

INITIAL COIN OFFERINGS: THE TOP 25 JURISDICTIONS AND THEIR COMPARATIVE REGULATORY RESPONSES

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ABSTRACT

This article provides an overview of the evolving ICO market. It evaluates hand-selected data for the top 25 ICO jurisdictions by market capitalization. The author codes the regulatory responses of the top 25 ICO jurisdictions in the world and provides a comparative analysis of their respective regulatory actions.

Key Words: Initial Coin Offerings, Blockchain, Distributed Ledger Technology, Regulation, Market Abuse, Investor Protection, Artificial Intelligence, Machine Learning, Data Science, Data Scientists, Innovation, Entrepreneur, Start-up, Big Data, Crypto Economics, Diversification, Optimization, Efficiency, Governance, Bad Actors, Risk Factors, Regulation

JEL Categories: K20, K23, K32, L43, L5, O31, O32

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I. Introduction

Initial Coin Offerings (ICOs) provide unprecedented liquidity and efficiency for capital formation while minimizing transaction cost. While ICOs have historically allowed primarily crypto start-ups, financial technology start-ups, and the crypto community to raise funds, in 2018, legacy businesses with established businesses and products increasingly used ICO fundraising to finance their business activities.

ICOs display several core beneficial characteristics that help explain their attractiveness for crypto startups and legacy businesses alike. ICOs' comparative advantage over other means of capital formation consists mainly of their cost-effectiveness that helps offsets the complex and unpredictable economic dynamics in the crypto marketplace. Unlike other means of capital formation, ICO's allow promoters to avoid sacrificing equity for financing. Instead, ICO promoters can use the proceeds of the ICO exclusively for product development. ICOs provide low barriers to entry for a diverse body of investors and thus increase the diversity and the heterogeneity of start-up funding.

ICOs are creating unparalleled efficiencies for capital formation. First, ICOs enable borderless online sales with much fewer points of friction. ICOs enable the promoters to bypass the typical legal, jurisdictional, and business hurdles by directly marketing to a worldwide pool of investors. Moreover, ICOs are still in 2018 subject to rather limited accreditation standards. While accreditation standards have been instituted by some jurisdictions, including full compliance checklists for ICO registrations, ICOs are overall still subject to rather limited accreditation standards and regulatory formality.

ICOs provide unparalleled liquidity for all of its constituents. First, global cryptocurrency exchanges provide significant continuous access to trading ICO tokens which allows for significant liquidity at the earliest possible time in the lifecycle of the underlying business. ICOs provide liquidity to investors much faster than any other form of capital formation. ICOs also allow venture capital funds to capitalize on existing profits much earlier while avoiding a long, complex, and time intensive processes leading up to an IPO, acquisition, or similar late liquidity event in the lifecycle of the business. Finally, promoters can get the earliest possible liquidity of their token reserves simultaneously with the financing for their product launch.

II. Regulatory Concerns

Regulators have been evaluating possible risk factors associated with ICOs since the inception of the ICO market. Regulators are particularly motivated by several ICO risk factors for retail investors. Unlike shareholders in the traditional corporate infrastructure who are able to vote for or against directors or to nominate directors, ICO investors have no control over the promoters whatsoever. Token holders typically invest in the future promise of an idea or future infrastructure product associated with the platform they invest in without having access to a tangible underlying product. Capped ICO raises evolved in an attempt by the crypto community to address the uncertainty for investors about the valuation of the underlying platform in cases of uncapped raises. However, capped ICO raises create significant incentive for investors to attempt to get in first, raising the likelihood of retail investor frenzy. Moreover, the lack of mandatory disclosures for ICOs leads many promoters to make irregular or no disclosures about the platform as time passes, leading to a significant lack of transparency in the ICO market. Promoters can also change the smart contract to change ICO sales rules mid-course during the ICO.

Unlike traditionally listed businesses that have a long history of business success before being listed on a stock exchange, most crypto platforms cannot generate revenue to offset costs. Crypto platforms typically do not have employees in the traditional sense that create and advertise the platform product. Worse yet, because they have no product and no revenue to offset costs, crypto platforms' revenue raised is typically required to last for the lifecycle of the platform, requiring crypto platforms to set aside a large number of tokens for future funding needs.

ICO investors have no preemptive rights or other anti-dilution protections. If the promoters decide to issue more reserve tokens to additional investors, the ICO investors may be diluted in the future. The only real control token holders have to protect themselves is to sell their tokens post-ICO. In fact, many venture capital funds that received tokens in exchange for their pre-ICO investments often quickly sell their tokens to protect themselves

against devaluation.

ICOs are subject to very high volatility. Unlike any prior financing vehicles, ICOs provide the highest possible liquidity for investors at the earliest possible time in the lifecycle of the issuer. Investors in legacy businesses receive significant assurances pertaining to the business success of the issuing entity because the issuing entity is subject to ongoing disclosure requirements. ICOs on the other hand, give investors very limited assurances through upfront and continuous disclosures, making the token market highly volatile.

