in Financial Instruments Directive 2004/39/EC, and the Electronic Money Institutions Directive 2009/110/EC respectively, would still be captured under their respective law. On the other hand, it sought to create a new law applicable to cryptocurrencies and prescribes the issuing process to provide a greater measure of investor protection than is currently available in any other jurisdiction.

Without regulation investors may be taken advantage of by being provided with unrealistic information or even plainly fraudulent misrepresentations about upcoming token offerings. By imposing the necessary disclosure requirements and ensuring that issuers remain true to their word as promised in the whitepaper, investors may enjoy peace of mind from the onset. Moreover, imposing quality standards for cryptocurrency exchanges and ensuring that these are well equipped to assess the quality of each asset they admit to trading will also add an extra filter to ensure that only quality investments are offered to investors.

2.2 Improved Transparency

Blockchain has become almost synonymous with transparency due to the possibility of tracing the journey of a transaction. Investing in start-ups has always been a risky venture in itself, doing so through an ICO adds another level of speculation. Investors who are less knowledgeable on how investment in an ICO works may easily be bamboozled by misleading financial projections or buzzwords that disguise a weak business plan. Regulation would set clear guidelines on what must be included in a whitepaper and business plan, forcing companies to be thoughtful, prepare more comprehensively for their ICO setup and make their business plans more transparent. Additionally, regulation will also help induce a change in mindset to disassociate cryptocurrencies with illegal practices once these are brought within the remit of AML legislation.

2.4 Rest Assured, Innovators

Regulating ICOs will not only create benefits for investors and the economy, but also for innovators and issuers of ICOs themselves. Innovators will feel more at ease knowing that they are operating in a regulated setting. In the present current unregulated environment, innovators may be hesitant to enter the market in fear that they may make a wrong move and unintentionally fall foul of the law, giving rise to hefty penalties or even seeing their business model blocked pending regulator investigation.

3. The Future – Where We Are Heading?

Although the first adopter of this technology seems to be the financial services sector, blockchain technology is being utilised in an ever-increasing number of applications in every industry, from education to pharma to logistics and legal practice. Blockchain has grown exponentially over recent years, attracting several groups of people including investors, engineers, governments, and corporations. With so many groups taking such an interest, blockchain continues to develop and expand, making the future of blockchain hard to predict but certainly worth watching out for. 2018 has seen more widespread movement towards blockchain adoption and regulation. Blockchain adoption is essentially moving the industry from the development stage to the application stage. The ease and accuracy of sharing data using blockchain has the potential to cut certain process times from weeks or days to mere seconds and ensure that data is being presented accurately.

Large retailers stand to benefit massively from the inclusion of blockchain into their supply chains and into data analytics. With big data being a dominant topic of discussion, blockchain has the potential to track information on end-users. VeChain is a prime example of how blockchain has been incorporated into real-world businesses. VeChain was one of the earliest movers in blockchain

adoption and has shown remarkable success in a very short time. Their platform has been applied to a variety of industries such as retail, accounting, agriculture, automotive and software. Walmart has also teamed up with IBM to develop a blockchain system for tracking its live-food business. The retail giant has now filed a patent for a blockchain-based secure delivery management system, which may help it compete against other online retailers. A portion of the overall public and large corporations have taken notice of the potential benefits related to adoption of blockchain technology over the past year, within which we have seen significant strides towards a more usable blockchain ecosystem.

Tech companies are determined to make blockchain a mainstream foundation technology for all types of trade and exchange. Some of the key factors that can propel Blockchain into large scale usage may include blockchain securely hosted on public cloud; a digital safe for public keys with ability to be accessed by personal devices as and when needed. Other factors could include blockchain development clusters which provide development services, effective protection against cyber-attacks and potentially a system which connects peripheral devices over and above Smartphones to address basic utility.

Blockchain has the potential to bring a paradigm shift in ways people transact with one another by eliminating bureaucracy at every level. Governments around the world are looking at moving public registries onto blockchain, such as land ownership registries, driver licences, company registries and far more. Some governments are already working towards issuing stablecoins – cryptocurrency versions of the existing fiat currency, with both at the same value. Amazon, IBM and Microsoft are inviting thousands to test Blockchain apps upon their infrastructure. Consolidating this with the potential of Blockchain itself, it is highly possible that we may start utilising Blockchain-based systems for basic transactions in the very near future. The power of blockchain also has the potential to serve our planet, for instance the immutability of the technology may provide an audited trail as to the provenance of raw materials. This could help to take informed action against illegal sourcing and unfair or illegal work practices, as well as working towards a more sustainable use of the earth's resources.

Despite certain challenges that remain a work in progress, such as the power required to run a blockchain, security concerns and the speed of transaction processing, it has been an impressive decade of transformation for blockchain technology and it will be intriguing to see where the next decade takes us.

3.1 Artificial Intelligence & Blockchain

Artificial intelligence (AI) is the theory and practice of building machines capable of performing tasks that seem to require intelligence. Currently, cutting edge technologies striving to make this a reality include machine learning, artificial neutral network and deep learning. The way a blockchain works, by building up an incremental picture will collect a hitherto unimaginable amount of raw data, that may all be fed into AI machines for analysis.

Another way in which blockchain lends itself to AI processing is that is by nature highly secure, thanks to the cryptography inherent in its ledger system. Data fed into a blockchain will include personal information, meaning that businesses must make significant investment to meet the standards expected of them in terms of security surrounding such data. An emerging field of AI is concerned with building algorithms which are capable of working with data while it is still in an encrypted state. Thus, combing AI and blockchain may revolutionise the way our personal data is secured online.

AI algorithms are also used in making decisions about the authenticity or otherwise of financial transactions and whether such transactions should be blocked or investigated further before processing. All this data needs to be audited, therefore it must be recorded at a great level of granularity. If this is done on a blockchain, auditing this data would become a simpler and safer task, owing to the fact that records cannot be tampered with after verification on the blockchain, and prior to the start of the audit process.

The merging of these two technologies will be mutually enhancing for both of them, while offering opportunities for better oversight and accountability. It is inevitable that both technologies shall mature and may bring about their own challenges which need to be examined from a regulatory perspective. Nevertheless, future-proof legislation, combined with constant research and development even at governmental level is of the essence to ensure that the regulator may exert sufficient control to ensure a fair-playing field for both the innovator and the investor.

EMBRACING BLOCKCHAIN
THE MALTESE MODEL

Malta has been one of the prominent jurisdictions to actively seek to accelerate the adoption of this technology. With the passing of 3 legislative bills from the Maltese Parliament in June 2018, Malta is the first jurisdiction offering a truly comprehensive regulatory environment for blockchain technology. Malta took the ground-breaking step of creating a new authority – the Malta Digital Innovation Authority (MDIA) - specifically to monitor and ensure high standards in the development of blockchain technology and applications built on it so that these may flourish while permitting adequate consumer protection. With the support of the Malta Financial Services Authority and the MDIA, the financial services industry and other areas are looking at some interesting developments.

1. A Transparent and Secure Database

A key aspect of blockchain technology is that it offers transparency and accountability, whilst still providing an element of privacy. Data secured through cryptography must be verified collectively by several nodes (computers or servers) in the blockchain, ensuring that human errors are minimised. With the decentralised nature of data stored on the blockchain, a cyber-attack is virtually impossible unless more than half the nodes on the blockchain are breached- a feat that would require huge amounts of computing power.

Moreover, whilst certain data records can be made public for everyone to view, blockchains may be private nonetheless on public blockchains, sensitive information will be encrypted such that private keys are required to access information. This heralds a new era for government databases such as land registry, civil records, transport licensing and much more, providing efficiency and security. The Maltese government is well aware of the opportunities to be gained from this new technology, particularly from its implementation within the public sector. As a way of improving transparency and giving peace of mind, the government is open to assimilating blockchain technology in the public sector, particularly the Lands Registry and the national health registries.

2. Challenging Traditional Players

At the basis of blockchain technology comes the removal of the middleman from a transaction between two parties. This will serve to not only increase the element of trust between both parties but will also significantly decrease the costs of certain transactions as intermediaries are removed from the picture. With the advent of blockchain technology, banks and financial institutions are being urged to adapt to this new innovation to meet the demands of both local and foreign clients. The main issue causing such reluctance to embrace this wave of technology lies in the perceived high element of risk which is associated with it.

In this regard, the Maltese Regulator is actively seeking to make the transition from the traditional systems to blockchain a smooth one. In viewing the new legislation recently passed by Parliament, the provisions of the 5th Anti Money Laundering Directive are respected and the similarities between existent financial services legislation and the new laws is evident. Banks will need to understand the nature of blockchain and the way parties transact with one another in this new world order to protect themselves and their clients.

3. An Increase of Education Opportunities

Malta remains committed to providing the best possible environment for companies using blockchain and the technology itself to flourish. With the influx of companies choosing Malta as their jurisdiction of choice, the demand for skilled human capital is on the rise.

The University of Malta has already announced that it will award scholarships to students seeking to further their studies in the tech industry, as demand for qualified personnel increases. Additionally, other educational institutions such as the Malta College of Science, Arts and Technology have already tailored a master's programme specifically aimed at IT students.

4. Setting a Precedent for Other States

Currently at the forefront of regulation, Malta has managed to consolidate its position as a jurisdiction which regulates and innovates this industry which marries technology with services hitherto seen as financial in nature. The Maltese model seeks to find a fair balance between safeguarding investors and consumers while giving freedom to innovators in a stable, growing economy.

Aside from these key elements, Malta's pro-business environment and idyllic position in the Mediterranean continues to attract major players in the industry such as Binance, OKEx, Neufund and BitBay.

INTERNATIONAL JURISDICTION COMPARISON

Jurisdiction	Authority	Position	Format	Document name	Topic	Summary	Source
AUSTRALIA	The Australian Transaction Reports and Analysis Centre (AUSTRAC)	Favourable	Law	Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2017	AML and ATF rules	AML and ATF rules	http://gesellberg.com/wp-content/uploads/2017/10/report.pdf
	Australian Taxation Office (ATO)		Guidance	GST and digital currency	Taxation of digital currencies	Sets out rules for the taxation of digital currencies and ICOs	https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Financial-services-and-insurance/GST-and-digital-currency/
	The Australian Securities and Investments Commission (ASIC)		Guidance	INFO 225 guidance	Gudidance on ICOs and other cryptocurrency and crypto-assets businesses	The guidance provides an overview on ICOs and other applications of cryptocurrencies within the existent regulatory framework on corporations and securities	https://asic.gov.au/regulatory-resources/digital-transformation/initial-coin-offerings-and-crypto-currency/
AUSTRIA	Austria Financial Market Authority (FMA)	Favourable	Guidelines	FinTech Navigator	Fintech Cryptocurrencies ICOs	The guidelines provide a summary of FMA's view on Fintech business and ICO's along with guidance for users to identify the regulatory and licensing requirements for the businesses	https://www.iosco.org/library/ico-statements/Austria%20-%20FMA%20-%20FinTech%20Navigator.pdf
CANADA	Canadian Securities Administrators (CSA)	Favourable	Notice	CSA Staff Notice 46-307 Cryptocurrency Offerings CSA Staff Notice 46-308 Securities Law Implications for Offerings of Tokens	Offerings of securities, ICOs of security, and utility tokens	The guidelines provide guidande on offerings of security tokens, utility tokens, multi-step token offerings, and cryptocurrency exchanges	http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20170824_cryptocurrency-offerings.htm https://www.osc.gov.on.ca/documents/en/Securities-Category4/csa_20180611_46-308_implications-for-offerings-of-tokens.pdf
	Canadian Financial Action Task Force (FTAF)	Favourable	Draft Bill	Cryptocurrency Regulations Draft Bill	Crypto exchanges and payment processors	The draft proposes to regulate crypto exchanges and payment processors as money service business complaint with KYC and AML rules	http://www.gazette.gc.ca/rp-pr/p1/2018/2018-06-09/html/reg1-eng.html

Jurisdiction	Authority	Position	Format	Document name	Topic	Summary	Source
CHINA	China Banking Regulatory Commission (CBRC)	Negative	Notice	Statement on ICOs	ICOs	Through the notice, the Chinese financial authorities established a total ban of ICOs in China	http://www.pbc.gov.cn
ESTONIA	1. Estonian Financial Supervisory Authority (EFSA) 2. Financial Intelligence Unit	Favourable	Guidance	The legal framework of initial coin offering in Estonia: Money Laundering and Terrorist Financing Prevention Act (MLTFPA), as amended Securities Market Act Consumer Protection Act Credit Institutions Act	ICO	The Estonian authorities believe that tokens issued through ICOs generally meet the conditions to be considered securities under Estonian securities law. It is also posssible that tokens are regulated under the Credit Institutions Act if the tokens have the functions of a loan	https://www.fi.ee/index.php?id=21662
GERMANY	German Financial Authrority	Advising Caution	Warning	Consumer warning: the risks of initial coin offerings	ICOs	The German authorities outlined the potential risks of ICOs, mainly based on their lack of legal clarity and protection for investors	https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Meldung/2017/meldung_171109_ICOs_en.html
GIBRALTAR	Gibraltar Financial Services Commission	Favourable	Regulation	Financial services (Distributed ledger technology providers) Regulations 2017	Distributed Ledgers (Financial Services - trading and exchange)	The legislation regulates the commercial use of Distributed Ledger Technology and the principles that DLT providers must adhere to	gibraltarfinance.gi/20180309-token-regulation---policy-document-v2.1-final.pdf
HONG KONG	Securities and Futures Commission (SFC)	Advising Caution	Statement	Statement on initial coin offerings	Cryptocurrencies ICOs Crypto exchanges	The Hong Kong financial authorities have taken a similar approach towards ICOs and exchanges as the one taken by USA. The SFC states the ICOs could potentially involve securities and therefore they would be under their supervision and control via the attainment of a license	https://www.sfc.hk/web/EN/news-and-announcements/policy-statements-and-announcements/statement-on-initial-coin-offerings.html
ICELAND	Central Bank Of Iceland	Neutral to Negative	Law	Icelandic Foreign Exchange Act	Foreign exchange	The legislation establishes restrictions for foreign exchange trading and capital movements between countries	https://www.cb.is/library/Skraarsafn---EN/Capital-surveillance/English-translation-of-the-Foreign-Exchange-Act---Nov-2016.pdf
INDIA	Reserve Bank of India's (RBI)	Neutral to negatve	Warning	Reserve Bank cautions regarding risk of virtual currencies including Bitcoins	Cryptocurrencies Cryptocurrency exchanges ICOs	Statement reiterating the warnings issued by the Indian authorities towards cryptocurrencies, exchanges, ICOs and any activities linked to virtual currencies	https://rbidocs.rbi.org.in/rdocs/PDFs/ PR15304814BE14A3414FD490B47B0B1BF79DDC.PDF

Jurisdiction	Authority	Position	Format	Document name	Topic	Summary	Source
IRELAND	Department of Finance	Favourable	Discussion paper	Discussion Paper	DLT ICOs Cryptocurrencies Crypto exchanges	The document gives a technical explanation on DLT, an overview of the global envirorment and the different regulatory approaches taken by selected jurisdictions. The document concludes with proposed steps to be taken by Ireland to further regulate and develop the industry	https://www.finance.gov.ie/wp-content/uploads/2018/03/Virtual-Currencies-and-Blockchain-Technology-March-2018.pdf
	Central Bank of Ireland		Speech/Press Release	Tomorrow's yesterday: financial regulation and technological change - Gerry Cross, Director of Policy & Risk	ICOs Cryptocurrencies Fintech	The speech touches on virtual currencies, ICOs, Fintech and the need for regulation and cooperation on an Irish and global scale	https://centralbank.ie/news/article/financial-regulation-and-technological-change-gerry-cross
ISLE OF MAN	Isle of Man Financial Services Authority (IOMFSA)	Favourable	Upcoming regulations	In 2016, the Gambling Supervision Commission (GSC) and Treasury approved regulation allowing digital currencies including bitcoin to be accepted as cash.	ICOs, crypto exchanges and business involved in virtual currencies in general	Isle of Man's government has demonstrated openess towards ICOs and crypto related businesses	https://www.iomfsa.im/media/1606/virtualcurrencyguidance.pdf
				Proceeds of Crime Act 2008	AML		http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2008/2008-0013/ProceedsofCrimeAct2008_6.pdf
				Designated Businesses (Registration And Oversight) Bill 2015	ICOs, crypto exchanges and business involved in virtual currencies in general	This Act designated the IOMFSA to supervise the managing, lending, buying, selling, exchanging or otherwise trading or intermediating convertible virtual currencies, including crypto-currencies or similar concepts where the concept is accepted by persons as a means of payment for goods or services, a unit of account, a store of value or a commodity	http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2015/2015-0009/DesignatedBusinessesRegistrationandOversightAct2015_1.pdf
MALTA	1. Malta Financial Services Authority (MSFA) 2. Malta Digital Innovation Authority (MDIA)	Favourable	Law	Malta Digital Innovation Authority (MDIA) Act	Responsible Technical Authority	Provides for the setup of the MDIA, a technical authority which shall be responsible for the recognition of Innovative Technology Services Providers and the certification of Innovative Technology Arrangements.	Chapter 591 of the Laws of Malta. Accessible from: http://www.justiceservices.gov.mt
				Innovative Technology Arrangements and Service providers (ITAS) Act	Innovative Technology Services Providers and Innovative Technology Arrangements	Sets out the regime for the registration of Technology service providers and the certification of Technology Arrangements.	Chapter 592 of the Laws of Malta. Accessible from: http://www.justiceservices.gov.mt
				The Virtual Financial Assets Act (VFAA)	ICOs and Virtual Financial Assets	Sets out a legal framework for ICOs and the regulatory regime on the provision of certain services in relation to virtual financial assets	Chapter 590 of the Laws of Malta. Accessible from: http://www.justiceservices.gov.mt

