



The Law Firm **Network**
FAR - REACHING LEGAL SOLUTIONS

2022

**THE COMPARATIVE GUIDE ON
CRYPTOCURRENCY
LEGISLATIONS
& GUIDELINES**

second edition

LEGAL NOTE

The information contained in this publication is general information and not intended to constitute legal advice by The Law Firm Network, the editor, authors or attorneys of the contributing law firms and they expressly disclaim any such interpretation by any party. Specific legal advice depends on the facts of the specific case and may vary from situation to situation. Should you require legal advice, please seek assistance of a counsel.

© The Law Firm Network and Contributors 2022

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior permission of the publisher.

PUBLISHED BY:



Zurich, Switzerland

E-MAIL: rafaeltruan@ifnglobal.com
TEL: +34 9131 06660
www.ifnglobal.com

Executive Director: **Rafael Truan Blanco**

LFN Chairman: **Peter Krarup** (Mazanti-Andersen)

Regional Directors:

- EMEA - **Stephan van de Kant** (Wieringa Advocaten)
- The Americas - **Alejandro Fiuza** (Brown Rudnick LLP)
- Asia-Pacific - **Dang The Duc** (Indochine Counsel)

IT Emerging Technologies Practice Group Co-chairs:

- **Marcus Tan** (Marcus Tan & Co)
- **Raf van Gysel** (Ponet & LVP Advocate)

Editor: **Gonzalo Oliva Beltrán** (Barreiro. Oliva. De Luca. Jaca. Nicastro)

Publications Director: **Marek Turcza** (TURCZA Kancelaria)

Graphic design and DTP: **Bartosz Wiczynski** (TURCZA Kancelaria)



EDITOR'S NOTE

04 GONZALO OLIVA BELTRÁN
Partner at **Barreiro. Oliva. De Luca. Jaca. Nicastro**

ARGENTINA

05 GONZALO OLIVA BELTRÁN
Partner at **Barreiro. Oliva. De Luca. Jaca. Nicastro**

COLOMBIA

09 JUAN A. VALLEJO & JUAN SEBASTIAN GAVIRIA GARLATTI
Partner and lawyer at **NIETO ABOGADOS**

GERMANY

13 ELISABETH S. WYREMBEK, LL.M.
Associate at **HAYER & MAILÄNDER RECHTSANWÄLTE**

INDIA

19 AMIT KIRAN
Partner at **Poovayya & Co**

INDONESIA

22 IRA A. EDDYMURTHY, SYAHDAN Z. AZIZ, JONATHAN M. STREIFER, CALLISTA PUTRI MAYARI
Lawyers at **SSEK Legal Consultants**

ITALY

30 GIACOMO GORI
Of Counsel at **Cocuzza & Associati Law Firm**

KENYA

35 DR. NJARAMBA GICHUKI
Lawyers at **Wanyaga and Njaramba Advocates**

LIECHTENSTEIN

37 REMO MAIRHOFER
Partner at **Mairhofer Advokatur**

MEXICO

41 RICARDO RIOS FERRER
Partner at **RÍOS-FERRER, GUILLÉN-LLARENA, TREVIÑO, RIVERA Y GUTIÉRREZ ABOGADOS**

NETHERLANDS

45 VICTOR BOUMAN
Partner at **Wieringa Advocaten**

RUSSIA

49 YEGOR KRAVCHENKO
Partner at **Westside Law Firm**

SPAIN

53 RAFAEL TRUAN BLANCO & CAMELIA HAMZA
Partner and lawyer at **Thomás De Carranza Abogados**

SRI LANKA

58 HANSI ABAYARATNE
Partner at **D. L. & F. De Saram**

UNITED KINGDOM

62 TIM DAVISON
Partner at **Brown Rudnick LLP**

USA

71 BROWNRUDNICK'S "DIGITAL COMMERCE PRACTICE"
Brown Rudnick LLP

VIETNAM

79 THAI GIA HAN & STEVEN JACOB
Partners at **Indochine Counsel**

— EDITOR'S NOTE —

by Gonzalo Oliva-Beltrán

PARTNER AT BARREIRO. OLIVA. DE LUCA. JACA. NICASTRO

FIRST EDITION

Exactly thirty years ago, two researchers outlined the first idea of a system where document timestamps could not be tampered with. But it was not until a little bit more than ten years ago that the world heard about blockchain technology.