Token holders typically do not receive a liquidity preference that would protect them in the case of bankruptcy or termination of the platform they invested in. In cases of bankruptcy, token holders typically have no recourse at all after the debt holders and outside creditors were satisfied with the liquidation value of the entity. By contrast, in a typical venture capital seed stage investment, the venture capital fund should typically obtain at least a simple liquidity preference. This allows venture capital funds to reclaim their initial seed investment before other creditors are satisfied.

III. Top 25 ICO Countries

To determine the ICO's used for this project, the author used data generated by ICO WatchList.¹ ICO WatchList ranks countries by the number of ICO's launched and provides information as to how much was raised through these ICO projects.

After compiling the ICO list, the author started researching the regulatory authorities in each of the top 25 countries. The Bank of International Settlements provides a list of different regulatory and supervisory agency used for the different countries around the world.² Through these websites, the author was able to search through governmental statements, locating anything that dealt with DLT, cryptocurrency, ICO's, etc. After analyzing these statements, the author coded the responses of the government.

¹ <https://icowatchlist.com/statistics/geo>

² <https://www.bis.org/regauth.htm?m=2%7C269>

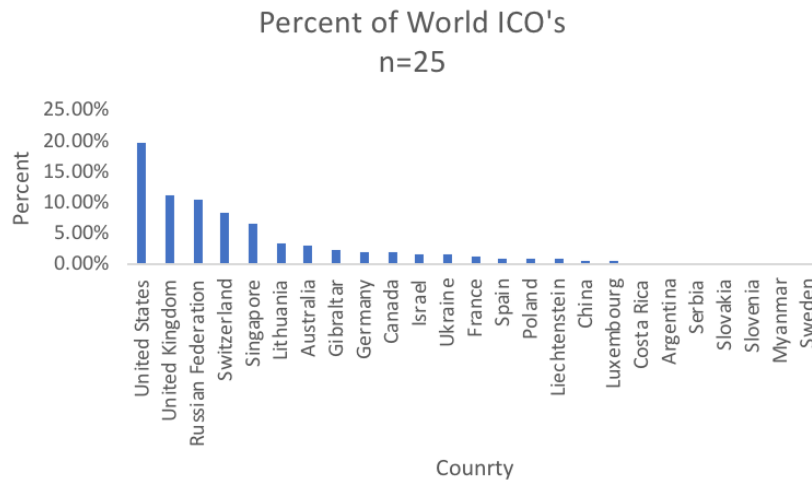


Figure 1: Percent of World ICOs

Figure 1 represents the percent of the world's ICO's that were launched in that country for 2017. This is based on the raw number of ICO's and not how much was raised through that ICO.

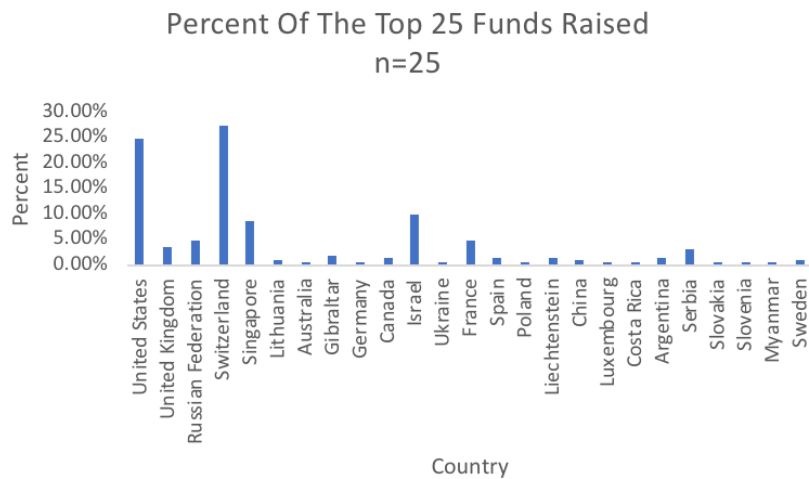


Figure 2: Percent of the Top 25 Funds Raised

Figure 2 shows the percent of funds raised in the top 25 country ICOs (not of the world) in the 2017 time period. Switzerland leads the world in total ICO Funds raised, followed by the United States.

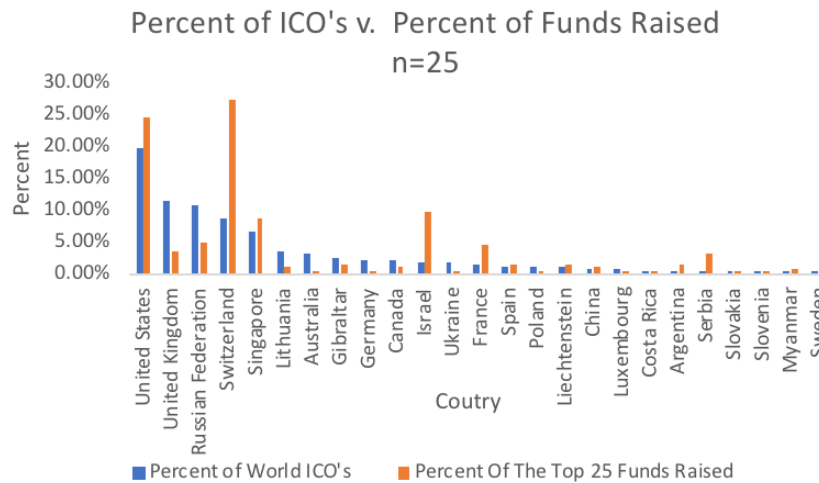


Figure 3: Percent of ICOs v. Percent of Funds Raised

Figure 3 is a combination of figures 1 and 2. It shows the discrepancy in the number of ICO's launched and the amount of funds raised. Switzerland is the country with the 4th most ICO's launched but the greatest amount of funds raised in total. Accordingly, the average project in Switzerland is raising a greater than average amount of funds. This can be attributed to the fact that many of the world's most successful ICOs get launched in Switzerland.