Jurisdiction	Authority	Position	Format	Document name	Topic	Summary	Source
ISRAEL	Bank of Israel Israel Securities Authority	Favourable	Report	Interim Report on cryptocurrencies	Cryptocurrency ICOs	Recommendations aiming to provide legal clarification and protection for investors within the cryptocurrency space	http://www.isa.gov.il/sites/ISAEng/1489/1513/Documents/DOH17718.pdf
JAPAN	Financial Services Agency (FSA)	Favourable	Law	Virtual Currency Act	Virtual currencies and virtual currency exchanges. ICOs are not regulated by this Act	The instrument was amended the Payment Services Act and included the definitions of virtual currencies, digital currencies and other related terms for the first time in Japanase legislation. The legislation established registration requirerments for virtual currency exchange service operators	http://www.so-law.jp/wp-content/uploads/2017/07/Japanese_VC_Act_and_Registration-Overview_170704.pdf
LUXEMBOURG	Commission de Surveillance du Secteur Financier (CSSF)	Advising caution	Warnings	Not regulated. Each case Is addressed through the local financial regulations	ICOs	Luxembourg authorites state that existing financial regulations including AML and CTF apply to ICOs. They have issued several warnings on the risk of ICOs and cryptocurrencies.	http://www.cssf.lu/fileadmin/files/Protection_consommateurs/Avertissements/W_ICOS_140318_eng.pdf http://www.cssf.lu/fileadmin/files/Protection_consommateurs/Avertissements/W_virtual_currencies_140318_eng.pdf
ROMANIA	The Romanian National Bank (BNR)	Neutral	Draft Bill	Not defined	Electronic Money	The draft regulation issued by the Romanian Ministry of Finance regulates the issuing of electronic money, or e-money under supervision of the Romanian National Bank (BNR). Necessary autorisation for the activities will be granted by BNR to legal entities having a share capital of at least EUR 350,000 and members approved by the BNR.	http://business-review.eu/money/romanian-authorities-take-first-steps-towards-regulating-crypto-currency-175649
RUSSIA	The Ministry of Finance of the Russian Federation	Becoming favourable	Draft bils	Federal law On Digital Financial Assets (draft stage)	Cryptocurrencies ICOs crypto investment platforms digital rights smart contracts	The bills are expected to regulate tokens, cryptocurrencies and investment platforms. The bills will most likely make smart contracts legally binding	N/A
SINGAPORE	Monetary Authority of Singapore (MAS)	Favourable	Guidelines	A Guide To Digital Token Offerings	Token offerings	The document provides guidance on the application of the securities laws administered by MAS in relation to offers or issues of digital tokens	http://www.mas.gov.sg/~/media/MAS/Regulations%20and%20Financial%20Stability/Regulations%20Guidance%20and%20Licensing/Securities%20Futures%20and%20Fund%20Management/Regulations%20Guidance%20and%20Licensing/Guidelines/A%20Guide%20to%20Digital%20Token%20Offerings%20%2014%20Nov%202017.pdf
	Monetary Authority of Singapore (MAS)		Guidelines	Fintech Regulatory Sandbox Guidelines	Fintech activities	The guidelines set out the objective and principles of the MAS Finteech Regulatory Sandbox, and provide guidance to the applicant on the application process	http://www.mas.gov.sg/~/media/Smart%20Financial%20Centre/Sandbox/FinTech%20Regulatory%20Sandbox%20Guidelines%2019Feb2018.pdf

Jurisdiction	Authority	Position	Format	Document name	Topic	Summary	Source
SOUTH KOREA	Financial Services Commission (FSC)	Neutral to positive	Guidelines	'Cryptocurrency-related AML Guidelines'	Cryptocurrencies Cryptocurrency exchanges	Cryptocurrency exchanges and their compliance with local AML and Due Diligence legislation	http://www.fsc.go.kr/eng/new_press/releases.jsp
SWITZERLAND	Swiss Financial Market Supervisory Authority (FINMA)	Favourable	Guidance	FINMA Guidance 04/2017. Regulatory treatment of initial coin offerings Guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs) (16 February 2018)	ICO Tokens sales	The guidelines classify tokens as: payment, asset, utility and hybrid tokens Asset tokens will be subject to both securities regulations as well AML laws & regulations	https://www.finma.ch/en/news/2018/02/20180216-mm-ico-wegleitung/
UAE (ABU DHABI)	The Financial Services Regulatory Authority(FSRA)	Favourable	Guidance	Supplementary Guidance – Regulation of Initial Coin/Token Offerings and Virtual Currencies under the Financial Services and Markets Regulations	Crypto Asset Businesses, Crypto Asset Exchanges. Crypto Asset Custodians and intermediaries	The guidelines set out the regulatory approach by the authorities toward crypto asset activities	https://www.iosco.org/library/ico-statements/Abu%20Dhabi%20-%20FSRA%20-%20Guidance%20-%20Regulation%20of%20Crypto%20Asset%20Activities%20in%20ADGM.pdf
UAE (DUBAI)	Dubai Multi Commodities Centre (DMCC		N/A	not regulated	N/A	N/A	https://www.dmcc.ae/application/files/4915/0832/8310/FreeZoneRulesandRegulations2012-Fullversion_5.pdf
	UAE Central Bank		Law	Regulatory Framework For Stored Values and Electronic Payment Systems (Stored Value Regulations)	Electronic payment systems	The regulations established licensing, KYC and costumer due dilligence for PSP's in Dubai	https://www.centralbank.ae/en/pdf/notices/Regulatory-Framework-For-Stored-Values-And-Electronic-Payment-Systems-En.pdf
UK	Financial Coduct Authority (FCA)	Advising Caution	Discussion paper	Discussion Paper on distributed ledger technology	Opportunities and risks of DLT and its compatibility with existing framework	The purpose of the discussion paper is to start a dialogue on the development of DLT and its use within the regulated markets in the UK	https://www.fca.org.uk/publication/discussion/dp17-03.pdf
USA	Security Exchange Comission	Advising caution	Law	Securities Exchange Act 1934	Exchange and trading of securities	The law regulates secondary markets of securities and the obligations of publicly listed companies. The SEC is the body in charge of enforcing the Act	https://legcounsel.house.gov/Comps/Securities%20Exchange%20Act%20Of%201934.pdf
	Security Exchange Comission			Securities Act 1933	Securities	The law sets out the requirements of the prospectus to be disclosed by companies before undertaking a securities offering. Measures against fraud and deceit were also established by the regulations	https://venturebeat.com/wp-content/uploads/2010/05/sa33.pdf
	Commodity Futures Trading Commission			Commodity Exchange Act 1936	Commodities	The CFTC classified cryptocurrencies as commodities. The body supervises derivatives, futures and swaps where the underlying assets are cryptocurrencies.	https://legcounsel.house.gov/Comps/Commodity%20Exchange%20Act.pdf

Malta

REGULATING BODY	Malta Financial Services Authority (MFSA) Malta Digital Innovation Authority (MDIA) – [due 01//10/2018]
DOCUMENT NAME	1. Malta Digital Innovation Authority (MDIA) Act 2. Innovative Technology Arrangements and Service providers (ITAS) Act 3. The Virtual Financial Assets Act (VFAA)
COMMENCEMENT	Published June 2018, to be brought in force over October and November 2018
SUPPORTING ORGANISATIONS AND PROJECTS	No
ACTIVITIES COVERED	DLT as a technology, ICO, STO, Virtual Currencies, all activities dealing with DLT assets
ECONOMIC FUNCTION OF TOKEN	Virtual Financial Asset, Financial instrument (security), Virtual Token (utility)
ICO LICENCE	No, but Issuer needs to conduct the Financial Instruments Test and register its whitepaper through a duly licenced VFA Agent
VC TRADING LICENCE	Yes
ELIGIBLE TO APPLY FOR A LICENCE[1]	Yes in accordance with VFAA, Article 15 and Schedule 2
LICENCE FEE[2]	**Issuers of VFA** Application Fee: €4,000 – registration of the Whitepaper with the MFSA Supervisory Fee: €1,000 upon submission of the certificate of compliance **Crypto exchanges** Application Fee: €12,000 Supervisory Fee: • For revenue up to €1,000,000: €25,000. • Further tranches of €1,000,000 up to a maximum of €100,000,000: €2,500 per tranche or part thereof.
TAXATION	Corporate taxes

Overview of the regulations

In July 2018, the Maltese Government promulgated three new Acts each setting out a framework to regulate the sphere of blockchain and DLT as well as virtual currencies. These laws are currently expected to come into force between October and November 2018 and will provide a comprehensive framework for technology companies. This includes those offering systems auditing and technical administration services, as well as issuers of Initial Coin Offerings or persons seeking to admit their assets to trading. The Acts also set out a licensing regime for service providers such as DLT exchanges, crypto advisers, brokers and market makers. The Laws are set out as follows:

1. The Malta Digital Innovation Authority (MDIA) Act[3] provides for the setup of the MDIA, a technical authority which shall be responsible for the recognition of Innovative Technology Services Providers such as Systems Auditors as well as the certification of Innovative Technology Arrangements. The MDIA shall work closely with the Financial Services regulator (MFSA) to ensure that tech companies are assisted, enabled, guided and regulated into setting up and offering their services to the ever-growing FinTech industry in Malta. The MDIA shall also be vested with the power to create Guidelines and shall also carry out a supervisory function which includes the power to impose sanctions.
2. The Innovative Technology Arrangements and Servicers (ITAS) Act sets out the regime for the registration of Technology service providers and the certification of Technology Arrangements.
3. The Virtual Financial Assets Act (VFAA)[4], sets out a legal framework for ICOs and the regulatory regime on the provision of certain services in relation to virtual financial assets (the terminology used in the VFAA for what is classically referred to as cryptocurrencies). This Act will regulate intermediaries such as brokers, exchanges, wallet providers, asset managers, investment advisors and market makers dealing in virtual currencies. The VFAA shall also be supplemented with a Rulebook to be issued by the MFSA.

The VFAA distinguishes between four types of DLT assets[5] –

1 Virtual Tokens (commonly referred to as utility tokens), which shall not be regulated;

2 Financial Instruments under the Markets in Financial Instruments Directive 2004/39/EC (MiFID II). Commonly referred to as security tokens these shall be subject to the local Investment Services Act

3 Electronic Money as defined and regulated in the Electronic Money Institutions Directive 2009/110/EC

4 Virtual Financial Assets (commonly referred to as cryptocurrencies), which shall be regulated under the new VFAA.

The VFAA proposes a Financial Instruments Test that needs to be applied to identify the category of DLT asset, which will in turn determine which regulation will govern the activities of the operator. Prior to launching a VFA in or from Malta, a company shall need to be set up once the Financial Instruments Test determines that the asset to be launched qualifies as a VFA.

The VFAA will also regulate the activities of those providing certain services related to DLT assets. VFA services may only be carried out under licence given by the MFSA the Competent Authority. The provision of the following services in relation to VFAs shall require the acquisition of a license[6]:

1. Reception and Transmission of Orders
2. Execution of orders on behalf of other persons
3. Dealing on Own Account
4. Portfolio Management
5. Custodian or Nominee Services
6. Investment Advice
7. Placing of VFAs (Marketing of VFA which have been issued but are not yet placed on an exchange)
8. The Operation of a DLT exchange

Any prospective licensee, as well as a company launching an Initial Virtual Financial Offering or a person seeking to admit their VFA asset to trading on an exchange which is licensed in Malta, shall need to appoint a VFA Agent[7]. The VFA Agent shall be a legal advisor who has attained the necessary recognition from the MFSA in order to be able to assist clients in this sector. The VFA Agent shall be entrusted with carrying out extensive due diligence on prospective applicants, including ensuring that they are fit and proper, and shall submit the relevant license application to the MFSA and continue to act as the liaison between the MFSA and the licensee or issuer.

Registration

Innovative Technology Services: Including Systems Auditors and Technical Administrators[8]

Tech companies providing services in relation to DLT in Malta shall need to register with the MDIA and have their technologies certified by the Authority so as to ensure that minimum standards are adhered to, further reinforcing the government's aim to protect consumers and investors.

Issuers of VFAs and Persons seeking Admissibility to Trading of VFAs[9]

The MFSA is the competent authority in Malta which regulates Initial Virtual Financial Offerings and admissibility to trading of VFAs. Rather than regulating Issuers, the MFSA has sought to regulate the DLT asset itself. Issuers and persons seeking to admit their DLT Asset to trading entities shall need to appoint a VFA Agent and carry out the Financial Instruments Test. Once the test determines that the DLT asset qualifies as a VFA, a whitepaper drafted in terms of the VFA must be registered with the MFSA. It is important to note that the MFSA places an onerous burden on the VFA Agent who shall need to report on a regular basis to the Authority on whether the Issuer has met the milestones set out in the whitepaper or any deviations therefrom.

Licence Holders (Including Crypto Exchanges)[10]

A Prospective Licence Holder shall need to apply to the MFSA for a license through its VFA Agent if it intends to offer its services to customers in or from Malta. Entities that are actively operating prior to the launch date of the law, currently expected to be 1st November 2018 shall benefit from a 12-month transitory period within which they can continue to operate prior to applying for a licence. Any operators wishing to avail themselves of the transitory period must notify the MFSA of their intention to do so, prior to the coming into force of the law. Moreover, all operators are expected to meet the licence conditions voluntarily on a "best efforts" basis during such transitory periods. The MFSA will request a preliminary meeting with all prospective licence holders upon receiving a notification of the latter's intention to become regulated.

Taxation

While Malta has not yet formally issued any guidelines specific to the fiscal treatment of DLT assets, the Commissioner for Revenue is widely expected to apply current tax principles to this sector with no ad hoc regime being envisaged. The issue would therefore be in determining whether the activity in relation to the DLT asset is a trading activity, or whether the DLT asset is being held as a capital asset. The income, or gains, from such activities would thus be taxed in accordance to this classification. Where the DLT asset is deemed to be a capital asset, any capital gain realised upon disposal would currently fall outside the scope of taxation in Malta.

Companies trading in DLT assets would be taxed in accordance with the long-established regime for Malta companies at the standard corporate income tax rate of 35% subject to the right of the shareholder upon receipt of a dividend to claim a refund of tax paid at source.

Malta does not charge capital duty and therefore under the current regime one would expect any DLT assets transactions which are deemed to be akin to an issuance of capital to also not be subject to duty.

Environment

Overall, the Maltese Government welcomes innovative digital technologies in general and DLT in particular. Malta's regulator has a notable positive track record for pioneering regulation in areas where other less dynamic regulators fear to tread and has managed to strike the right balance between fostering innovation and providing stability and consumer protection. This was proven in 2004 when Malta became the first country to regulate Remote Gaming in the EU and whose success means that Malta now boasts a highly advanced IT infrastructure. Malta already vaunts a robust and ever-growing financial services industry and is ready to take on the next step and embrace disruptive technologies such as DLT. The authorities do not only provide a framework for businesses wishing to use DLT, but also provides a degree of legal certainty to smart contracts which shall not be regulated as such, but which will still be recognised.

Future considerations

Once the regulations are in force, clarifications may be needed. It is also expected that the definition of Technology Arrangements provided be the Innovative Technology Arrangements and Services Act will extend to other platforms and arrangements, such as those relating to artificial intelligence.

Opportunities

Malta's efforts to consolidate itself as the Blockchain Island has already attracted some of the biggest names in the industry, including Binance, OKEx, Neufund and BitBay. Additionally, its ability to create a framework which strikes a balance between investor protection and market stability on one hand, and the promotion of innovation on the other makes Malta one of the most nurturing environments for service providers in terms of growth opportunities. Investing in a product which has been scrutinised and given a seal of approval from an EU regulatory authority grants investors the peace of mind of knowing their rights shall be adequately safeguarded in an industry where fraudulent projects are prevalent.

Malta's approach to the regulation of this sector is fast becoming the industry benchmark as other countries scramble to follow suit. Malta's DLT laws are expected to reshape the future of the industry, moving it from a nascent, highly risky environment to more of a known quantity, where genuine operators welcome a clear and transparent set of regulations. The laws that are about to become force of law are seen by Malta as simply a starting point, with further regulation and guidelines expected to continue in providing a launch pad for innovative technology.