Now in the wake of the 21st century, technology does not seem to be about globalization anymore -now taken for granted-, but about decentralization. If globalization revealed that as a planet we are centripetally connected, decentralization now confirms that we are centrifugally hyper-connected.

As legal practitioners, not only are we challenged by the concept of decentralization, but we also need to reassess the legal nature of time-honored institutions like currency, securities, agreements, property, justice.

Cryptocurrency is probably the most popular utilization of decentralized technology, but it has not

been equally regulated in all jurisdictions however popular it might be. And even in those jurisdictions where it has, it has been assimilated -from a regulatory perspective- to securities, currency, or generally as goods.

This guide intends to be a snapshot of the current cryptocurrency regulations in some of the countries that are represented at The Law Firm Network. It does not intend to be legal advice and readers are encouraged to contact the local law firm for further information or guidance.

SECOND EDITION

It is with great enthusiasm that we release this second edition of our guide, now with sixteen countries represented, out of Europe, Asia, Africa and the Americas.

As the reader will see, complete regulation and absolute lack of it coexist globally in this matter. If we were only to skim-read this guide, I would suggest we take a few minutes to focus on the question about the definition of cryptocurrency. Probably the core of this publication, it is hard not to ask ourselves if we will reach a general agreement on the nature of cryptoassets in the near future. In any case, it is

precisely the changing nature, and constant evolution, of cryptocurrency (and cryptoassets in general), that triggers the need for lawyers to be updated on the latest developments. As Abraham Lincoln once said, if we could first know where we are, and whither we are tending, we could then better judge what to do, and how to do it. We hope you enjoy this updated guide.



LAW FIRM

Mairhofer Advokatur

AUTHORS

REMO MAIRHOFER, Partner

CONTACT

remo.mairhofer@m-advokatur.li

+423 340 11 20

1

QUESTION

Which legislative and regulatory provisions, or any other guidelines or policies that govern or regulate cryptocurrency in your jurisdiction?

In Liechtenstein, the Law on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (Due Diligence Act, DDA) and the Ordinance on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (Due Diligence Ordinance) generally apply to natural or legal persons whose activities consist in the exchange of virtual currencies respectively tokens against legal tender or other virtual currencies respectively tokens and vice versa. Token issuers who are not subject to registration but are domiciled or resident in Liechtenstein and issue tokens in their own name or on a non-professional basis on behalf of the principal, provided they settle transactions in the amount of CHF 1'000 or more are also subject of DDA. Further, operators of trading platforms for virtual currencies respectively tokens fall within the scope of the mentioned act ordinance. According to DDA “operators of trading platforms for virtual currencies respectively tokens” generally shall mean natural or legal persons who operate trading platforms via which their customers transact an exchange of virtual currencies respectively tokens against legal tender or other virtual currencies respectively tokens and vice versa.

2

QUESTION

Which legislative and regulatory provisions, or any other guidelines or policies that govern or regulate entities or operators that provide services relating to cryptocurrency? Must they be registered or licensed by any specific regulatory authority?

Service providers relating to cryptocurrency have to be aware of the Law on Tokens and TT Service Providers (also called the Blockchain Act). TT means transaction systems which allow for the secure transfer and storage of Tokens and the rendering of services based on this by means of trustworthy technology. TT service providers who offer activities relevant to user protection on a commercial basis and thus require registration (e.g. issuing, generating or holding tokens) must comply with the minimum standards of the Blockchain Act. This applies to all TT service providers domiciled in Liechtenstein. However, it is not applicable to TT service providers domiciled abroad who provide TT services to persons domiciled in Liechtenstein, thus preventing any unreasonable restriction of market access of the token economy for persons domiciled in Liechtenstein.

The Law on Bank and Investment Firms (Banking Act), the Law on Asset Management (Asset Management Act), the E-Money Act, the Payment Services Act, the Law concerning specific undertakings for collective investment in transferable securities (UCITSG), the Law concerning the Managers of Alternative Investment Funds (AIFMG) and the Law on the Supervision of Insurance Undertakings (Insurance Supervision Act) could also be relevant for service providers.

QUESTION

3

Please describe which part or kind of services involving cryptocurrency that have yet to be governed or regulated.