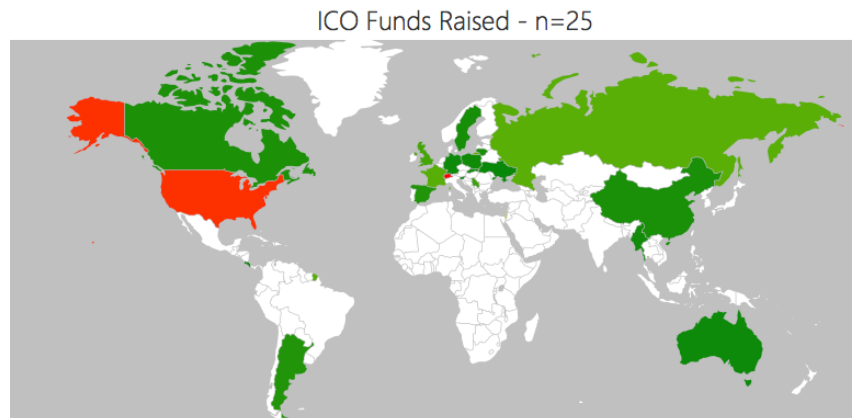


Figure 4: Heat Map ICO Funds Raised World

Figure 4 shows where ICO funds are being raised. The red countries show the highest dollar value of ICO funds raised, followed by the darker green and then lighter green.

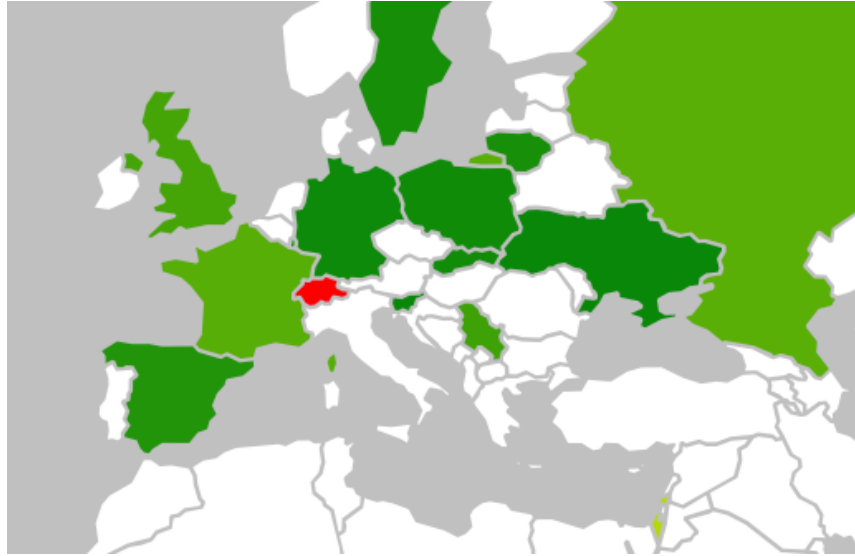


Figure 5: Heat Map ICO Funds Raised Europe

Figure 5 shows a more focused view of figure 4. Switzerland and Israel have greater funds raised than their surrounding countries. Figure 5 shows how different countries throughout Europe compare to each other.

IV. Regulatory Responses

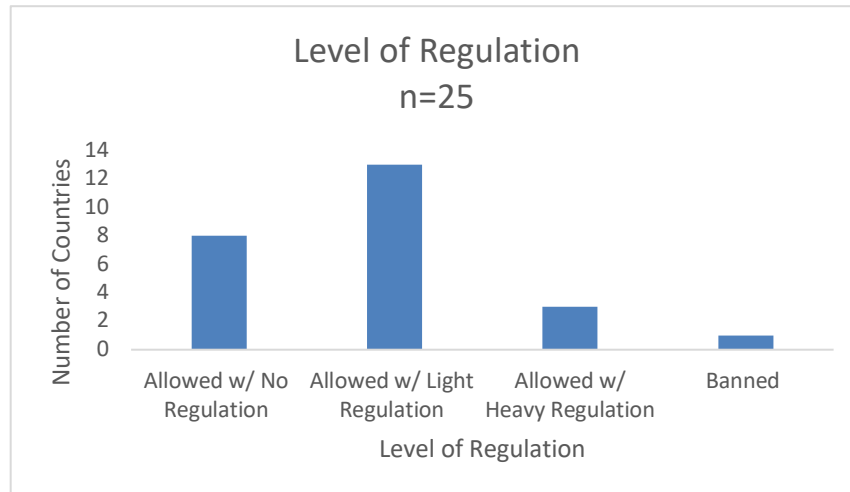


Figure 6: Level of Regulation

Figure 6 describes the level of regulation of the top 25 ICO countries. This chart indicates that the majority of the countries examined in this study are in the category of allowing ICO's and cryptocurrencies. There are fewer countries that have banned ICO's and cryptocurrencies altogether. For the most part, the general view of the world governments appears to be that they are using existing laws to regulate these cryptocurrencies.