Australia

REGULATING BODY	The Australian Securities and Investments Commission (ASIC)
DOCUMENT NAME	1. Information sheet (INFO 225) (a guidance on application of the Corporations Act 2001 to ICO and other crypto-currency or digital token businesses) 2. Information sheet (INFO 219) (a guidance on application of the Corporations Act 2001 to ICO and other crypto-currency or digital token businesses)
COMMENCEMENT	1. May 2018 2. March 2017
REGULATING BODY	The Australian Transaction Reports and Analysis Centre (AUSTRAC)
DOCUMENT NAME	Anti-Money Laundering and Counter-Terrorism Financing Act 2006, as amended
COMMENCEMENT	3 April 2018
SUPPORTING ORGANISATIONS AND PROJECTS	ASIC's Innovation Hub
ACTIVITIES COVERED	ICO, crypto-assets, DLT
ECONOMIC FUNCTION OF TOKEN	Financial products (investment scheme, share or derivative)
ICO LICENCE	Required, depending on the ICO's structure
VC TRADING LICENCE	Required, subject to the financial market obligations
ELIGIBLE TO APPLY FOR A LICENCE	According to the applicable regulations
LICENCE FEE	According to the applicable regulations
TAXATION	Capital gain and income taxes

Overview of the regulations

In March 2017 the Australian Securities and Investments Commission (ASIC) issued a guidance note[1] on the legal treatment of any business using distributed ledger technology (DLT) or blockchain. This provides basic information on the application of the existing legal framework to such activities. The document also sets out the basic requirements and obligations for market operators which include having adequate technological resources, risk management arrangements, human resources and sufficient competence.

In October 2017, the regulator issued an additional information sheet[2] for the potential application of the Corporations Act to fundraising using ICO or other crypto-currency and digital tokens. Amended in May 2018, the document clarifies the legal status of ICOs, as well as providing for a regulatory process in particular instances. According to the document, ICOs are mainly regarded as financial products, such as an investment scheme, share or derivative, and therefore may require a licence. For example, when an ICO has[3] the characteristics of an investment, it is likely to be deemed a managed investment scheme. Such use of ICO requires a range of product disclosure and licensing registration obligations under the Corporations Act. Platforms that offer the trading of ICO tokens or other crypto-assets are subject to the existing financial market regulations. Financial market operators in Australia must obtain a licence or otherwise request an exemption by the Minister.

The regulation points out that even if the ICOs or crypto-assets are determined by the issuer as a non-financial product, they may still be regarded as a financial product by ASIC. Therefore, it is suggested to seek professional advice on licence variation and carefully consider the nature of the ICO or crypto-asset prior to launching such businesses. In August 2018, ASIC released their Corporate Plan for 2018-2019 where they announced the launch of a project to promote the use of cryptocurrencies across different industries. They also revealed that they will apply the same principles of financial markets to monitor crypto exchanges.

In March 2018, another regulator, the Australian Transaction Reports and Analysis Centre (AUSTRAC) issued a new regulation[4] for digital currency exchange providers. Under this regulation, it is mandatory for all the digital currency exchange providers operating in Australia to register and enrol with AUSTRAC and comply with the Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) obligations. To date, Australia appears to have licensed three cryptocurrency exchanges.

Registration

The registration process depends on the activities to be undertaken and their classification under the guidelines described above. An entity considering launching an ICO or carrying out crypto-asset related activities must determine which regulations are applicable and proceed with the relevant registration process to obtain the licences needed.

For fintech start-ups, the regulator strongly advises to apply with the Innovation Hub[5] to obtain assistance from ASIC to navigate the regulatory system. This ultimately will help save money and time, as compliance is taken into consideration at an early stage of the business planning. Additionally, within the Innovation Hub, ASIC helps determine potential waivers and reliefs that may be applicable to the business.

With regards to registering and enrolling with AUSTRAC, businesses must complete and submit a business profile form (ABPF) providing comprehensive information about business, service and the industry contribution and other details, along with the required documents.

Taxation

The Australian Taxation Office published a guidance document[6] on the tax treatment of cryptocurrencies. This provides information on tax consequences for transactions dealing with cryptocurrency, the use of cryptocurrency as an investment, personal use assets, and business operations, including paying salary or wages in cryptocurrency.

In order to remove double taxation, from 1st July 2017 the Government waived the goods and services taxes (GST) at a rate of 10% from sales and purchases of cryptocurrencies, granting status of legal tender to digital currencies. According to the guidance note, individuals and businesses may be subject to capital gains tax or income tax depending on the activities undertaken. Income derived from operations with cryptocurrencies is likely to be classified as ordinary income, which allows the company to claim qualifying deductions under the existing taxation rules. In the eyes of the Australian tax authorities, cryptocurrency business includes cryptocurrency trading, cryptocurrency mining and cryptocurrency exchange (including ATMs).

Environment

The ASIC's approach toward developments in the fintech sector is to reap the benefits of the technologies while mitigating any potential risks. The regulator initiated the Innovation Hub to help new businesses developing innovative financial products or services using DLT. Other initiatives include the ASIC Digital Finance Advisory Committee (DFAC) - a membership organisation for fintech market participants to engage with licensing organisations to evaluate potential opportunities of DLT for future regulatory considerations; and testing new fintech products and services to define eligible businesses licensing exemption rules. The ASIC has also signed several international fintech-related memoranda of understanding (MOUs), including agreements with the United Kingdom, Kenya, Singapore and Canada. In April 2018, the Australian Competition and Consumer Commission (ACCC) enabled[7] ASIC to take action against misleading or deceptive conduct related to ICOs (regardless of their structure) and crypto-assets.

Future considerations

The Australian authorities have not announced any plans regarding the development of specific regulations for DLT or cryptocurrency businesses. With the international focus on the growing risk of money laundering and terrorism financing risks, the country has in recent years been focusing more on financial crimes and less on comprehensive regulations. The regulators however appear to see the potential of innovative financial technologies, and tests new services and products within existing legislation in order to further develop relevant legal framework. In August, the Queensland State Government announced that it will grant 8.3 million AUD to a tourism start-up which only accepts payments in cryptocurrency, as a move to boost innovation and tourism in the region.

Opportunities

The fintech environment in Australia is favourable and provides opportunities for both domestic and foreign businesses. However, the legal framework concerning DLT, blockchain and crypto-assets businesses is neither comprehensive nor straightforward. All proposed activities need to be assessed on a case-by-case basis.

The Innovation Hub was developed to assist companies developing innovative products and services to comply with their legal obligations and streamline the licensing process. The strict position of the regulator to misleading or deceptive conduct needs to be considered by market participants, particularly when it comes to promotional communications and information delivered to the potential customers/investors with the aim of promoting consumer trust and confidence.

Estonia

REGULATING BODY	Estonian Financial Supervisory Authority (EFSA) Financial Intelligence Unit
DOCUMENT NAME	The legal framework of initial coin offering in Estonia (supervised by the EFSA)
COMMENCEMENT	March 2018
ACTIVITIES COVERED	ICO
DOCUMENT NAME	Money Laundering and Terrorist Financing Prevention Act (MLTFPA), as amended (supervised by the Financial Intelligence Unit)
COMMENCEMENT	01/01/2018
ACTIVITIES COVERED	Virtual currency services (exchange, wallet service) 1st January 2018
SUPPORTING ORGANISATIONS AND PROJECTS	No
ECONOMIC FUNCTION OF TOKEN	Mainly as securities
ICO LICENCE	Required, if tokens are classified as securities
VC TRADING LICENCE	Required
ELIGIBLE TO APPLY FOR A LICENCE	Not specified
LICENCE FEE	Crypto licence state fee is €345. Licencing of ICOs depends on the token's structure
TAXATION	Income tax (Personal or Corporate)

Overview of the regulations

In March 2018 the Estonian Financial Supervisory Authority (EFSA) issued an updated legal framework[1] regulating the treatment of initial coin offerings (ICO). In the document, the EFSA states that depending on their structure, tokens can be classified as securities according to the definition of the Securities Market Act (SMA) and the Law of Obligations Act (LOA). Particularly, tokens are likely to be regarded as securities when they give certain rights to the investors or when their value is tied to the future profits or success of a business. Therefore, such tokens will be governed by the public offering rules under the SMA and will require the registration of the respective prospectus with the EFSA.

Activities such as facilitating ICOs, including the offering of instruments qualified as securities or secondary trading of such tokens are considered to fall under investment services and can be therefore provided only following proper authorisation by the EFSA.

EFSA notes that a token may still qualify as a security, despite not being referred to as a share or equity when being sold. Therefore, offerors should complete their own analysis on whether a security is involved. False information presented during an ICO may be classified as fraud and is subject to the Penal Code.

The regulator also states that ICOs can qualify under the Credit Institutions Act (CIA) when the main activity of the business is to provide loans financed from ICOs by raising repayable funds from the public.

With regards to cryptocurrency services, there are two instances that are subject to authorisation in Estonia: providing exchange services for virtual currency against a fiat currency; and providing a virtual currency wallet service. The authorisation is granted by the Financial Intelligence Unit under the November 2017 amended Money Laundering and Terrorist Financing Prevention Act[2] (MLTFPA). The Act defines 'virtual currency' as "a value represented in the digital form, which is digitally transferable, preservable or tradable and which natural persons or legal persons accept as a payment instrument", but it is not a legal tender. The Act also defines 'virtual currency wallet service' which refers to "a service in the framework of which keys are generated for customers or customers' encrypted keys are kept, which can be used for the purpose of keeping, storing and transferring virtual currencies".

Registration

If tokens are identified as securities, or when an activity may qualify as that of a credit institution or a bank, offerors must register with the EFSA pursuant to the relevant provisions. When the offering is deemed to be public, a prospectus for the offer must be prepared in accordance with the Prospectus Regulation No. 809/2004/EC of the European Union or a regulation established by the minister responsible for the area, depending on the total consideration value. The level of detail upon preparation of the prospectus depends on the qualification of the offering securities. Start-up companies, that exist for less than three years can be granted some exemptions from the Prospectus Regulation.[3]

The registration time depends on various factors and can take around three to six months. If the issuer does not have any securities admitted to trading on a regulated market or has not previously offered securities to the public, a decision concerning the registration can be made within 20 working days from the submission of the prospectus.

To register as a cryptocurrency service provider under the MLTFPA an application must be filed with the Register of Economic Activities. The authorisation will be provided within 30 working days following the date of submission of the application by the Financial Intelligence Unit if all the requirements are met. The state fee for the authorisation is €345 and no services may be offered prior the granting of authorisation. The MLTFPA provides for exemptions from the obligation to apply for a licence to certain persons that already possess other authorisations, including a person holding or obliged to apply for an authorisation of the EFSA, or a person holding an authorisation of a financial supervision authority of a country of the European Economic Area that allows operating through a branch in Estonia or across borders.

Taxation

The Estonian Income Tax Act did not establish any specific tax rules in regard of ICOs. Thus, companies are subject to corporate income tax (CIT), which is exempted if the profit remains undistributed. The CIT on distributed profit currently stands at 20%. A lower CIT rate of 14% is available from 2018 for companies making regular profit distributions[4].

According to the Estonian Tax and Customs Board[5], income earned in a virtual currency is taxed on similar principles as income received in the traditional currency. For the purpose of taxing income, the purchase and sale price or the proceeds of the virtual currency must be converted into euro at the exchange rate (market price) of the virtual currency at the date of receipt or receipt of the cost. Virtual currency is considered to be an asset within the meaning of § 15 (1) of the Income Tax Act. Income tax is charged on the transfer of virtual currency, including exchange, the benefits received (§ 15 (1) and § 37 (1)) of the Income Tax Act.

If a person receives income from trading, buying, selling or exchanging a virtual currency against another virtual currency or ordinary currency, the income should be declared in Table 6.3 or 8.3 of the income tax return as a transfer from other assets.

Exchange of virtual currency against traditional currency is exempt from VAT, and vice versa, similar to traditional currency swaps. Therefore, dealing with virtual currency, including mining, does not entail VAT or the obligation to register for VAT. Regardless of whether the payment is agreed in a virtual currency or in another currency, the standard rules for charging VAT on goods or services apply.

Environment

Estonia is one of the few jurisdictions that have a clear and straight forward regulation for cryptocurrency services and ICOs. Therefore, businesses can obtain the necessary authorisation while avoiding uncertainties. Additionally, Estonia welcomes innovative start-ups from anywhere to sustain its reputation as the most advanced digital nation. The industry regulators the Financial Supervision Authority and Financial Intelligence Unit, are open for direct interaction with businesses on a regular basis and provide assistance throughout the application process.

Future considerations

Estonian regulators did not announce any plans on further development of the legal framework on blockchain technologies. However, the EFSA stated that it reserves the right to change the legal framework and interpretations, as the technology, as well as its treatment (including on the EU level) is continuously evolving.

Opportunities

Estonia is regarded as a beneficial jurisdiction for tech companies and start-ups offering an affordable and simple company incorporation process, favourable taxation and a unique opportunity to establish a company online and manage it remotely. Estonia is open to both local and foreign entrepreneurs and, ensures easy and direct interaction with the regulators.

The current regulations on ICOs and cryptocurrency service are straight-forward, making it beneficial for incorporating such businesses in Estonia. It is still however important to consider the legal and compliance obligations. Additionally, cryptocurrency businesses may find difficulties with opening a bank account in Estonia[6], especially for those incorporated through E-Residency and are operated abroad.

Gibraltar

REGULATING BODY	Gibraltar Financial Services Commission HM Government of Gibraltar
DOCUMENT NAME	Financial services (distributed ledger technology providers) regulations 2017
COMMENCEMENT	1st January 2018
SUPPORTING ORGANISATIONS AND PROJECTS	No
ACTIVITIES COVERED	DLT as Financial Services (trading and exchange)
ECONOMIC FUNCTION OF TOKEN	Assets, holdings, or other forms of ownership, rights or interests
ICO LICENCE	Required
VC TRADING LICENCE	Required
ELIGIBLE TO APPLY FOR A LICENCE	Not specified, to be determined at the initial assessment stage
LICENCE FEE	Between £10,000 and £30,000
TAXATION	Corporate taxes

Overview of the regulations

In October 2017, Gibraltar's Financial Services Commission ("GFSC") published a draft regulatory framework[1] on cryptocurrencies and businesses offering blockchain services, which came into force on the 1st January 2018. The legislation called Financial Services (Distributed Ledger Technology Providers) Regulations 2017 is a subsidiary legislation made under the Financial Services (Investment and Fiduciary Services) Act. The regulations provide for the commercial use of Distributed Ledger Technology ("DLT") as means to store data or to transmit value. Value is defined as "assets, holdings, or other forms of ownership, rights or interests", while a DLT Provider is described as "a person licensed to carry on the controlled activity of providing distributed ledger technology services". Thus, any DLT provider, including those dealing in crypto exchanges, must obtain a financial services licence "to carry on the controlled activity of providing distributed ledger technology service".

The regulator took a "light touch" approach, which comprised of being more outcome-focused and based around a set of regulatory principles. Summing up, the law promotes:

1. Sound values of honesty, integrity, fairness and clarity to promote investor interest;
2. The maintenance of adequate financial and non-financial resources and sound risk management practices;
3. The protection of the clients' assets and corporate governance arrangements;
4. The setting up of secure systems and protocols;
5. The effective prevention of financial crime risks and contingency plans for the winding down of business.

While there are no detailed regulation requirements to the potential applicants, the document prescribes the application process, as well as the licence fee structure. Applications are to be assessed of on a case-by-case basis depending on the nature and complexity of the proposed business model.

Registration

The authorities have taken a risk-based approach to all aspects of the authorisation process, which consists of three steps – Application Assessment, Full Application, and Presentation. Throughout the process, applicants are expected to provide sufficient evidence that the proposed business model will meet the regulatory expected outcomes and principles, along with the background information of the key individuals driving the business, business plan and financial projections. According to the guidelines for the DLT Application Process[2], the process from the initial assessment to licensing takes around three months.

Applicants are advised to engage early with the local professional advisors at the GFSC prior to submitting an application for assessment in order to seek appropriate guidance. The fee structure is based on the complexity, size and risk of the business carried by the DLT Provider which varies between £10,000 and £30,000. Further guidelines are expected to expand on the registration process of token offerings and secondary market platforms as provided by the proposals published in March 2018.

Taxation

There is no differentiated tax treatment for DLT providers in Gibraltar. Firms licenced as DLT providers are subject to a flat 10% corporate income tax on operating profit. Businesses set up in this jurisdiction are therefore likely to be deemed to operate in a low-tax regime and may fall foul of internationally coordinated moves to reduce aggressive tax-planning structures. In some cases, qualified start-ups are able to claim certain capital allocations in the first year of operation. Tax credits may also be available for social security contributions for certain start-ups.

Environment

Whilst Gibraltar is well-known for facilitating innovation and supporting high-tech businesses, the value-based approach to DLT regulation is rather protective. In September 2017, the GFSC issued an official statement, highlighting the "highly risky and speculative" nature of some ICOs. The GFSC's licensing regime is meant to mitigate the risks of fraud and financial crime connected to virtual currency operations through licencing of organisers of such DLT systems. in December 2017 the principle-based regulation was published as a first step towards development of the fully regulated DLT ecosystem. Taking into consideration diversity of functional uses of DLT, the Government stated its aim to further develop regulatory frameworks for various types of tokens, particularly the use of tokens as a means of raising finance.