The legislation mentioned in Q1 and Q2 above is continuously reviewed and adapted to meet current and future requirements.

QUESTION

4

Which bodies are responsible for enforcing the applicable laws and regulations? What powers do they have?

The Financial Markets Authority (FMA) is responsible for the supervision of TT service providers and the execution of the associated statutory provisions. With regards to penalties, the Liechtenstein courts have jurisdiction.

QUESTION

5

How does the government or authority in your jurisdiction treat cryptocurrency (legal treatment and general approach)?

The blockchain technology was first developed for Bitcoin, a private digital money system. Thereby, blockchain technology functions as a register in which transactions can be securely stored. However, the applications of blockchain technology are not limited to simple transactions of coins. Moreover, they offer the possibility for a wide range of economic services, since assets or rights in general can also be mapped on blockchain systems. Above all, the low costs of digital transactions (without intermediaries) open up new possibilities in the world of finance and services as well as in the industrial world. These applications are collectively referred to as the 'token economy'. Liechtenstein recognised this trend early on and create a legal framework and thus legal certainty for users and service providers.

QUESTION

6

How is cryptocurrency legally defined in your jurisdiction? Have there been any judicial decisions which have helped to define them with the existing legislations or court precedents? (e.g. as a currency, commodity, property)

According to DDA "Virtual currency" is defined as a digital representation of a value that was not issued or guaranteed by any central bank or public body and is not necessarily pegged to a legally established currency and does not have the legal status of a currency or money but is accepted by natural or legal persons as a means of exchange that can be transferred as well as saved and traded electronically. As mentioned above, Liechtenstein has also implemented token as a separate instrument in civil law. A token is thereby defined as a piece of information on a TT System which can represent claims or rights of memberships against a person, rights to property or other absolute or relative right.

7**QUESTION**

How are different type of fundraising activity involving cryptocurrency defined in your jurisdiction? (i.e. Initial Coin Offering (ICO), Security Token Offering (STO), Initial Exchange Offering (IEO) & Stable Token)?

According to the Token and TT Service Provider Act (Blockchain Act) "Token Issuance" shall mean the public offering of Tokens. This means offering to the public in any form and by any means of communication with the aim of selling tokens to users. Commonly, token issuance is known as Initial Token Offering (ITO), Token Offering, ICO (Initial Coin Offering), Security Token Offering (STO) or TGE (Token Generating Event).

8**QUESTION**

Are cryptocurrencies trading platforms subject to a specific regulatory regime in your jurisdiction? Must they be registered or licensed by a regulatory authority? Upon being licensed are they allowed to accept legal currency?

Please see questions above.

9**QUESTION**

What is the is the current approach in your jurisdiction to the treatment of cryptocurrency regarding money laundering and terrorist financing?

Please see questions above.

10**QUESTION**

Is there any bill in process in your jurisdiction regarding cryptocurrency?

Please see questions above.

11**QUESTION**

Is there any Law, Resolution or official guideline that regulate blockchain in your jurisdiction?

The term 'Blockchain' originates from the application of Bitcoins, which involves the serial logging of transactions in a distributed ledger and the blockwise verification of a certain number of transactions. In this process, the unchangeable history of the transactions creates a relationship of trust between the actors. However, the Bitcoin blockchain is only one of the possible technical implementations of blockchains. Therefore, an abstract, technology-neutral definition of the term 'Blockchain' was deliberately chosen in Liechtenstein for the legislation, not least to prevent the legal framework from becoming outdated from a technological perspective after just a few years. The fact that trust is created by technology and not only by organizations was the decisive factor in defining the term 'Trustworthy Technology' as the connecting factor for the law. The term 'Trustworthy' means that the integrity of tokens, their unambiguous allocation and their secure exchange should be guaranteed.

The Blockchain Act establishes the legal framework for all transaction systems based on trustworthy technology and governs particularly the basis in terms of civil law with regards to tokens and the representation of rights through tokens and their transfer as well as the supervision and rights and obligations of TT Service Providers. It is important to understand that Liechtenstein has not regulated blockchain technology itself so as not to prevent or discourage innovation.

QUESTION

12

Are there any other key issues concerning cryptocurrency in your jurisdiction that legal practitioners should be aware of?

Please see questions above.