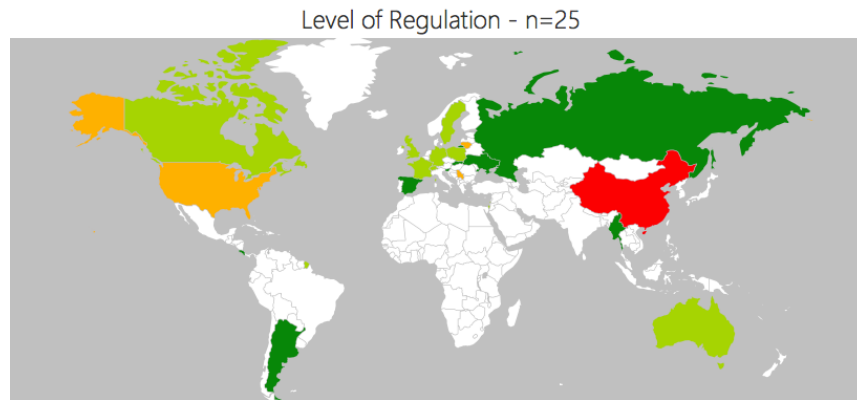


Figure 7: Heat Map - Level of Regulation

Figure 7 shows a heat map of the level of regulation throughout the world. The dark green areas represent the areas in the world where the government has suggested either regulation is premature or have

stayed silent. Government bodies of countries in red have stipulated that blockchain technology is prohibited in some capacity in their country. The shades of light green and yellow fall somewhere in between.

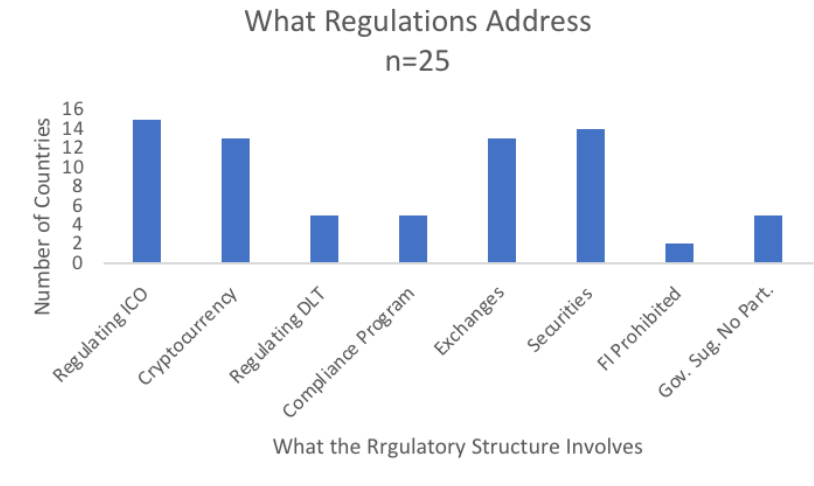


Figure 8: What Regulation Addresses

Figure 8 shows the sub issues addressed by governments. ICO's and cryptocurrencies are the main issues addressed. Although (federal) securities law is the main way countries are regulating this technology, there is also concern about the regulation of exchanges within such countries which may fall outside of the federal securities laws, at least in part. Finally, few governments have prohibited financial investors from investing, but a greater number of governments have suggested not to take part. Many countries have issued warnings, but have not made a suggestion to its citizens as to whether to take part or not.