Future considerations

In February 2018, HM Government of Gibraltar announced its plans to extend the scope of regulated activities to token-based crowd financing. According to the Proposals for the regulation[3] published in March 2018 the new legislation will cover "the promotion, sale and distribution of tokens", "operating secondary market platforms trading in tokens", and "providing investment and ancillary services relating to tokens". The legislation will not regulate blockchain technology itself nor tokens, smart contracts or their functioning, individual public token offerings, or persons involved in the promotion, sale and distribution of tokens. The main purpose of the laws will be to regulate offerings of non-security tokens since security token offerings are already regulated under securities law. Moreover, decentralized virtual currencies such as Bitcoin will fall outside of the scope of law. The regulations are expected to be compliant with MiFID II and MiFiR. The three limbs of the proposed regulations are expected to be completed by the end of 2018.

One risk of setting up business in Gibraltar is the uncertainty over the country's future relations with the EU in light of Brexit negotiations – specifically if the country were to seek EU membership in its own right significant changes to its regulatory framework would be necessary. Another risk is the underlying political tension with its much larger neighbour Spain, that considers Gibraltar a tax haven.

Opportunities

Presently, all FinTech and other firms based in Gibraltar wishing to use DLT on a commercial basis can do so in accordance with licenses that allow the storage or transmitting of value using DLT, which is generally understood as cryptocurrency trading and exchange platforms. Applicants are required to meet the nine regulatory principles designed to protect consumers' rights and interests and to pass through the assessment process which should take around three months. Regulations proposed in March 2018[4], dealing with token sales and investment services, shall benefit start-ups, as well as small and medium-sized enterprises wishing to raise funds using ICOs.

Japan

REGULATING BODY	Financial Services Agency (FSA)
DOCUMENT NAME	Payment Services Act (or “VC act” as amended)
COMMENCEMENT	1st April 2017
SUPPORTING ORGANISATIONS AND PROJECTS	Japan Virtual Currency Exchange Industry Association and Japan Blockchain Association (JBA)
ACTIVITIES COVERED	Virtual Currency Exchange Services
ECONOMIC FUNCTION OF TOKEN	Assets, financial value, a form of payment method, but not a legally-recognized currency
ICO LICENCE	Not regulated
VC TRADING LICENCE	Required
ELIGIBLE TO APPLY FOR A LICENCE	Stock company/ branch, office or liaison office of a Foreign company
LICENCE FEE	150,000 yen
TAXATION	Capital gain taxes are considered miscellaneous income

Overview of the regulations

Following the harmful consequences of the collapse of Mt Gox in 2014[1] the Japanese Government decided to develop a Virtual Currency (VC) business regulatory framework in order to protect consumers. The Japanese Virtual Currency Act[2] (“The Act”) which came into effect on the 1st April 2017 was one of the first VC regulations in the world. It was a significant step towards legal development in the application of blockchain to the financial service.

The Act provides a definition of “virtual currency” and “virtual currency exchange services” and sets a registration requirement for virtual currency exchange service operators. Virtual currency is defined as a property value which can be transferred by means of an electronic data processing system, but not a domestic or foreign currency or any asset denominated in any currency. The Act distinguishes between Type I and Type II virtual currencies (VC). A Type I VC is can be used to purchase or lease goods or pay for services and can be purchased from and sold to unspecified persons. Examples of the Type I virtual currency include Bitcoin, Litecoin and other major VCs. Type II VCs also have a financial value and can be mutually exchanged with Type I VCs but cannot be used as a payment method. Type II VCs include Counterparty coin (the so-called “XCP”) or tokens.[3]

Activities regulated by the said Act are the sale, purchase and exchange of VC; a VC related intermediary, brokerage or agency service; management of fiat currency or VC on behalf of the users/recipient. A person (or a company) wishing to carry out the activities described above has to register with the Financial Services Agency. This rule also applies to foreign VC exchanges conducting business with residents of Japan.

The regulation does not provide specific requirements for ICOs, unless tokens can be identified as Type I or Type II VCs. However, in November 2017 the Japan Blockchain Association issued a Guidance for ICO Token Sales[4] where it clarified that no token sales to Japanese residents may be undertaken without first being properly authorised. The document states that other local legislations such as security and collective investment scheme regulations, civil law, commercial transaction law, consumer protection law, and criminal law may apply in case of contravention of this requirement. The Government is working to further develop the relevant legislation and has established a research group at Tama University which in April 2018 released a list of proposals for the regulation and full legalisation of initial coin offerings (ICO)[5].

With regards to the accounting of Virtual Currencies, the Accounting Standards Board of Japan (ASBJ) issued a Practical Solution on the Accounting for Virtual Currencies[6] on March 2018. Since Virtual Currencies are not considered as fiat currencies by The Act, there is no existing asset category that would be appropriate for virtual currencies. As such, the ASBJ decided to prescribe an independent category of assets for accounting purposes of Virtual Currencies. ASBJ also concluded that "virtual currencies with an active market should be measured at their market price with any changes in that price being recognised in profit or loss, and those without an active market should be measured at cost".

Registration

The main requirements to register as an operator under the Act are:

- to be a stock company or a foreign virtual currency exchange service provider with established presence in Japan (can be a branch, office or liaison office) and registered under Payment Services Act (PSA), and
- to have a minimum of 10 million Japanese Yen as capital, and
- to have systems for appropriate and secure operation and legal compliance, necessary to operate a virtual currency exchange service.

Foreign operators must either provide a foreign VC licence and register with the Japanese Financial Services Agency (FCA) or set up a stock company in Japan and apply for a licence with FSA meeting the requirements stated above.[7] The registration requirements for foreign operators include an obligation to have a physical office in Japan and a local representative who resides in Japan. They are also advised to involve Japanese-speaking attorneys experienced in the relevant Japanese laws for smooth discussion.

The registration process generally consists of two stages. The first stage is the consultation with the FSA where the applicant submits a draft registration application for pre-screening and to identify any omissions. The application must include an overview of the applicant, background and purpose of application, contents and method of business, and business operation systems. The law requires all documentation to be prepared in Japanese, providing an official translation if the documentation is initially created in a foreign language. After the consultation stage, the FSA examines the application received.

The timescale of the consultation stage varies depending on the complexity of the application and type of virtual currency, but normally should take three to four mouths. The second stage – the actual application for registration, typically takes one to two months. The fee for the registration is set 150,000 yen[8].

Taxation

From 2017, capital gains from virtual currencies transactions are considered as a form of "miscellaneous income" by Japan's National Tax Agency. The VC investors are now required to declare any profit made and are subject to pay between fifteen to fifty-five percent (15% to 55%) as capital gains tax.[9]

Environment

The Japanese Government recognise the potential of cryptocurrency and ICOs and is considered as a crypto friendly nation. However, understanding the potential risks of price volatility and fraud, in October 2017, the Financial Services Agency issued a warning statement[10] for the VC investors. The statement clarifies that depending on the type and structure of ICO it may fall within the scope of the Payment Services Act or the Financial Instruments and Exchange Act; and if it does, failure to register with the relevant regulator will be subject to criminal penalties. In January 2018 one of the registered operators CoinCheck was hacked, resulting in the loss over $530 million worth of tokens[11]. Following that case, seven out of sixteen registered VC exchange operators received sanctioning notices from the FSA. As a result, the Japanese Government and Regulator is now seeking to restore a damaged reputation and trust in the virtual currency industry.

To this effect in April 2018 the Government established a self-regulatory industry association, consisting of the sixteen (16) approved crypto operators aiming to achieve consumer protection and transparency in the industry. The official name is Nihon Kasotsuka Kokangyo Kyokai (Japan Cryptocurrency Exchange Association) and its aim is to establish standards and expectations for crypto exchanges in Japan which have not complied with the registration requirements.

Future considerations

Following the discussion from November 2017 to March 2018, the government-backed ICO Business Research Group has issued a proposal on rule-making concerning a safe use of ICOs for financing activities. The report proposes principles on issuance of tokens, guidelines on requirements related to practical operations, as well as trading principles.[12] The paper also emphasises the necessity of developing specific accounting and taxation standards to reduce uncertainties related to crypto currency operations.

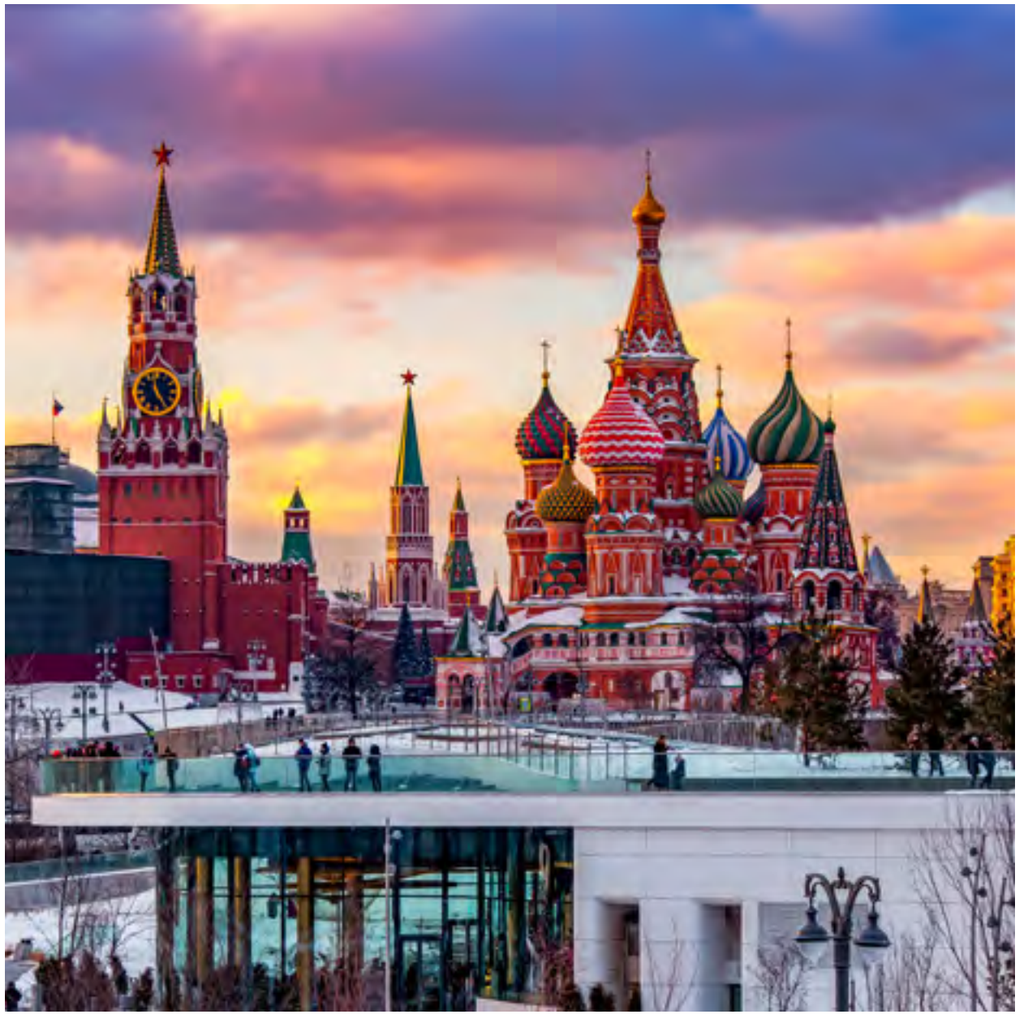
In July 2018, the FSA announced its plan to regulate crypto exchanges by the Financial Instruments and Exchange Act (FIEA) instead of its current rules under the Payment Services Act.[13] This will provide stronger customer protection, as cryptocurrencies will be treated as a financial product.

Opportunities

The actions taken by the Japanese authorities show the readiness for the rapid progress of technical innovations of financial technologies and particularly the virtual currency industry. The establishment of a self-regulating organisation should provide enhanced levels of trust and confidence to consumers which in turn is expected to result in a growing market of Japanese operators.[14] Japan is clearly a leading jurisdiction to consider for operators in this sphere wishing to tackle the market in this part of the world. Operators benefit from a known license application process and defined treatment of the resulting revenue. Investors meanwhile may take some comfort in knowing that any crypto exchanges established in Japan are subject to – at least for this industry – relatively high levels of regulatory scrutiny.

Russia

REGULATING BODY	The Ministry of Finance of the Russian Federation The Central Bank of the Russian Federation
DOCUMENT NAME	Federal law On Digital Financial Assets (the Bill)
COMMENCEMENT	Expected in fall 2018
SUPPORTING ORGANISATIONS AND PROJECTS	Russian association of cryptocurrency and blockchain (RACIB)
ACTIVITIES COVERED	Cryptocurrency Exchange Services
ECONOMIC FUNCTION OF TOKEN	Digital financial asset (property) not a legally mean of payment
ICO LICENCE	Not regulated
VC TRADING LICENCE	Required
ELIGIBLE TO APPLY FOR A LICENCE	Legal entities incorporated in Russia under either the Federal Law "On Organized Trading" or the Federal Law "On Securities Market"
LICENCE FEE	Not provided
TAXATION	Not provided



Overview of the regulations

At the end of December 2017, the Russian authorities introduced a draft law on “On Digital Financial Assets” that aims to regulate cryptocurrency operations including ICOs and crypto exchanges. The bill[1] was introduced in January 2018 and was submitted to the Russian State Duma’s Committee for Legislative Work (the Duma) in March 2018. In May 2018 the Duma supported the first reading, with the second and third reading scheduled for the fall session[2].

The document introduces the definition of crypto currency, tokens, smart contracts, and digital wallets. The bill establishes the procedure for performing transactions based on Know-Your-Customer (KYC) principle. Tokens and cryptocurrencies are defined as digital financial assets, or property, but not a legitimate means of payment within the Russian Federation.

According to the bill, transactions of crypto currencies can only be made through authorised cryptocurrency exchange operators, which should be a legal entity. In order to protect investors, the bill provides the Central Bank of Russia with the right to restrict the number of tokens to be purchased by individuals.

A very recent revision to the draft bill brings about less clarity, whereas both operators and investors in crypto would have welcomed the opposite[3].

Registration

Crypto exchanges must be established as legal entities incorporated in accordance with the Russian law system, and are required to be registered under the Articles 3 to 5 of Federal Law No. 39-FZ of April 22, 1996 ‘On the Securities Market’ or the Federal Law of November 21, 2011 No. 325-FZ ‘On Organized Trading’.

Taxation

The discussion about taxation of operations using crypto-currencies in Russia are still hypothetical, since crypto-currencies are not adapted to the existing legislative environment. If no particular tax measures for businesses dealing with crypto and blockchain are implemented, they will be subject to the corporate income tax and other taxes according to the Russian Tax Code (RTC).

Environment

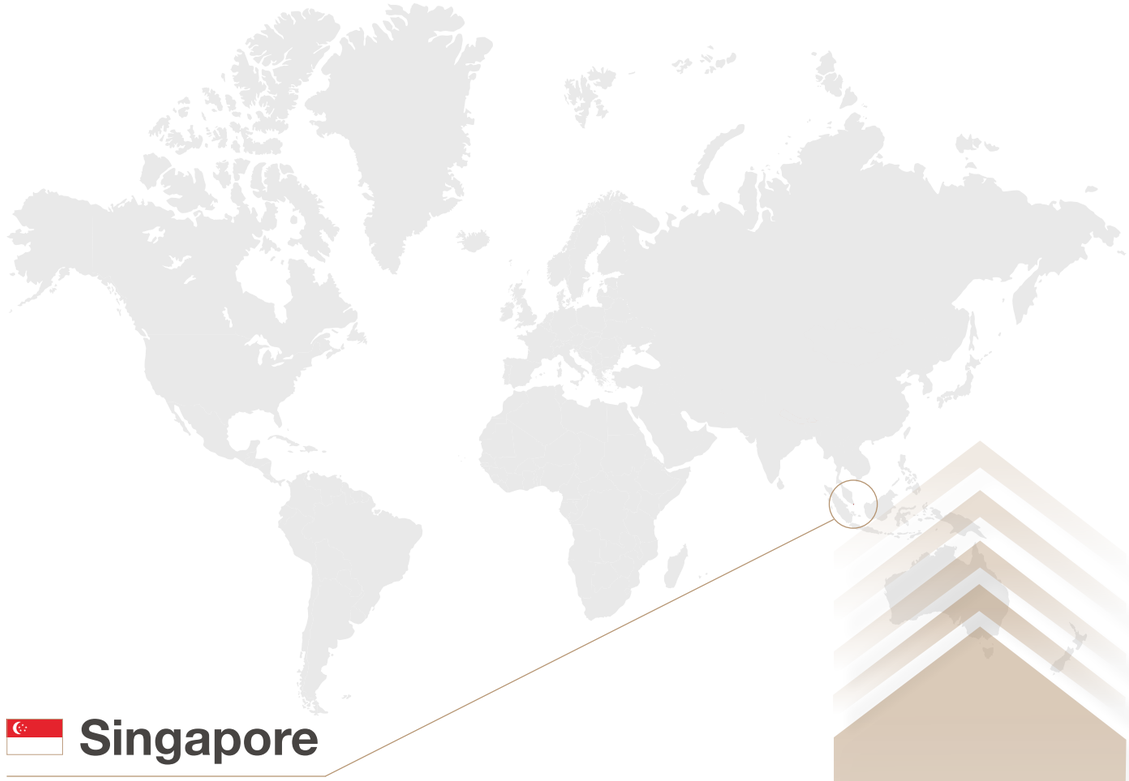
Initially, Russia took a restrictive position to crypto-currencies because of the potential risk of money laundering and financing of terrorism. In 2016, the Ministry of Finance proposed to impose a criminal charge for the issuance of crypto-currencies. However, amidst the growing popularity of cryptocurrencies worldwide and acknowledgement that lack of legislation would increase the risk of financial crime, the Russian authorities have changed tactic and decided to permit trading of cryptocurrencies, taking on a more positive, albeit careful, stance[4]. The regulators have clearly adopted a protective rather than supporting approach for legislation of crypto businesses. In line with most of the other jurisdictions approaching regulation of DLT, Russian regulators are concentrating on the financial application of the technology.