OUR AUTHORS




Gonzalo Oliva-Beltrán
ATTORNEY-AT-LAW

+54 11 4814 1746
goliva@bodlegal.com
1309 Córdoba Avenue, 3rd floor, office A.
C1055AAD, City of Buenos Aire

ARGENTINA



NIETO ABOGADOS

Juan A. Vallejo
ATTORNEY-AT-LAW

+57 1 345 3663
juan.vallejo@nietolegal.com
Calle 72 No. 5-83, Piso 2
Bogotá

COLOMBIA




Elisabeth S. Wyrembek, LL.M.
ATTORNEY-AT-LAW

+49 (0) 711 22744 59
ew@haver-mailaender.de
Lenzhalde 83-85
70192 Stuttgart

GERMANY



Poovayya & Co.
ADVOCATES & SOLICITORS

Amit Kiran
ATTORNEY-AT-LAW

+91 99016 70055
amit@poovayya.net
121 Dickenson Road,
Bangalore 560 042, Karnataka

INDIA




Ira A. Eddymurthy
ATTORNEY-AT-LAW

+62 21 5212038
iraeddy@ssek.com
14th Floor, Mayapada Tower Jl. Jend.
Sudirman Kav. 28
Jakarta, 12920

INDONESIA



COCUZZA & ASSOCIATI

Studio Legale

Giacomo Gori
ATTORNEY-AT-LAW

+39 02-866096
ggori@cocuzzaassociati.it
Via San Giovanni Sul Muro 18
20121 Milano

ITALY



COCUZZA & ASSOCIATI

Studio Legale

Giacomo Gori
ATTORNEY-AT-LAW

+39 02-866096
ggori@cocuzzaassociati.it
Via San Giovanni Sul Muro 18
20121 Milano

ITALY




Dr. Njaramba Gichuki
ATTORNEY-AT-LAW

+254 202 212794
njaramba@njarambagichuki.com
1View Park Towers, 16th Floor Utalii
Lane/Uhuru Highway, CBD
1. O. Box 3695 00200 Nairobi

KENYA




Remo Mairhofer
ATTORNEY-AT-LAW

+423 340 11 20
remo.mairhofer@m-advokatur.li
Landstrasse 99
Schaan, FL-9494

LIECHTENSTEIN




Ricardo Rios Ferrer
ATTORNEY-AT-LAW

(52 55) 5980 03 50
ricardo@riosferrer.com.mx
Av. Insurgentes Sur 1605 piso 12
Ciudad de México

MEXICO




Victor Bouman
ATTORNEY-AT-LAW

+31 (0)20 624 68110
bouman@wieringa.nl
Ijdoek 17, 1013 MM Amsterdam

NETHERLAND




Yegor Kravchenko
ATTORNEY-AT-LAW

+7(499)608 06 01
kravchenko@wslaw.ru
Office 303, «The Yard» Business Centre, at
No.11,bld.1, 1st Magistralnyi tupik
Moscow, 123290

RUSSIA



THOMÁS DE CARRANZA
Abogados

Rafael Truan Blanco
ATTORNEY-AT-LAW

(+34) 91 310 66 60
rafaeltb@tc-abogados.com
Paseo de la Castellana,
116, 9ª Planta, 28046 MADRID

SPAIN



D.L.&F. DE SARAM
Attorneys at Law & Notaries Public

Hansi Abayaratne
ATTORNEY-AT-LAW

+9411 2695782
savantha@desaram.com
47 Alexandra Place
Colombo, 7

SRI LANKA



brownrudnick

Tim Davison
ATTORNEY-AT-LAW

+44.20.7851.6143
tdavison@brownrudnick.com
8 Clifford Street, London W1S 2LQ

UK



brownrudnick

Digital Commercial Practice

+1.212.209.4848
ckrivoy@brownrudnick.com
7 Times Square New York, NY 10036

USA




Thai Gia Han
ATTORNEY-AT-LAW

+84 28 3823 9640
thuy.le@indochinecounsel.com
Unit 305, 3rd Floor, Centec Tower
72 -74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City

VIETNAM




Steven Jacob
ATTORNEY-AT-LAW

+84 28 3823 9640
sdjacob30@gmail.com
Unit 305, 3rd Floor, Centec Tower
72 -74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City

VIETNAM



Follow on
LinkedIn[™]
The Law Firm Network