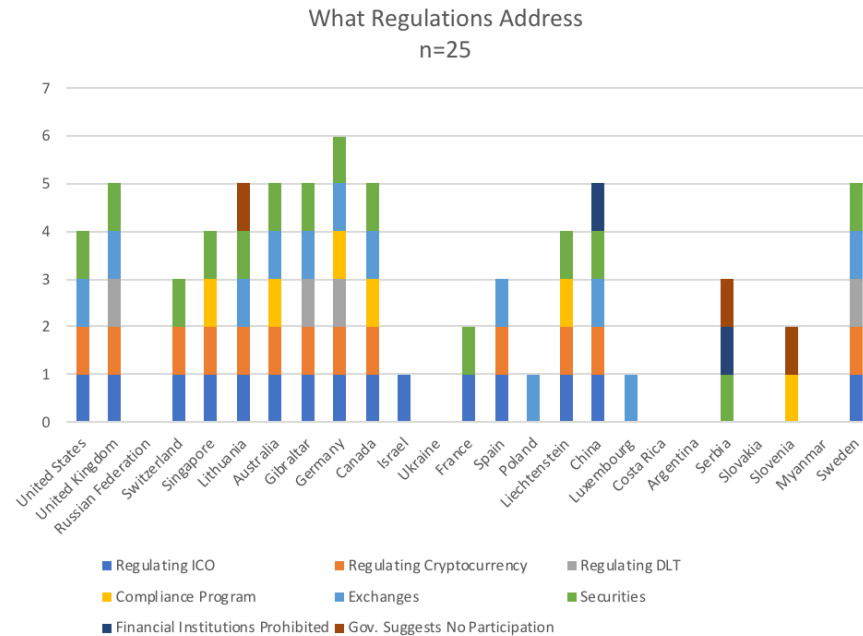


Figure 9: What Regulations Address

Figure 9 shows what the top 25 countries are doing to address these new technological developments. Some states have developed and considered these issues more than others. Some states have decided to stay silent as to developing regulations involving ICO's and cryptocurrencies. There are other reasons that may exist such as blockchain technology may not be considered as salient of an issue for some or others may not understand the technology and how it applies to the existing laws.

Figures 6 to 9 are based on the core regulatory actions or proposals in the jurisdictions listed below and their regulators (excluding the United States)³. The summaries provided below on the regulatory responses are naturally incomplete and require much more analysis to be determinative for jurisdictional choices. All research herein has been based on the originally issued government guidance on their respective approaches, not third-party reporting on such initiatives.

³ The regulatory setup for cryptocurrencies and DLT business was still too uncertain in the United States to be included in the below discussion at the time of publication of this article.

United Kingdom

The Financial Conduct Authority (FCA) is the agency of the UK government that regulates financial activity such as ICO's and Cryptocurrency. The FCA has taken the position that ICO's may be regulated as securities depending on the different aspects and rights the coin holder obtains through holding the coin.⁴ They propose a case by case analysis to determine whether the ICO falls under the regulatory authority of the FCA.⁵ Additionally, they recognize the lack of jurisdiction when the ICO is based overseas.⁶

The FCA currently does not regulate cryptocurrencies provided they are not part of other regulated products or services.⁷ Although they state that their objective is to regulate the outcome rather than the process, the FCA has acknowledged that DLT has unique aspects that can work around current regulations.⁸ As a result of a study, the FCA determined that the current laws are flexible enough to confer DLT businesses, but they will continue to monitor DLT-related market developments and keep their rules and guidance under review for future developments.⁹ For instance, the FCA issued a statement that firms conducting regulated activities in cryptocurrency derivatives must comply with all applicable rules in the FCA's Handbook and any relevant provisions in directly applicable European Union regulations.¹⁰

Russian Federation

⁴ Initial Coin Offerings, (2017), <https://www.fca.org.uk/news/statements/initial-coin-offerings>, (last visited Jan. 30, 2018)

⁵ *Id.*

⁶ *Id.*

⁷ Discussion Paper on Distributed Ledger Technology, (2017) <http://www.fca.org.uk/publication/discussion/dp17-03.pdf>, (last visited Jan. 30, 2018).

⁸ *Id.*

⁹ FS17/4: Distributed Ledger Technology (Apr. 10, 2017), <https://www.fca.org.uk/publications/feedback-statements/fs17-4-distributed-ledger-technology>.

¹⁰ FCA Statement On the Requirement for Firms Offering Cryptocurrency Derivatives to be Authorised, (Apr. 06, 2018), <https://www.fca.org.uk/news/statements/cryptocurrency-derivatives>

The Central Bank of the Russian Federation is the regulatory authority in Russia that is considering ICO and cryptocurrency regulation.¹¹ At the time of publication, the Central Bank of Russia has indicated that the regulation of this technology is premature. For this reason, the Central Bank of Russia has declined to put forth any regulations to control ICO's, cryptocurrency, or DLT. Recently, however, several Russian Federation Ministries have brought forth regulations in this area. On January 25, 2018, the Ministry of Finance of the Russian Federation presented a draft of the Digital Assets Regulation Bill which contains a proposal for defining and establishing a regulatory system for cryptocurrencies, ICOs, mining, and trading.¹² Also, Russia's Ministry of Communications and Mass Media has published a document establishing the licensing rules for ICO projects.¹³

Switzerland

The Swiss Financial Market Supervisory Authority (FINMA) has the power to regulate financial matters within Switzerland. FINMA published guidelines on "how it will deal with enquiries regarding the supervisory and regulatory framework for ICOs. The guidelines specify the information required by FINMA to process enquiries from market participants and also set out the principles on which FINMA will respond to them."¹⁴ If, based on these new guidelines, FINMA determines that an ICO

¹¹ On the use of Private "virtual currencies"(crypto currency), (2017), http://www.cbr.ru/press/PR/?file=04092017_183512if2017-09-04T18_31_05.htm, (last visited Jan. 20, 2017).

¹² Draft Federal Law "On Digital Financial Assets", (Jan. 25, 2018), https://www.minfin.ru/ru/document/?id_4=121810&page_id=2104&popup=Y&area_id=4 (last visited Apr. 24, 2018).