Future considerations

The proposed bill does not provide a comprehensive legal framework for the cryptosphere but rather creates the basic conditions for further regulation. The bill regulating crowdfunding was also submitted to the Duma in March and is waiting for approval. The document prescribes the definition of crowdfunding as a service that gives investors access to an online investment platform where they can conduct financial transactions. Such platform will also allow the initial placement of tokens of various crypto-currencies (ICO). In the meantime, the Ministry of Digital Development, Communications and Mass Media of the Russian Federation proposed a regulation on the accreditation of ICO issuers in April 2018, which has not received support from other regulators[5].

Opportunities

The approach taken by the Russian lawmakers will allow the conduct of cryptocurrency activities by individuals and companies wishing to be registered as operators. It is not clear yet whether the proposed regulatory framework will attract foreign operators, but residents who meet the set requirements will be able to conduct business, raise finance and trade freely in Russia, with the exception of using cryptocurrencies as a means of payment.



Singapore

REGULATING BODY	The Monetary Authority of Singapore (MAS)
DOCUMENT NAME	A Guide to Digital Token Offerings
COMMENCEMENT	November 2017
SUPPORTING ORGANISATIONS AND PROJECTS	The FinTech regulatory sandbox
ACTIVITIES COVERED	Offers or issues of digital tokens
ECONOMIC FUNCTION OF TOKEN	Capital markets products
ICO LICENCE	Required, with exemptions
VC TRADING LICENCE	Not regulated
ELIGIBLE TO APPLY FOR A LICENCE	According to the applicable regulations
LICENCE FEE	According to the applicable regulations
TAXATION	Income tax

Overview of the regulations

A guide issued by the Monetary Authority of Singapore (MAS) in November 2017[1] addresses the issuance of digital tokens and provides general guidance on the application of the existing securities laws to such activities.

The MAS regulates digital tokens offering if they are considered to be capital market products. This includes “any securities, futures contracts and contracts or arrangements for purposes of leveraged foreign exchange trading”. The MAS examines the offer of tokens on a case-by-case basis. If the offer is deemed to be a regulated activity under the Securities and Futures Act (SFA), then the operator must register with the MAS.

The guide also provides the requirements for intermediaries involved in the offering or issuance of digital token operations. Thus, when operating a platform in Singapore through which digital tokens are offered or issued, the issuer is required to obtain a capital market license under the SFA, unless otherwise exempted[2]. An authorised person holding a financial advisor’s licence under the Financial Advisers Act (FAA) may offer any financial advice in respect of digital tokens that are considered to be an investment product. Establishing and operating a trading platform open to digital tokens which are securities or futures contracts are deemed to be operating a financial market and therefore require proper approval from the MAS.

The MAS also stresses that relevant provisions on Prevention of Money Laundering and Countering the Financing of Terrorism (PMLCFT) may apply to digital tokens even if the tokens do not fall under the MAS regulatory scope. Thus, the MAS announced its intention to further develop regulations covering payments services with digital currency that would include money laundering and terrorism financing risks prevention rules.[3]

In addition, the document provides several case studies that illustrate different applications of the regulatory framework, which may be used as a registration guide for firms conducting similar activities. The regulator however recommends seeking professional legal assistance prior to applying for registration to ensure compliance with all relevant laws.

Registration

Companies wishing to establish offerings for digital tokens or other innovative financial services have two registration options. A company can conduct its own research and determine what licence is required (if any) and then apply with the MAS. This option however is not advisable for innovative financial services because of potential uncertainty during application and longer processing time due to potential risks with the complexity of the technology. Such firms are encouraged to apply for the regulatory sandbox[4], where the MAS will provide regulatory support by relaxing specific legal and regulatory requirements. Upon application to the sandbox, the firm needs to provide supporting information proving that the business is truly innovative and unique, and it meets the objectives and principles of the sandbox.

In both cases, the company is expected to be au fait with legal and regulatory requirements for the proposed services and must conduct proper due diligence, which includes testing the proposed financial service in a laboratory environment prior to submitting an application.

Taxation

The Inland Revenue Authority of Singapore ('IRAS') has not clearly defined the tax treatment of tokens and cryptocurrencies. In May 2017 IRAS stated[5] that businesses using virtual currencies for their remuneration or revenue are subject to normal income tax rules on the income sourced in Singapore at the prevailing rate of 17%. Virtual currency trading businesses are taxed on the profit derived from the trading, while gain from a long-term investment in crypto currency is not taxable, as there is no capital gains tax in Singapore. Sale of virtual currency is treated as a supply of services in Singapore and therefore in most cases is subject to goods and services tax (GST) at a rate of 7%, unless the supplier (or buyer) resides or is established outside Singapore[6]. The authority however suggests assessing the applicable tax rules on a case-by-case basis.

Environment

Singapore's regulators encourage the adoption of innovative technology in the financial sector since they are looking to convert the country into a smart financial centre. Singapore's stock exchange is teaming up with the MAS itself to introduce blockchain-focused smart contracts as a mechanism to settle transactions. Aimed at improving operational efficiency and decreasing settlement risks, the partnership will allow the "simultaneous exchange and final settlement of tokenized digital currencies and security assets" on the Ethereum network.[7] The proposed regulatory framework and the established sandbox are designed to provide an environment in which innovative businesses may develop. The existing regulatory framework however, allows for the unlicensed provision of services involved in blockchain technology if the activities do not fall under the MAS regulatory scope. Such flexibility, however, increased the risk of illegal activities. In May 2018, the MAS warned 8 (eight) digital token exchanges not to conduct trading of digital tokens that are securities or futures contracts without authorisation. The regulator also uncovered a case of illegal offerings of digital tokens to Singapore based investors. The ICO issuer had to cease the offer, return all the funds to the investors and immediately proceed with MAS registration.[8] The MAS has stated that it does not plan to further restrict operators but will take immediate action in the case of those entities which are violating the current prescribed laws.

Future considerations

Currently, neither cryptocurrencies nor use of tokens, other than as described above, are regulated in Singapore. Singapore does not consider cryptocurrencies as legal tender[9] and has issued a number of warnings in December 2017, against investments in cryptocurrencies[10]. The authorities however do not plan to ban cryptocurrencies[11]. Moreover, the MAS is currently working on revising the current recognised market operators (RMOs) regime in order to facilitate blockchain-based decentralised exchanges[12].

Opportunities

Singapore is one of the leading world's technological and financial centres. The environment in Singapore is favourable for start-ups intending to implement and offer innovative financial services in a cost effective and timely manner, while receiving support from the authorities. This may benefit both local and international companies wishing to operate in the region.

Switzerland

REGULATING BODY	Swiss Financial Market Supervisory Authority (FINMA)
DOCUMENT NAME	1. FINMA Guidance Regulatory treatment of initial coin offerings 2. Guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs)
COMMENCEMENT	1. April 2018 2. February 2018
SUPPORTING ORGANISATIONS AND PROJECTS	Crypto Valley Association
ACTIVITIES COVERED	ICO/tokens sales
ECONOMIC FUNCTION OF TOKEN	Assets/utility/payment instrument
ICO LICENCE	Required, only for trading tokens classified as securities
VC TRADING LICENCE	Not required
ELIGIBLE TO APPLY FOR A LICENCE	N/A
LICENCE FEE	N/A
TAXATION	No specific rules

Overview of the regulations

Presently Swiss law and regulation does not provide for a specific set of rules on blockchain and cryptocurrency related activities. In September 2017, FINMA, the Swiss Financial Market Supervisory Authority, published guidance on the regulatory treatment of Initial Coin Offerings ("ICOs"). FINMA stated that it will analyse each offering on a case-by-case basis due to the novelty of the industry, and will carry an assessment of ICOs only within the area of existing financial market legislation. In February 2018, FINMA issued complimentary guidance[1], where it clarified the principles on which ICOs will be assessed and treated by the supervisory and regulatory framework.

According to the guidance issued by FINMA, tokens can be classified as:

- Payment;
- Asset,
- Utility; and
- Hybrid tokens.

Each token will experience a unique treatment and will be subject to different regulations.

According to FINMA, payment tokens (synonymous with cryptocurrencies) will not be treated as securities; nevertheless, they are subject to the Anti-Money Laundering Act ("AML laws & regulations"). Asset tokens will be subject to both securities regulations as well AML laws & regulations.

Utility tokens will not be treated as securities either given that they do not serve an investment purpose and are exempt from the Anti-Money Laundering Act, provided that they only provide access rights to a non-financial application of blockchain technology.

Hybrid tokens represent asset or utility tokens that are also classified as payment tokens. These tokens can qualify both as a security and a means of payment and can fall under the relevant regulations governing these activities.

Data Protection is also a prominent factor in Switzerland. Storing of personal or legal entity data in Switzerland is subject to the Swiss Data Protection Act which requires the operator to comply with certain conditions as required in the Swiss Data Protection Act. Legal advice is strongly recommended in this regard.

Registration

There are currently no specific registration requirements for ICOs and crypto businesses in Switzerland. Domestic and foreign market participants may establish a corporate entity under existing corporate regulations and comply with relevant laws (e.g. Anti-Money Laundering or Securities laws). Prior to starting a business involving token issuance, the issuer is required to apply with the FINMA for assessment of the business activities in order that the regulator may ascertain which regulations the company (or project) must comply with.

Taxation

The Swiss tax authorities have not issued any specific regulations or guidelines in respect of tax with regards to ICO or cryptocurrency business for the moment. In 2015 the Swiss Federal Tax Administration (SFTA) responded to a formal request of some Swiss bitcoin organizations and stated that trading in Bitcoin is not subject to VAT, as it is neither a delivery, nor a service, but rather a means of payment; so, it would be treated the same way as a fiat currency.

Cryptocurrency investors are subject to net wealth tax based on the exchange rate published by the SFTA. Taxes on ICO for legal entities may apply depending on the nature of the tokens issued (e.g. stamp duties or withholding taxes for crowdfunding). Reward-based crowdfunding using ICO could be subject to VAT if seen as a provision of a service. With regards to the Swiss corporate tax system, income tax rates vary between 8 and 24%, depending on business activity and location (canton).[2] However, due to lack of specific tax regulations, no specific statements regarding tax treatment of ICOs can be made. Thus, the potential tax implications for a specific project should be discussed and assessed with the relevant authorities for each separate case.[3]

Environment

Switzerland is a well-known hub for Fintech and crypto businesses. Numerous virtual currency firms, including Ethereum, established themselves in Zug, also known as Crypto Valley. So-called government backed associations have attracted more than two hundred (200) blockchain companies to the heart of the crypto expansion. Zug has allowed payment with bitcoin for municipality services since 2016. Furthermore, another Swiss town Chiasso, branded as CryptoPolis, announced that from 2018 it will start accepting tax payments in Bitcoin. The city, competing with Zug, also promotes mass adoption of innovations, financial technologies, and blockchain start-ups.

The Directorate General for Economic Development, Research and Innovation of the State of Geneva has issued a guidance[4] on ICOs in the Canton of Geneva which provides practical information concerning regulatory and tax aspects. The canton has already initiated several projects using blockchain technology.[5]

While the financial ecosystem in Switzerland is very tolerant to crypto technologies, the country's banks are not enthusiastic about the expansion of virtual currencies. The authorities have also refrained from taking any significant steps to fully embrace cryptocurrency, and instead turned to boosting blockchain technology, promoting the country as "Blockchain Nation" Instead of famous "Crypto Nation" terms used previously.

Future considerations

Presently, the Swiss authorities have not announced any plans on the further development of the regulatory framework. Switzerland's Federal Department of Finance (FDF) has established a working group that will evaluate the legal framework for financial use of the blockchain technology focusing on ICOs to identify and implement any course of action as needed. The group consisting of the Secretary of the State Secretariat for International Financial Matters (SIF), Jörg Gasser (chair), the Director of the Federal Office of Justice (FOJ), Martin Dumermuth, and the Director of FINMA, Mark Branson, will report to the Federal Council by the end of 2018.[6]

According to the guide of the Canton of Geneva, the Swiss authorities are planning a corporate tax reform that would be also beneficial for businesses engaged in ICO and cryptocurrency related activities.

Opportunities

Switzerland has a friendly Fintech and crypto ecosystem which is beneficial for firms conducting such activities. Setting up a business in Switzerland is relatively simple. Propelled by the attractive corporate tax system, different Swiss cantons have become a popular destination for many FinTech businesses, including those engaged in crypto markets and ICO. They still however need to comply with relevant regulations and obtain the necessary licences or registrations depending on the classification of the business activities to be undertaken.

Thailand

REGULATING BODY	Securities and Exchange Commission (SEC)
DOCUMENT NAME	Royal Decree on Digital Asset Business B.E. 2561 (2018) (the “Digital Assets Decree”) Revenue Code (as amended)
COMMENCEMENT	July 2018
SUPPORTING ORGANISATIONS AND PROJECTS	Thai Fintech Association
ACTIVITIES COVERED	Cryptocurrency, Public Offering of Digital Tokens, ICO Portals, Digital Asset Businesses
ECONOMIC FUNCTION OF TOKEN	Digital asset
ICO LICENCE	Yes
VC TRADING LICENCE	Yes
ELIGIBLE TO APPLY FOR A LICENCE	A private or public company incorporated in Thailand
LICENCE FEE	Cryptocurrency distribution and operations: 5 million baht (2.5m for each) + annual fee 0.002% of trading volume (min. 500,000 and max. 20 million baht); Brokerage firms: 2.5 million baht; Digital asset dealers: 2 million baht.
TAXATION	VAT + withholding tax + CIT

Overview of the regulations

The Royal Decree on Digital Asset Business B.E. 2561 (2018) (the “Digital Assets Decree”) published on 14th May 2018, defines cryptocurrencies and digital tokens as “Digital Assets” and regulates the trading and offering of cryptocurrencies and digital tokens. The Decree regulates operations of exchanges and intermediaries for Digital Assets businesses, namely
(a) Digital Asset Trading Centre;
(b) Digital Asset Broker;
(c) Digital Asset Trader; and
(d) any other business operations which may be prescribed by the Finance Minister[1].

This regulatory framework for cryptocurrencies and ICOs went into effect on July 16, 2018.[2]

Offerors of investment and utility tokens must be companies incorporated in Thailand and approved or exempted from the approval requirements by the Securities and Exchange Commission of Thailand (“SEC”)- the supervising body for Digital Assets businesses. The new law also sets limitations to retail investors in the offering of digital tokens. For example, retail investors can subscribe up to a maximum of 300,000 baht per investor per project or no more than 70% of the public offering project, whereas there is no offering limit to institutional investors or ultra-high-net-worth investors.

According to the law, public offering of digital tokens can only be undertaken after approval from the SEC “ICO portals” – system providers for digital token offerings. The role of ICO portals include conducting due diligence on the promoters of the digital token offering, ensuring compliance of the offeror with the SEC requirements and consistency with the information provided in the registration statement. The ICO Portals also need to monitor investors and investment limit as applicable, conducting KYC tests, and notifying the SEC should unfair or illegal practices be suspected.

The law also provides rules to the Digital Assets market participants for “Prevention of Unfair Trading Practices”. The restrictions largely concern the use or distribution of false information that affects trading prices and any market manipulation activities.

All market participants involved in digital assets activities must register their business in Thailand with SEC. A transition period to register market participants conducting business in Thailand at the time the law was issued came to a close on the 14th August 2018. This included ICO issuers, cryptocurrency traders, dealers and brokers. Apart from registering with the SEC, Digital Asset business providers are required to obtain a permit from the Ministry of Finance. The minimum fine for undertaking unauthorised activities related to Digital Assets is set at 500,000 baht. Offenders also could be sentenced for up to two years[3].

Registration

The registration process and requirements for digital tokens issuers are similar to those applied to an offeror of securities under Thai regulations. According to the guidance on the regulation issued by the SEC[4], an issuer has to be a private or a public company incorporated in Thailand in order to apply for authorisation with the SEC. Upon application, every issuer must provide clear information about the type of tokens to be issued and investment information. The SEC started accepting applications for crypto licences on July 24, 2018. When filing for a business licence, the documents will be forwarded to the Finance Ministry within 90 days, which will then make a decision within 60 days.[5]

With regards to ICO portals, they must be also a company incorporated in Thailand and have a minimum paid up capital of 5 million baht. The required registered capital for other digital assets business providers is set at:

- 50 million baht for centralised digital exchanges;
- 25 million baht for brokers;
- 10 million baht for decentralised exchange;
- 5 million baht for decentralised broker;
- 1 million baht for broker for brokers solely involved with sending trading orders;
- 5 million for dealers.

Taxation

According to the May 2018 amendment to the Revenue Code, digital assets business providers are taxed on profits derived from holding Digital Tokens and gains arising from a transfer of cryptocurrency or Digital Tokens[6]. The amended Code sets a 15% withholding tax for individuals who make gains by investing in digital assets. For corporate entities, the withholding tax on capital gains is to be set at the same rate (15%) by ministerial regulations issued by the Ministry of Finance. Companies, however are also liable for a corporate income tax (CIT) at 20%, which unless rectified may potentially result in up to 35% tax for digital assets business providers.[7]

The Revenue Department announced that it would waive value added tax (VAT) for individual investors, while corporate entities are still liable for a 7% VAT payment of the digital asset transaction value, on top of the withholding tax and corporate income.[8]

Environment

Proposing the decree in May 2018, Thailand completely reversed its position towards crypto businesses as this had until then been entirely prohibited. The regulation is comprehensive and beneficial for law-abiding market participants. The SEC is currently allowing seven cryptocurrencies to be used for initial cash offerings, and to be traded as trading pairs[9]. These fully legal cryptocurrencies include Bitcoin (BTC), Ethereum classic (ETC), Ethereum (ETH), Litecoin (LTC), Bitcoin cash (BCH), Ripple (XRP), and Stellar (XLM).[10] According to Bangkok Post, The SEC expects 50 ICO projects to raise funds in Thailand following the passing into force of law of the digital asset decree.

Thailand has definitely embraced the industry swiftly and effectively through a decisive strategy. The Bank of Thailand has announced the development and issue of its own Central Bank Digital Currency (CBDC) through the use of DLT-known as Project Ithanon, he first phase of which is scheduled to be completed by the first quarter of 2019.[11]

Future considerations

The SEC is to develop secondary regulations under the Digital Assets Decree[12]. The Bank of Thailand intends to regulate further distributed financial services in order to reduce potential threats from financial crime and other issues associated with the crypto industry[13].

Opportunities

Apart from the minimal hurdle of setting up a local company, the Digital Assets Decree and the pro-crypto government stance is sure to attract overseas interest in this jurisdiction as an option for conducting such businesses, known for its significant number of high-net-worth investors.

USA

REGULATING BODY	Securities Exchange Commission (SEC) Securities Regulators at state level
DOCUMENT NAME	1. Securities Act of 1933 2. Securities Exchange Act 3. Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 4. The DAO. Release No. 81207 5. Commodity Exchange Act (1936)
COMMENCEMENT	4. July 25, 2017
SUPPORTING ORGANISATIONS AND PROJECTS	
ACTIVITIES COVERED	ICOs Secondary markets including exchanges, brokers, dealers and investment advisors on ICOs
ECONOMIC FUNCTION OF TOKEN	Grant ownership, voting rights and profits to a project if token has the features of a security under US securities regulations
ICO LICENCE	Not licensed. Issuers must either register the offer of tokens as securities with the SEC or register for an exemption if they succeed to demonstrate that they will not offer securities
VC TRADING LICENCE	Not licensed. Entitles must register as national securities exchange or operate pursuant to an exemption from such registration
ELIGIBLE TO APPLY FOR A LICENCE	N/A
LICENCE FEE	N/A
TAXATION	Depends on the view; likely subject to capital gains taxes

Overview of the regulations

There is no regulatory framework in the US on a federal level that prohibits activities related to cryptocurrencies and digital tokens (e.g. initial coin offerings and cryptocurrency exchanges). Given the financial nature of such assets, the supervision of Initial Coin Offerings (ICOs) and related activities is enforced by the US Securities Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), under the provisions of the Securities Act (1933)[1], Securities Exchange Act (1934)[2] and the Commodity Exchange Act (1936).[3]

On July 25th, 2017, the SEC issued a warning on ICOs, commonly referred to as the DAO Report[4]. Through the report, the SEC indicated that tokens issued through ICOs could qualify as investment contracts, hence securities under the Securities and Securities Exchange Act. The preceding statement established the criteria on which US ICOs are measured. The main priority for the regulator, the investors and the issuers is to determine whether the issued tokens must comply with the US securities laws or otherwise are eligible for an exemption.

During the past months, the SEC has continued to release statements, bulletins and alerts regarding their view on ICOs, cryptocurrencies and their trading in secondary markets (i.e. crypto exchanges, brokers, dealers and investment advice). In February 2018 the SEC disclosed their National Exam Program Examination Priorities[5]. The document reflects their intention to prioritize the screening of ICOs and to monitor whether the offerings of security tokens comply with the regulations. Moreover, in March 2018 the regulator announced that entities involved in the secondary market of virtual currencies classified as securities under the pertaining laws would also undergo their supervision[6].

On the other hand, the CFTC has determined that virtual currencies are commodities under the Commodity Exchange Act due to their exchangeability to other currencies (e.g. US Dollars and Euros) and other virtual currencies. They have also emphasized that virtual currencies lack the status of legal tender in the US and therefore advise caution due to their volatility, decentralized nature and the absence of costumer protection. The CTFTC has allowed and currently oversees futures, swaps, options and derivative contracts related to virtual currencies.[7]

On a state basis, the stance towards digital assets and blockchain varies significantly—ranging from states with their own licensing process to states with an absolute absence of regulations towards this sector. In 2015,

the state of New York released its BitLicense as an effort to regulate virtual currency trading, holding and custody as well as issuing and exchange activities[8]. In 2017, as a legislative initiative to promote the use of blockchain technology, the state of Nevada prohibited the taxation and imposition of licensing requirement to businesses involved in blockchain technology[9]. Other state measures include Arizona's legal recognition of smart contracts[10], Delaware's measure of enabling local corporations to issue and trade shares in a blockchain platform[11] and Wyoming's passing of five bills including the Utility Token Bill, which would exempt certain virtual currencies from securities laws[12].

The general legal standpoint is that ICOs are currently undergoing strict scrutiny from the federal authorities in order to protect investors and ensure financial stability, whereas the use of blockchain as a technology is increasingly being promoted.

Registration

US ICOs must register with the SEC before launching, provided that tokens to be issued are considered securities under US laws. In addition to the registration requirement, the issuers must disclose information related to the company, its purpose and its management, followed by detailed financial statements, descriptions of its assets and comprehensive prospects of the securities to be issued.

In the event that the ICO does not represent an offer of securities, a Form D must be filed with the SEC after the first offering takes place. The main implication of filing for an exemption from the SEC's regulations is that only accredited investors will be able to invest in the ICO[13]. Accredited investors are individuals with a net worth over 1 million USD or a consistent yearly income of 200,000 USD. Legal entities with over 5 million USD worth of assets also qualify as accredit investors[14].

Similarly, exchanges engaged in listings of security tokens must fulfil the registration requirements equivalent to national securities exchanges. Brokers and dealers of virtual currencies must register as alternative trading systems[15]. For the sake of self-regulation, SEC registered platforms must operate under policies and procedures designed to avoid manipulative and fraudulent behaviour[16].

Taxation

According to the US Inland Revenue Service, virtual currencies are to be treated as property from a federal tax perspective[17]. Therefore, the sale of virtual currencies is subject to capital gains and the following general principles apply:

- Wages paid to employees using virtual currency are taxable to the employee, must be reported by an employer on a Form W-2, and are subject to federal income tax withholding and payroll taxes.
- Payments using virtual currency made to independent contractors and other service providers are taxable and self-employment tax rules generally apply. Normally, payers must issue Form 1099.
- The character of gain or loss from the sale or exchange of virtual currency depends on whether the virtual currency is a capital asset in the hands of the taxpayer.

A payment made using virtual currency is subject to information reporting to the same extent as any other payment made in fiat. In March 2018, the IRS published a reminder to taxpayers to report the income derived from virtual currency transactions on their income tax returns[18].

Despite the existent clarity in relation to the tax treatment of virtual currencies, there is still no certainty in relation to the taxation of token offerings. The determination of the applicable tax regime for ICOs is not straightforward and depends on the features of the tokens issued (for instance security tokens may be taxed as equity, whereas convertible virtual currencies may be taxed as property[19]).

Environment

Overall, the US ecosystem for ICOs and secondary markets for cryptocurrencies in remains subject to the centralized control and supervision from the SEC and CFTC, whereas the implementation of smart contracts and blockchain technology as tools for business optimization are being encouraged through regulatory efforts coming from certain states.

Amid a recent raise of ICOs in the US, the SEC has started to issue subpoenas and requests for information to those issuers who failed to register their security token offerings under the applicable laws[20]. Regardless of the aggressive posture taken by the US regulators towards virtual currencies and their related activities, USA has maintained its position has a solid jurisdiction for the development of virtual currencies and blockchain. Furthermore, issuers of ICO have been catching up with the regulatory requirements provided by the authorities. Through February 20th, 2018, thirty-nine entities have filled Form D registrations (i.e. exemption from securities laws)[21] and approximately 12 billion USD were raised during the first quarter of 2018 through ICOs.

US banks are taking a cautious approach toward cryptocurrencies. During the first months of 2018, Bank of America, Wells Fargo and JPMorgan—the three largest USA's banks, banned the purchase of cryptocurrencies through their credit cards due to the high level of volatility of virtual currencies[22]. Furthermore, individual and corporate customers are facing difficulties to open bank accounts in relation to crypto activities.

Future considerations

No further legislation is expected to regulate the cryptocurrency field in the US. However, further clarification is expected in relation to the jurisdictional powers of the SEC and CTFC. While the regulators see potential in the cryptocurrency and blockchain industry, they also share the opinion that further regulatory supervision must take place[23]. An increasing amount of businesses are expected to make efforts to take advantage of the technological capabilities of Blockchain.

Opportunities

The upswing/surge of clarifications and statements from the US authorities towards ICOs has enabled a formalisation and legalisation of the industry. As opposed to previous years, token offerings and crypto related projects are increasingly backing their business with further documentation and due diligence requirements now that the bar has been raised. This may create more trust amongst investors. Also, the entry of financial institutions and traditional players, as well as a clearer stance from banks could contribute positively to the US crypto sector.

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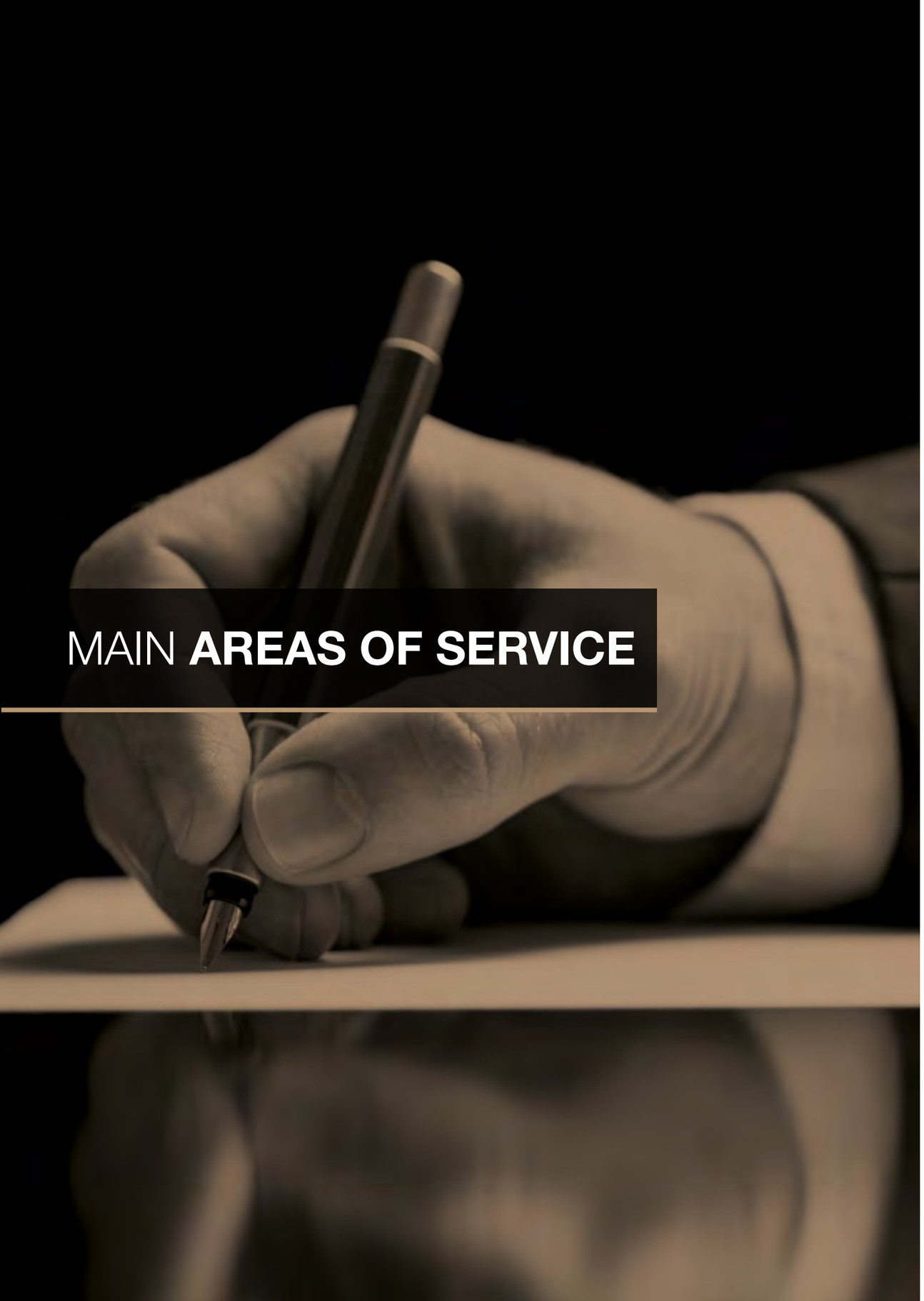

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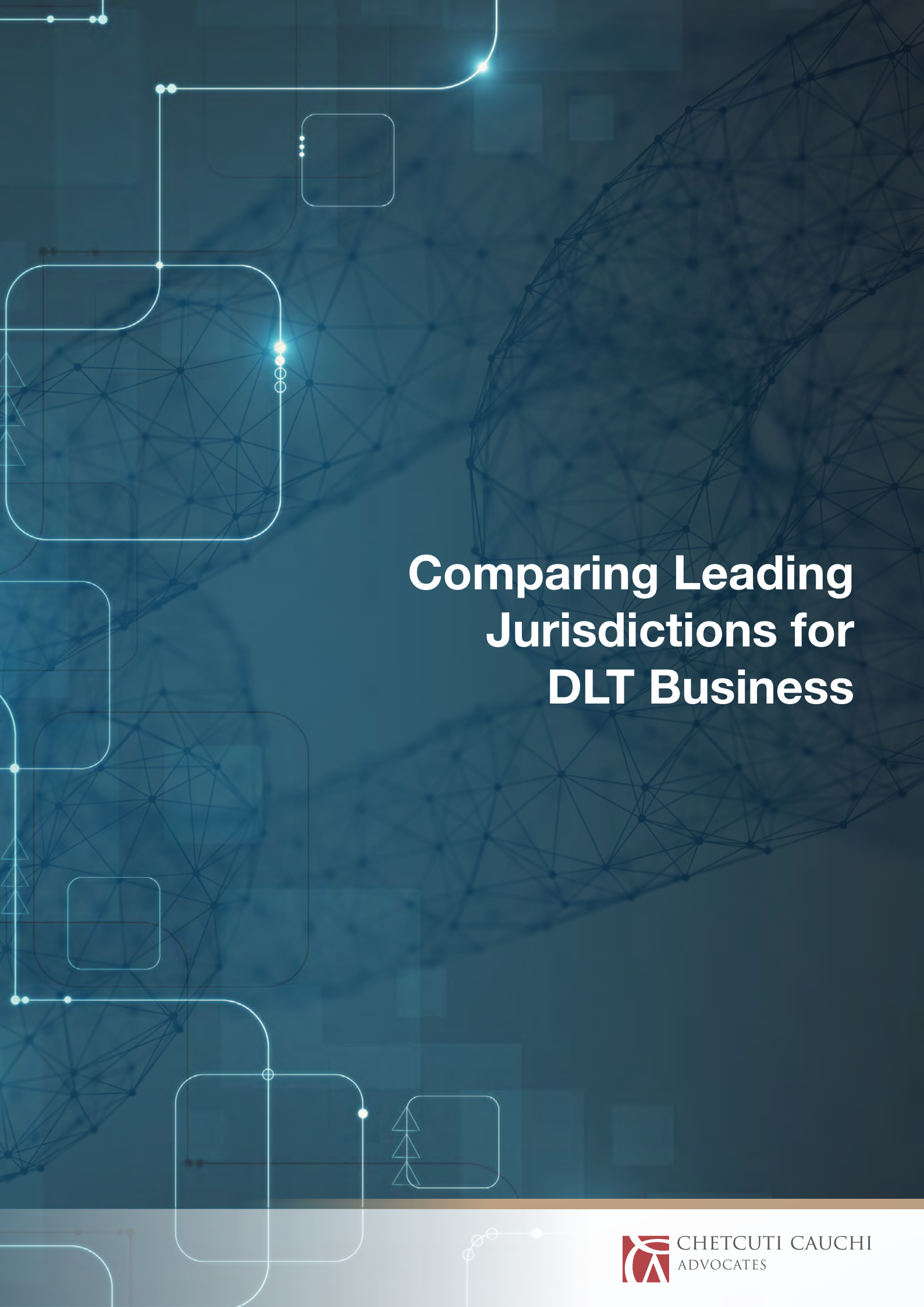