¹³ Helen Partz, Russia: Ministry of Communications Requires ICO Issuers to Have \$1.7 Mln Nominal Capital, (Feb. 12, 2018), <https://cointelegraph.com/news/russia-ministry-of-communications-requires-ico-issuers-to-have-17-mln-nominal-capital> (information from translated document found at <http://regulation.gov.ru/projects#npa=78254>).

¹⁴ Guidelines for Enquiries Regarding the Regulatory Framework for Initial Coin Offerings (ICOs), (Feb. 16, 2018), <file:///C:/Users/kinn0039/Downloads/wegleitung%20ico.pdf>.

constitutes a security, then the ICO would fall under securities regulation.¹⁵ These guidelines are a compliment to previously published guidance where FINMA stated it supports blockchain technology and sees its benefits within the financial markets.¹⁶

Singapore

The regulatory authority in Singapore is the Monetary Authority of Singapore. In August of 2017, the MAS released guidance on how they plan to approach regulation of digital tokens.¹⁷ In this statement the MAS stated they will regulate tokens if they fall under the Securities and Futures Act (SFA).¹⁸ There is no direct regulation under the SFA unless the currency is linked to an ownership or security interest in the issuers assets or property.¹⁹ If such rights are attached to the currency, the issuer must register with MAS, unless exempted for another reason.²⁰

MAS also issued a warning to investors considering investing in these securities.²¹ If the securities fall under MAS-regulation, there will be a triggering of conduct rules, which concerns fair dealing.²² If the security falls outside the MAS-regulations, there will be no duty of fair dealing.²³

Lithuania

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¹⁶ FINMA Guidance 04/2017: Regulatory Treatment of Initial Coin Offerings, (Sep. 29, 2017).

¹⁷ MAS clarifies regulatory position on the offer of digital tokens in Singapore (2017), <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-clarifies-regulatory-position-on-the-offer-of-digital-tokens-in-Singapore.aspx> (last visited Jan. 8, 2018).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Consumer Advisory on Investment Schemes Involving Digital Tokens (2017), <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/Consumer-Advisory-on-Investment-Schemes-Involving-Digital-Tokens.aspx>, (last visited Jan. 13, 2018).

²² *Id.*

²³ *Id.*

Lithuania's current regulatory body (Bank of Lithuania) takes the position that these financial devices are too risky and discourage investors from investing in them.²⁴ If a party decides to still launch an ICO or cryptocurrency under Lithuanian jurisdiction, the current laws surrounding securities and money laundering may apply.²⁵

The terms for financial institutions stipulates that if a financial institution seeks exposure to cryptocurrencies, they separate the financial services of the cryptocurrency from the other investments.²⁶ Although this may be difficult for many institutions, there is still a possibility that a financial institution can invest in cryptocurrency if they keep the crypto exposure separate.

Australia

The Australian Securities and Investment Commission is the regulatory body for cryptocurrency in Australia. Australia is trying to determine whether the Corporations Act applies to ICO's and cryptocurrencies.²⁷ If an ICO/cryptocurrency falls under the Corporations Act, additional disclosures are triggered. For instance, an ICO might trigger a disclosure requirement if the ICO is a managed investment scheme (MIS).²⁸ A few other possible triggers of the Corporations Act involve, for instance, the ICO is being offered as a share of a company, as a directive, or as a non-cash payment.

²⁴ Position of the Bank of Lithuania on Virtual Currencies and Initial Coin Offering (2017) <https://www.lb.lt/uploads/documents/files/Pozicijos%20del%20virtualiu%20valiutu%20ir%20VV%20zetonu%20platinimo%20EN.pdf>. (Last visited Apr. 27, 2018).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Initial Coin Offering (2017), <http://asic.gov.au/regulatory-resources/digital-transformation/initial-coin-offerings/>, (last visited Jan. 13, 2018).

²⁸ A MIS is present if (1) people contribute assets (such as digital currency) to obtain an interest in the scheme ('interests' in a scheme are generally a type of 'financial product' and are regulated by the Corporations Act), (2) the assets are pooled together with one or more other contributors or used in a common enterprise to produce financial benefits or interests in property, and (3) the contributors do not have day-to-day control over the operation of the scheme but, at times, may have voting rights or similar rights. *Id.*

Australia has also implemented what they call the “Innovation Hub” to help fintech companies comply and navigate the regulatory world.²⁹ Through this program, the ASIC is also able to keep track of what is happening in the market.³⁰ This allows both parties to eliminate uncertainty that may exist.

In response to questions about DLT, ASIC has stated that the existing regulatory framework is able to accommodate DLT in the use cases they have reviewed, but that they anticipate additional regulatory conditions may arise.³¹

Gibraltar

The Gibraltar Financial Service Commission is in charge of regulating cryptocurrency in Gibraltar. Gibraltar has taken notice of the increased use of DLT, cryptocurrency and exchanges.³² Effective January 1st, 2018, the Financial Services (Distributed Ledger Technology Providers) Regulations 2017 address DLT, exchanges and cryptocurrency.³³

GFSC states that “[t]he DLT framework positions Gibraltar as a jurisdiction which facilitates innovation, whilst ensuring it continues to meet its regulatory and strategic objectives, and understands the modern need for robust and speedy interaction with regulators in this fast moving area of business. The DLT framework applies to activities, not subject to regulation under any other regulatory framework, that use DLT for the transmission or storage of value belonging to others. Firms and activities that are subject to another regulatory framework continue to be regulated under that

²⁹ *Id.*

³⁰ Innovation Hub, (2017), <http://asic.gov.au/for-business/your-business/innovation-hub/>, (last visited Jan. 13, 2018).