Comparing Leading Jurisdictions for DLT Business

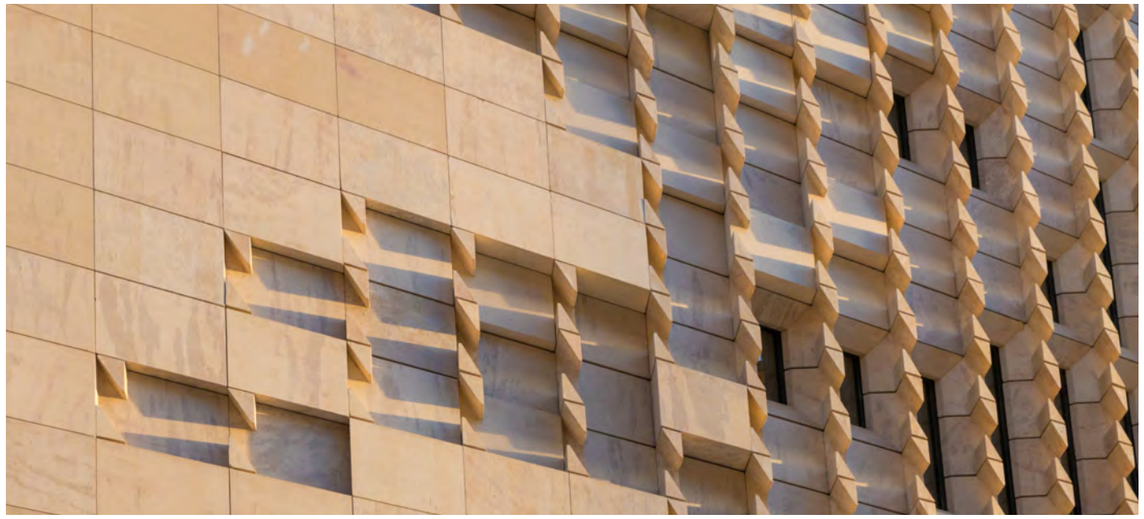
CHETCUTI CAUCHI
ADVOCATES

Introduction

The blockchain industry is expanding at an incredible pace. With every month that passes, new and exciting projects and applications using blockchain technology are taking root everywhere. Countries around the world are quickly realising the potential that blockchain technology will bring to various industries and are therefore keen to attract investments and players operating within the space. Yet some countries have taken the lead in welcoming this emerging industry by cultivating the right environment for these companies to operate within.

This in-depth comparison builds on the ten jurisdictions discussed in our comprehensive report entitled 'Blockchain, Crypto and ICOs - A legal review of leading jurisdictions' published earlier this year. We are now comparing these favourable jurisdictions with a view to identify the key strengths each one offers to entrepreneurs seeking to set up a blockchain company, or launch an ICO or crypto exchange.

Through this concise summary of the legal framework in these jurisdictions, we trust that investors will get a clear overview of which jurisdiction offers the best conditions for their business to thrive.



Evolution of regulatory landscape

Consumer and investor protection, risk control, enhanced security, established standards, greater transparency, industry maturity, supportive supervision, and innovative framework - these are only some of the main characteristics that shape top jurisdictions aiming to attract the blockchain industry through a sensible regulation of Distributed Ledger Technology (DLT).

Similar to when DLTs first started surfacing, the process of the industry's regulation was and, remains in many ways, an enigma in itself. There is no clear pathway signalling the best approach to take when regulating blockchain. There is a delicate balance between restrictive regulation which could set back or, even impede on the industry's development on the one hand, and fruitful regulation which propels advancement and growth, on the other.

The main dilemma here, is how to define and differentiate between what constitutes a good regulatory framework and what doesn't. Indeed, some countries have held back from introducing regulation in the hopes of eventually following in the steps of a regulatory regime which had already been tested and proven effective by another jurisdiction. One other factor which has in a way delayed widespread regulation of blockchain is that the initial igniting kernel of this technology was that it would not be tied down to any centralised system, in part so as not to impede on development and innovation. However, having a regulatory vacuum may end up doing just that. Lack of regulation implies an absence of safeguards which are imperative to ensure overall consumer and investor protection, market integrity and financial stability.

> "Lack of regulation implies an absence of safeguards which are imperative to ensure overall consumer and investor protection, market integrity and financial stability."

Looking at, and comparing some of the jurisdictions which are the forefront of the blockchain sphere, aids in shaping an image of what works when it comes to regulation and what more could be done to ensure sustainability and growth.

This in-depth comparison builds on the ten jurisdictions discussed in our comprehensive report entitled 'Blockchain, Crypto and ICOs. A legal review of leading jurisdictions'. The jurisdictions discussed below were chosen depending on whether they have instated some sort of legal structures related to the technology, or whether they offer a distinctly attractive environment for the operation of crypto and blockchain enterprises.

Frontrunners: Malta, Japan, Australia

Out of the ten jurisdictions, only three have emerged as definite proponents of the blockchain sector, each in their own way. Japan was, in fact, the first country globally to legalise payments through Bitcoin and cryptocurrencies, and went on to quickly entice massive cryptocurrency interest. This was enabled under an amendment in the Payment Services Act, or "VC act" as it became known, commencing on the 4th of April 2017. It marked a critical development in legally integrating blockchain into financial services. As the name suggests, the regulation covers virtual currency exchange services. While establishing some sort of protective barrier for consumers, the Act also signalled an acknowledgement by the Japanese government on the valuable capacity of cryptocurrency and ICOs.

Japan was in fact the first country globally to legalise payments through Bitcoin and cryptocurrencies

The Act distinguishes between two established types of virtual currencies (Type I or Type II) and regulates their usage as assets - a source of financial value and a medium of payment and exchange - including through intermediaries or other counterparts. Anyone, including foreign operators, wishing to provide any of the listed services under the Act must register with the Financial Services Agency. However, the regulation does not cover the licensing of Initial Coin Offerings (ICOs), as no requirements are specifically listed for them unless the tokens can be identified as one of the two types of virtual currencies. Businesses might also be discouraged from the fact that taxes are imposed on income from virtual currency transactions. Having said that, the Japan Blockchain Association does provide guidelines for the sale of ICO tokens, and a plan for the legislation and regulation of ICOs is currently in the works. A Practical Solution on the Accounting for Virtual Currencies[1] was also issued in March 2018. Further emphasising on consumer protection and narrowing in on money laundering, a self-regulatory industry association was set up in April 2018, in order to set down standards and expectations for crypto-exchanges in Japan that do not conform to registration requirements. Overall, with its head start in regulation, Japan does not only offer a defined license application process and revenue treatment for operators, but secures investors' speculations in crypto-exchanges within the bounds of its regulations.

> "Japan was in fact the first country globally to legalise payments through Bitcoin and cryptocurrencies."

Australia does not follow far behind Japan, having recognised bitcoin and cryptocurrencies as a legal tender in October 2017, through the Australian Securities and Investments Commission (ASIC)'s issue of an information sheet dealing with ICO, or other cryptocurrency fundraising. Even before this, in March 2017, the same regulator had already issued regulatory guidance[2] on the legal treatment of any business using distributed ledger technology (DLT) or blockchain, setting out basic requirements and obligations for businesses. The October 2017 guidelines, amended in May 2018, clarify the legal status of ICOs, and in some instances provide for a regulatory process. Trading platforms for ICO tokens or other crypto assets are also regulated, and financial market operators in the country must either obtain a licence or request exemption. ASIC is also involved in the active promotion of cryptocurrencies across different industries. Though Australia is not as big of a crypto-trading market as Japan, it is most definitely a growing and substantial one globally.

In March 2018, the Australian Transaction Reports and Analysis Centre (AUSTRAC) took another significant step by issuing new regulation requiring local, and foreign, digital currency exchanges operating within the country to register with AUSTRAC and meet the Government's AML/CTF (Anti-Money Laundering/Counter-Terrorism Financing) compliance and reporting obligations.[3] While the main objective of this regulation is to crack down on criminal activity, such as money laundering and terrorist financing, it was also introduced in the hopes of fostering growth and confidence in the sector.[4] In July 2017, the government also removed the double taxation on cryptocurrencies by waiving the

Australian goods and services tax (GST), a move decisively in favour of digital currency development. Other initiatives include the creation of the Innovation Hub by ASIC, aiding new businesses delving into DLT, as well as numerous Fintech related international agreements. Supervision has also been stressed upon by the Australian Tax Office, which has in turn been implementing measures to keep track of cryptocurrency investors, and anonymous crypto sphere and markets. Nevertheless, the new Australian regulation is a balanced one; introducing guidance and clarity to the industry, while promoting innovation.

Although both Australia and Japan have been exemplary proponents in the regulatory sphere, neither has yet gone to the extent which Malta has. Malta distinctly stands out from all jurisdictions, as it is the first around the world which can claim to have established a comprehensive legislative framework for DLT, including blockchain and cryptocurrencies. Malta's approach is different to that of Australia or Japan, in that it is a detailed and inclusive one, which targets the whole technology arrangement itself, rather than specific facets. What is more, rather than amending existing laws to adapt them to the new technology as many countries have done, Malta has created a new regulatory framework, tailoring it to the new technology.

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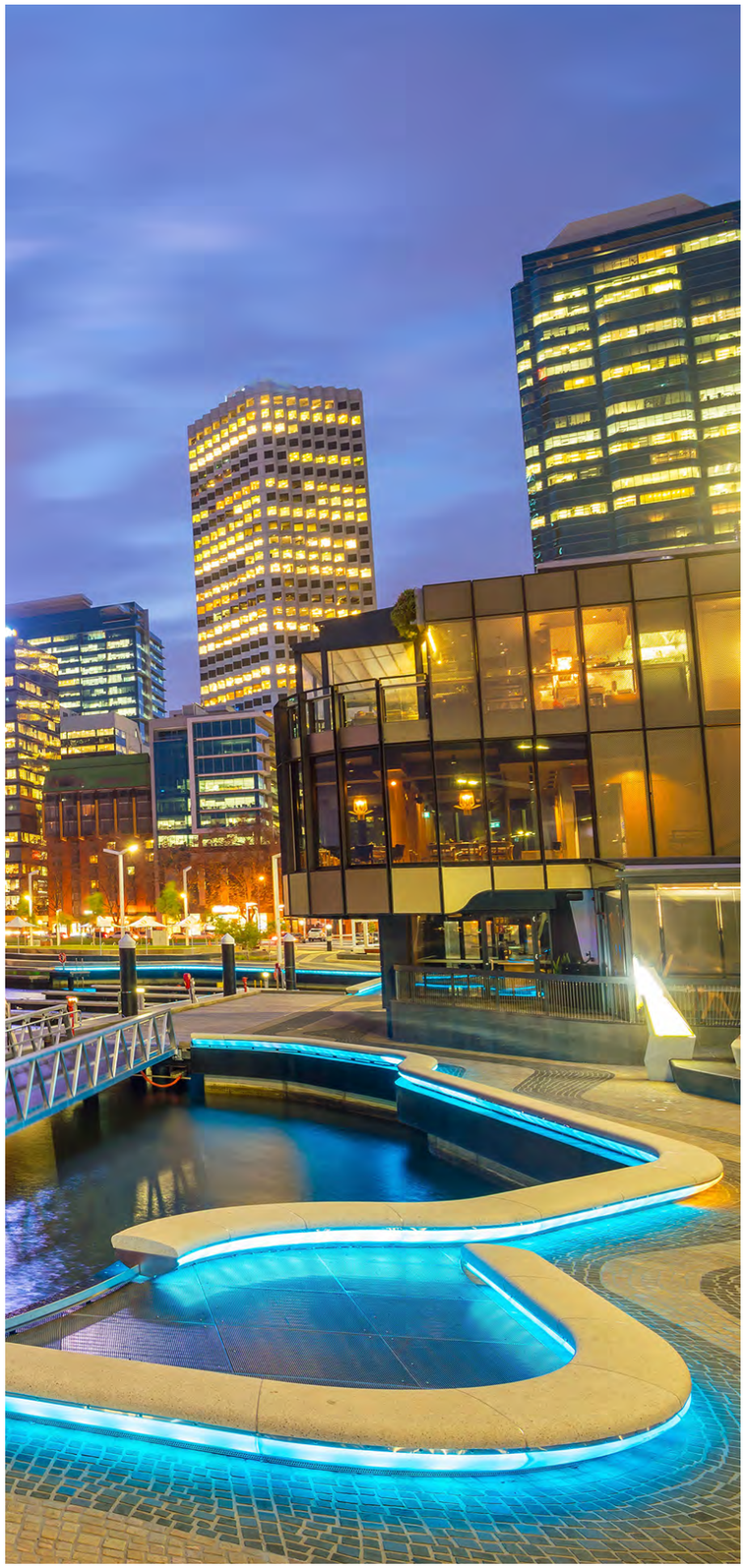


In July 2018, the Maltese Government promulgated three new Acts, setting up a framework to regulate the industry; The Malta Digital Innovation Authority (MDIA) Act, The Innovative Technology Arrangements and Servicer's (ITAS) Act, and The Virtual Financial Assets Act (VFAA). The first act for the Malta Digital Innovation Authority came into force in July, setting up a completely new authority responsible for the recognition and registration of Innovative Technology Services Providers, as well as the certification of Innovative Technology Arrangements. The other two will acts come into force on the 1st of November 2018. The ITAS Act sets out the regime for the registration of Technology service providers and, the certification of a new type of legal entity known as Technology Arrangements. Lastly, the VFAA regulates ICOs and the provision of certain services in relation to virtual financial assets or cryptocurrencies, including any intermediaries involved. Four different types of DLT assets are distinguished in the VFAA, with specific regulation dedicated to each one. Entities may only carry out the VFA services listed in the Act upon acquiring a license from the Malta Financial Services Authority (MFSA).[5] Prospective licensees, companies launching Initial Virtual Financial Offerings, and persons seeking to trade their VFA on a Maltese- licensed exchange, all need to appoint a VFA agent who would act as a liaison between the MFSA and the licensee/ issuer. They would also be primarily responsible for due diligence checks.

> "Malta continues to set its sights higher, with the government's attention most recently turning to Artificial Intelligence"

As of yet, no guidelines exist for the taxation treatment of DLT assets in Malta, however current tax principles are expected to be applied. There is also room for extending the regulation to cover other platforms and arrangements, such as those relating to artificial intelligence. All in all, however, the Maltese regulation has made legal uncertainty a thing of the past, and not only with regards to cryptocurrencies, but in relation to DLT as a whole, including transactions such as smart contracts. In this respect, the Maltese government has set up the ideal environment for crypto-trading and other innovative blockchain business, while also laying down standards, and providing stability and protection. Malta has set a precedent for other jurisdictions who aspire to create transparency and, regulate an initially risky environment into one which nurtures innovation and progress.

Holding its ground in the vanguard of technological advancement, Malta continues to set its sights higher, with the government's attention most recently turning to Artificial Intelligence, and other advanced technologies. As Malta's Prime Minister has reinstated in several recent speeches, both on an international and local level, "Artificial Intelligence and a sensible, best in class regulatory framework"[6] are next on the agenda for the resolute island nation.

Ideal countries for setting up or relocating

Start-up Hubs: Switzerland, Estonia, Gibraltar, Singapore, and USA

Targeted regulation and guidelines in some countries, have paid off in attracting an increasing degree of investment in the form of blockchain businesses. This is owing to the fact that these jurisdictions have been particularly successful in honing their efforts to create as friendly of an environment as possible for start-ups in the industry.

Most notably, Switzerland has been actively working towards creating a smooth pathway for blockchain and cryptocurrency start-ups. Several businesses have in fact located to Switzerland to launch their ICOs. While it still has a way to go in terms of regulation, the overarching government attitude on blockchain in Switzerland has been liberal and encouraging. A critical step for the country has been the issue of guidelines by FINMA, the Swiss Financial Market Supervisory Authority, first in April 2017 and once again in February 2018. Though no registration requirements have been specified, the guidance on the regulatory treatment of Initial Coin Offerings established that FINMA would evaluate each individual ICO separately, and carry an assessment of ICOs only within the area of existing financial market legislation.

> “Case-by-case regulatory treatment of each token, sets the Swiss jurisdiction apart as one which is markedly sensitive to the novelty of the blockchain industry.”

Furthermore, the complementary guidance of February 2018 elaborated on the principles upon which ICOs would be assessed and treated by the supervisory and regulatory framework, specifically their subjection to Swiss anti-money laundering and securities laws.[7] The development induced through these guidelines, particularly the case-by-case regulatory treatment of each token, sets the Swiss jurisdiction apart as one which is markedly sensitive to the novelty of the blockchain industry. Allowing individual evaluations not only provides clarity but at the same time, allows for more flexibility for companies.

When it comes to taxation for ICO or cryptocurrency, no specific regulations have been issued. However, businesses have been attracted by the country’s appealing corporate tax system, which sees tax rates varying between 8 and 24%. Swiss officials are also exploring efforts to gradually open up the traditional corporate banking market, and ease banking proceedings for cryptocurrency firms. Investors are also drawn to Switzerland due to the emphasis the country places on data protection and privacy issues.

Similar to Switzerland, Estonia has also positioned itself as a digitally-advanced nation, with an advantageous setup for establishing and operating a blockchain business. One of the strong suits behind this is clear and straight forward regulation for cryptocurrency services and ICOs which does away with any ambivalence when obtaining authorisation. In March 2018, the Estonian Financial Supervisory Authority (EFSA) issued an updated legal framework regulating the treatment of ICOs and, the subjective classification of tokens as securities. Depending on the specific activity, service or classification, authorisation and registration with the EFSA may be required. With respect to the provision of virtual currency exchange services, and the provision of a virtual currency wallet service, authorisation is here required through the Financial Intelligence Unit (FIU) under the November 2017 amended Money Laundering and Terrorist Financing Prevention Act (MLTFPA). Obtaining both of these licenses would grant authorisation to operate a crypto exchange supporting fiat currencies. While the MLTFPA clarifies the understanding of a ‘virtual currency’, it does not legalise it as a method of payment. To add to this, there is

still a degree of reluctance amongst Estonian banks in opening up bank accounts for crypto businesses, especially for ones not operating from within the country.

> “Gibraltar’s regulatory framework spans beyond dealings with crypto currencies and looks more generally at DLT as a whole.”

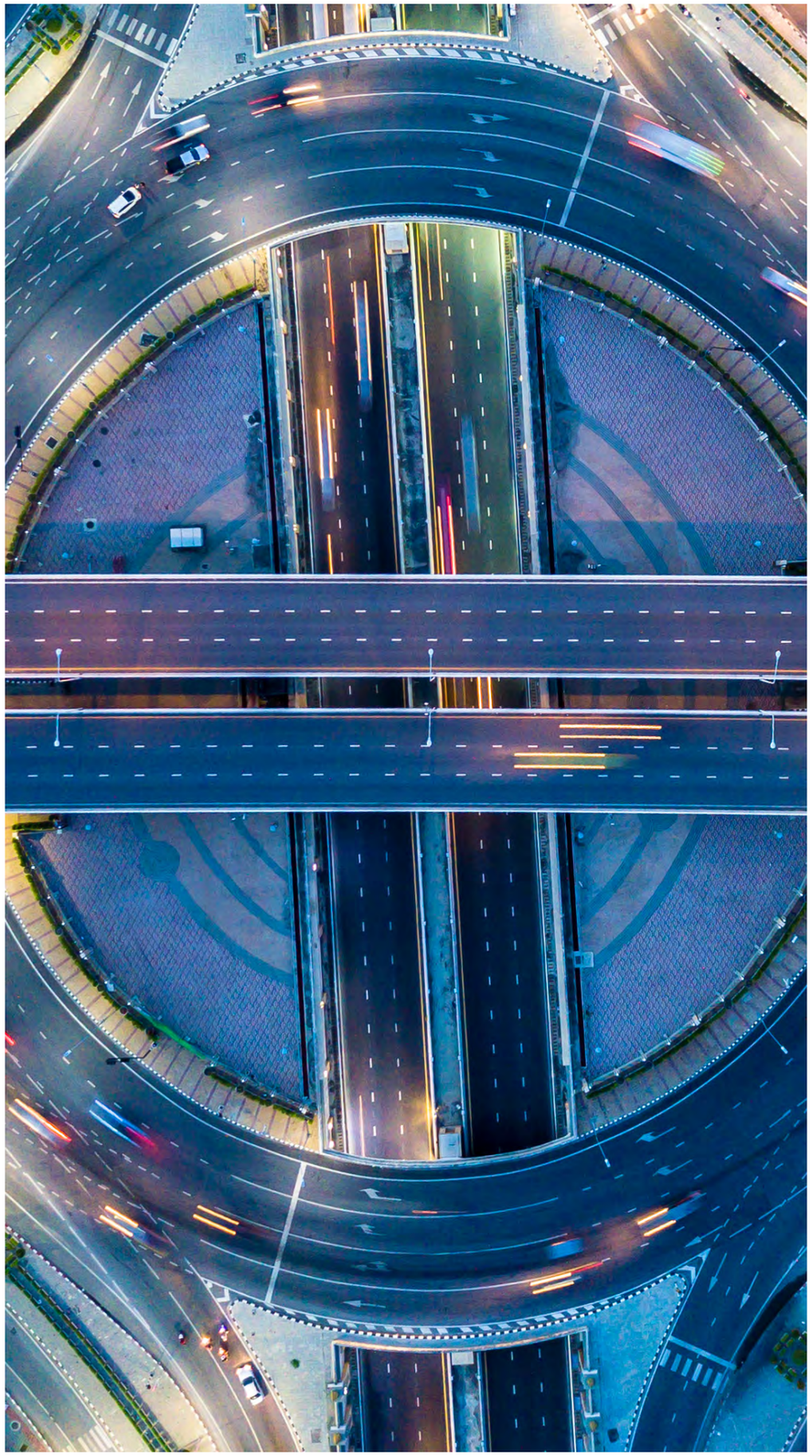
In spite of this, Estonia has still risen to become one of the most popular jurisdictions amongst blockchain companies, as a result of its clear-cut regulation, affordable operation costs and a unique opportunity to establish and remotely manage a company online. Companies are subject to corporate income tax (20%), which is exempted if the profit remains undistributed since no specific tax rules have been established pertaining to ICOs. Moreover, through the country’s e-residency programme, entrepreneurs can become digital citizens of the country, upon which they may incorporate and maintain their business in Estonia and benefit from the aforementioned taxation structures and cross-border management.

The Gibraltar Financial Services Commission (GFSC)’s Financial Services (Distributed Ledger Technology Providers) Regulations came into force in January 2018. Similar to the Swiss guidelines, the Gibraltar legislation allows applications to be assessed on a case-by-case basis relative to the character and intricacy of the proposed business model. However, in contrast to both the Swiss and Estonian regulation, Gibraltar’s regulatory framework spans beyond dealings with crypto currencies and looks more generally at DLT as a whole. The regulations provide for the commercial use of DLT as a means to store data or to transmit value, and hold that any DLT provider - including those dealing in crypto exchanges - must obtain a financial services licence. In other words, the regulation applies to companies conducting business through DLT.

While Gibraltar’s legal framework echoes Malta, in the sense that it aims to be more comprehensive than others, what differentiates the two is that Gibraltar has so far taken a lighter principle-based approach and a less comprehensive one, focusing more on the outcome and how the applicants will address nine main principles. Among these principles, the law promotes the sound values of honesty, integrity, fairness, and clarity, protection of clients’ assets, secure ecosystems, risk management, and financial crime prevention. This principle-based approach nonetheless, launched the jurisdiction as a hub for innovation and digital business. The regulation diminishes legal ambiguity for companies and start-ups, and offers transparency and reassurance.

Following proposals published in March 2018, the government is also expected to extend the scope of regulated activities to token-based crowd financing with the purpose of regulating offerings of non-security tokens not governed under securities law. Another factor that has more than a little sway in enticing business, is that there is no differentiated tax treatment for DLT providers in Gibraltar. Therefore, DLT providers are subject to an attractive flat 10% corporate income tax. Moreover, qualified start-ups may claim tax credits, and in some cases certain capital allocations in the first year of operation. The Gibraltar Blockchain Exchange (GBX), a digital asset trading platform, also officially opened its services to public trading in July 2018.

Singapore has also gained traction in the industry as a jurisdiction with relatively easy procedures in establishing a blockchain business. Following its adoption of a supportive yet neutral stance on virtual currencies by the Monetary Authority of Singapore (MAS), an increasing number of start-ups have been setting up within the country. Both cryptocurrency trading and crypto payments are legal in Singapore. However, a regulatory framework for cryptocurrency and the use of tokens is still lacking, and cryptocurrencies



have yet to be recognised as legal tender. The Guide to Digital Token Offerings, issued by the MAS in November 2017, deals with the issuance of digital tokens and provides general guidance on the application of the existing securities laws to such activities. Furthermore, the MAS examines each offer of tokens individually under the Securities and Futures Act (SFA), as Switzerland and Gibraltar also do. Issuers are required to register and obtain a capital market license so as to issue tokens on a platform, and the establishment and operation of such a trading platform requires prior approval from the MAS.[8]

Digital tokens are also liable to relevant provisions of the Prevention of Money Laundering and Countering the Financing of Terrorism (PMLCFT). No clear tax treatment has been identified pertaining to tokens and cryptocurrencies, and it is generally suggested that tax rules are assessed on a case-by-case basis, and this tends to turn out quite agreeable for ICOs. The MAS is also working to foster confidence in the local banking sector and ensure that cryptocurrency start-ups receive domestic banking services.[9]

Since the country views the technology as an innovation, authorities are hesitant to impose any regulation which might impede on the sector, particularly in light of the country’s larger goal of evolving into a smart financial centre. The environment in Singapore is thus expected to remain a favourable jurisdiction for start-ups intending to implement, and offer, innovative financial services in a cost effective and timely manner, while receiving support from the authorities. With regards to the United States, the advantages for crypto-trading, digital assets, and blockchain start-ups vary from state to state. Currently, there is no regulatory framework on a federal level that prohibits activities related to cryptocurrencies and digital tokens. Therefore, it is not illegal to trade or possess cryptocurrencies. Virtual currencies, nevertheless, lack the status of a legal tender in the US. In turn, authorities advise caution in their dealings. Supervision of ICOs and related activities, is enforced by the US Securities Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC). A paramount priority for the SEC is token classification so as to determine whether the issued tokens must comply with the US securities laws or are otherwise eligible for exemption. ICOs and exchanges involved with the issue and listing of security tokens must register with the SEC prior to launching. The sale of virtual currencies is also subject to capital gains tax, yet there is an absence of certainty regarding the tax treatment of token offerings. As opposed to previous years, however, the surge in clarifications and statements from US authorities towards ICOs, has helped formalise and legalise the industry.

Certain states, such as Nevada, Arizona, Delaware, California, and Wyoming, have implemented a functional and favourable regulatory framework. In 2017, Nevada abolished taxation and the imposition of licensing requirements for businesses involved in blockchain, in an effort to promote the use of the technology.[10] Arizona, on the other hand, legally recognises smart contracts, while Delaware enables local corporations to issue and trade shares in a blockchain platform.[11] Just recently in September 2018, California passed two new bills into law, defining and recognising blockchain technology and promoting its integration in business.[12] Wyoming also passed five pro-blockchain bills, such as the Utility Token Bill, which exempts certain virtual currencies from securities laws[13]. All this, in combination with the country’s robust investor base, has made the US a major player in the blockchain sphere - in the 18 months to July 2018, the majority of global ICO projects had been originating from within the country.[14] Many prominent crypto-exchanges also operate inside the US.

> “Gibraltar’s regulatory framework spans beyond dealings with crypto currencies and looks more generally at DLT as a whole.”

Generally, whereas the use of blockchain as a technology is increasingly encouraged, ICOs continue to face firm scrutiny from federal authorities with the aim of investor protection and financial stability. The USA’s shortcoming is the lack of clarity or comprehensive guidance, and constant speculation on what classifies as securities. Fortunately, increased pressures for the introduction on further regulation might soon see this change.

Sceptics Turned Innovators: Thailand and Russia

Even though cynicism revolving around the blockchain industry is still prominent in some countries more than others, most countries have gradually opened up their borders to the technology and the benefits it could bring. What is particularly striking and encouraging for the sector, is to see countries that had originally taken a protective, or even restrictive stance, and have now completely reversed their approach upon realising the potential of the market.

Thailand is notably one such country - having previously completely prohibited crypto businesses up till July 2018 once The Royal Decree on Digital Asset Business B.E. 2561, came into force. Through this decree, Thailand can now boast of having enacted legislation dealing with digital assets, that is, cryptocurrencies and digital tokens. The Decree, first proposed in May 2018, regulates the trading, offering and operations of intermediaries for digital assets businesses. Enacting new legislation, as Malta has done, overcomes the barrier that many jurisdictions appear to be facing- that of categorizing digital assets as securities or non-securities.

For a company to offer investment and utility tokens in Thailand, it must be incorporated in the country and, approved or exempted from the requirements by the Securities and Exchange Commission of Thailand (“SEC”) - the supervising body for Digital Assets businesses. All market participants involved in digital assets activities, must register their business in Thailand with SEC - including ICO issuers, cryptocurrency traders, dealers, and brokers. Digital Asset business providers are also required to obtain a permit from the Ministry of Finance. Public offering of digital tokens can only be undertaken after approval from the SEC “ICO portals” – system providers for digital token offerings. Furthermore, rules are also provided for Digital Assets market participants in relation to “Prevention of Unfair Trading Practices”.

The SEC currently legalises seven cryptocurrencies, which are considered as digital assets, to be used for ICOs. Indeed, the SEC has announced that over 50 initial coin offering projects are interested in applying for Licence, 5 ICO portals plan to operate and up to 20 Crypto exchanges intend to formally register.[15] Unfortunately, the taxation rules are a drawback for digital asset business providers, as following the May 2018 amendment to the Revenue Code, profits derived from holding Digital Tokens and gains arising from a transfer of cryptocurrency or Digital Tokens[16], are subject to prejudicial taxes. Companies, for instance, are liable for a corporate income tax (CIT) at 20%, which unless rectified may potentially result in up to 35% tax for digital assets business providers.[17] In spite of this, Thailand has decisively embraced the industry swiftly and efficiently, and is now even working on issuing its own Central Bank Digital Currency.

Russia was also very much closed off to cryptocurrencies, largely due to fears of potential money laundering and financing of terrorism to the extent that a criminal charge for the issuance of cryptocurrencies was imposed by the Ministry of Finance, in 2016. However, as mentioned previously, lack of legislation only makes a jurisdiction more vulnerable to financial crime in the sector, and upon realising this, Russia changed its perception and decided to allow the trading of cryptocurrencies. While Russia has settled on more of a protective approach, it still marks a positive development for the country and, even puts it ahead of many jurisdictions in terms of regulatory measures.

At the end of December 2017, the Russian authorities introduced a draft law “On Digital Financial Assets”, which focuses on the financial application of the technology and aims to regulate cryptocurrency operations including ICOs and crypto exchanges. The bill was submitted to the Russian State Duma’s Committee for Legislative Work (the Duma), in March 2018. In May 2018, the Duma supported the first reading, with the second and third reading scheduled for the autumn session. The latter two, furthermore, will be reviewing a new edition of the bill obtained in October 2018.

The bill establishes the procedure for performing transactions based on the Know-Your-Customer (KYC) principle, however the new Bill removes the definitions of key crypto terms. According to the Bill, transactions of cryptocurrencies can only be made through authorised cryptocurrency exchange operators, which should be a legal entity and registered. Regarding taxation, if no specific crypto and blockchain taxes are implemented, they will be subject to the corporate income tax and other taxes according to the Russian Tax Code (RTC).

Although the proposed bill does not provide a comprehensive legal framework, it sets the scene for further propitious regulation. Resident individuals and companies will be allowed to register as operators, conduct cryptocurrency activities, raise finance and trade freely in Russia - with the exception of using cryptocurrencies as a means of payment. The new proposed bill also allows privately held businesses and legal entities to “digitise” their shares, and store them via blockchain.[18]

Industry updates …

The blockchain space is one which is continuously evolving. In fact, since launching our report, we have observed the following regulatory updates:

- Malta’s Innovative Technology Arrangements and Servicer’s (ITAS) Act, and The Virtual Financial Assets Act (VFAA) have come into force on 1st November 2018
- New draft version of Russian bill will allow privately-held businesses to create and sell Digital Financial assets as digitised shares that are stored via blockchain
- South Korea to make a decision in November on whether it will uplift the ban on ICOs
- UAE planning to allow firms to raise capital through ICOs instead of IPOs by the first half of 2019
- State of California passed two new pro-blockchain bills defining, acknowledging, and promoting blockchain technology

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