³¹ Evaluating Distributed Ledger Technology, Information Sheet 219, (Mar. 2017), <http://asic.gov.au/regulatory-resources/digital-transformation/evaluating-distributed-ledger-technology/#framework>

³² Statement on Initial Coin Offering, (2017), <http://www.gfsc.gi/news/statement-on-initial-coin-offerings-250>, (last visited on Jan. 21, 2018).

³³ Financial Services (Distributed Ledger Technology Providers) Regulations, *Gibraltar Gazette* 4401 (Oct. 12, 2017), [http://www.fsc.gi/uploads/DLT%20regulations%20121017%20\(2\).pdf](http://www.fsc.gi/uploads/DLT%20regulations%20121017%20(2).pdf),

framework.”³⁴ Gibraltar recognizes that this area of the law is evolving and innovative, and as such is better achieved through the “application of principles rather than rigid rules”³⁵ which are more suited for the purpose.

Germany

Germany’s Federal Financial Supervisory Authority (BaFin) has issued a letter of advice in which it comments on the regulatory classification of tokens in the area of securities supervision. Initial Coin Offerings are covered by the applicable regulatory requirements depending on the configuration of the token, and will be determined by BaFin on a case by case basis where its assessment is based on the language of the statutory provisions under securities supervision law.³⁶ “The decisive factor is which rights are associated with the respective token.”³⁷ A prior classification of the token (i.e. as a “participation token”, “utility token”, or “payment token”) can provide initial guidance as to the type of token it is under German law, but is not to be relied upon outside a comprehensive and binding regulatory classification.³⁸ If a token is found to be regulated by a particular securities law, failure to comply with the relevant portions may result in BaFin prohibiting the relevant transaction, and could constitute administrative offenses punishable by fines.³⁹

Canada

³⁴ Distributed Ledger Technology Regulatory Framework (DLT Framework), (2018), <http://www.fsc.gi/dlt?print> (last visited Apr. 24, 2018).

³⁵ *Id.*

³⁶Initial Coin Offering: [Note](#) on the Classification of Tokens as Financial Instruments, Ref. No. WA 11-QB 4100-2017/0010 (Mar. 28, 2018), https://www.bafin.de/SharedDocs/Downloads/EN/Merkblatt/WA/dl_hinweisschreiben_einordnung_ICOs_en.html.

³⁷ Initial Coin Offerings: BaFin Publishes Notes on Classification as Financial Instruments, (Mar. 15, 2018), https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Fachartikel/2018/fa_bj_1803_ICOs.html

³⁸ *Id.*

³⁹ *Id.*

The Canadian Securities Administration (CSA) is the regulatory authority in Canada. The CSA applies a four-factor test in determining whether a cryptocurrency have to be registered as securities.⁴⁰ The factor test will consider substance over form when considering: (1) Soliciting a broad base of investors, including retail investors; (2) Using the internet, including public websites and discussion boards, to reach a large number of potential investors; (3) Attending public events, including conferences and meetups, to actively advertise the sale of the coins/tokens; and (4) Raising a significant amount of capital from a large number of investors.⁴¹ The CSA has also developed a regulatory sandbox specifically for Fintech companies to stay in compliance.⁴² The regulatory sandbox allows a fast track for registration or exemption depending on the circumstances.⁴³ The thought behind the regulatory sandbox is to allow a flexible process for complying with the current regulations.⁴⁴

Finally, the CSA touches on exchanges and how this relates to regulation. In determining whether an exchange must be registered, they must meet the qualifications for being a marketplace.⁴⁵ When an exchange is considered a marketplace⁴⁶ or

⁴⁰ Canadian Securities Regulators Outline Securities Law Requirements That May Apply To Cryptocurrency Offerings (2017), <https://www.securities-administrators.ca/about.aspx?id=-1606>, (Last visited Jan. 8, 2018).

⁴¹ CSA Staff Notice 46-307 Cryptocurrency Offerings, (2017) http://www.osc.gov.on.ca/en/SecuritiesLaw/csa_20170824_cryptocurrency-offerings.htm, (Last visited Jan. 8, 2017).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ A marketplace consists of three elements: (1) brings together buyers and sellers of securities; (2) brings together the orders for securities of multiple buyers and sellers; and (3) uses established non-discriminatory methods under

alternative trading system⁴⁷, the exchange is required to register.⁴⁸ At the time of publication, there were no registered marketplaces or ATS's in Canada.

Israel

The Bank of Israel's Deputy Governor stated in a speech that "Bitcoin and similar virtual currencies are not a currency, and are not considered foreign currency. The Bank of Israel's position is that they should be viewed as a financial asset, with all that this entails."⁴⁹ In February 2018, Israel's Tax Authority confirmed that it would treat bitcoin and other cryptocurrencies as a kind of property for tax purposes.⁵⁰ As such, "[p]rofits from cryptocurrencies will be subject to capital gains tax at rates between twenty percent and twenty-five percent, while individuals mining or trading cryptocurrencies in connection with businesses must pay a seventeen percent value-added tax (VAT) in addition to capital gains tax."⁵¹ Earlier in January, the Tax Authority had released a draft statement that considered the methods of taxing ICOs with

⁴⁷ An ATS differs from an exchange in that it: (1) require an issuer to enter into an agreement to have its securities traded on the marketplace; (2) provide, directly, or through one or more subscribers, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis; (3) set requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the marketplace; and (4) discipline subscribers other than by exclusion from participation in the marketplace

⁴⁸ CSA Staff Notice 46-307 Cryptocurrency Offerings, (2017) http://www.osc.gov.on.ca/en/SecuritiesLaw/csa_20170824_cryptocurrency-offerings.htm, (Last visited Jan. 8, 2017).

⁴⁹ Remarks by Bank of Israel Deputy Governor Dr. Nadie Baudot-Trajtenbert at the Knesset Finance Committee Meeting on Activity and Use of Virtual Currencies. (Jan. 8, 2018), <http://www.boi.org.il/en/NewsAndPublications/PressReleases/Pages/8-1-18-DeputyGove.aspx>

⁵⁰ Annaliese Milano, Israel Confirms it Will Tax Bitcoin as Property, Coindesk (Feb. 19, 2018), <https://www.coindesk.com/israel-confirms-will-tax-bitcoin-property/> (official publication offered in Hebrew only at https://taxes.gov.il/About/SpokesmanAnnouncements/Pages/Ann_190218_1.aspx).

⁵¹ *Id.*

VAT, but the February statement does not mention any decisions regarding ICOs taxation methods.⁵²

Ukraine

The National Bank of Ukraine has the power to regulate cryptocurrencies in Ukraine. A statement for the Bank of Ukraine lays out the different views other countries have presented,⁵³ concluding that the Ukraine has not taken a position on the issue yet. Instead, they are going to discuss the issue at the next financial stability board meeting, which will be held in August of 2018.⁵⁴ At the present time, Ukraine is not saying anything as to how they are going to treat this technology.

France

The Autorite Des Marchés Financiers (AMF) is France's regulatory authority on the matter of cryptocurrency. The AMF has taken the position that they are still not sure what this technology is or how to regulate it.⁵⁵ For this reason, France has implemented a new program called the Universal Node to ICO Research & Network (UNICORN). Through this program, France will explore the scope of regulation to be implemented. As of now, the three ways of regulating they are considering are: (1) promoting best practices with existing legislation (2) extend the scope of existing text to include ICOs as securities and (3) propose ad hoc legislation

⁵² Moly Jane Zuckerman, Israel Confirms Cryptocurrency Will Be Taxed as Property, Not Currency, CoinTelegraph (Feb. 20, 2018), <https://cointelegraph.com/news/israel-confirms-cryptocurrency-will-be-taxed-as-property-not-currency>.

⁵³ Comment of the Deputy Chairman of the National Bank of Ukraine Oleg Churia on the status of Bitcoin in Ukraine, (2017), http://bank.gov.ua/control/uk/publish/article?art_id=53411806&cat_id=55838, (last visited Jan 21, 2017).

⁵⁴ *Id.*

⁵⁵ The AMF Publishes a discussion paper on Initial Coin Offerings and institutes the Unicorn programme, (2017), http://www.amf-france.org/en_US/Actualites/Communiqués-de-presse/AMF/annee-2017?docId=workspace%3A%2F%2FSpacesStore%2F5097c770-e3f7-40bb-81ce-db2c95e7bdae, (last visited Jan. 31, 2017).

adapted to ICOs.⁵⁶ After public comments on the options were considered, the AMF Board has decided to continue to work on “the definition of a specific legal framework for ICOs providing for the appropriate guarantees, particularly in terms of information, which will be necessary for this new type of offer.”⁵⁷ The AMF Board also has reached the conclusion that platforms which offer cryptocurrency derivatives require authorization that these products are prohibited to advertise such offers via electronic means, irrespective of the legal qualification of a cryptocurrency.⁵⁸

Spain

There is currently no official regulation of ICO's or cryptocurrency beyond gambling laws in Spain, however in February 2018 a joint press statement by the Banco de España and the Comisión Nacional del Mercado de Valores (CNMV), accompanied by “Considerations” on cryptocurrencies and ICO's, lays out Spain's concerns and guidance regarding these areas.⁵⁹ In particular, the Considerations “seek to offer initial guidance about the consequences of so-called ‘Initial Coin Offerings’ (ICOs) from the regulatory standpoint, and are subject to potential coordinated

⁵⁶ *Id.*

⁵⁷ The AMF Publishes the Summary of Responses to the Public Consultation on Initial Coin Offerings (ICO), (Feb 22, 2018), http://www.amf-france.org/en_US/Actualites/Communiqués-de-presse/AMF/annee-2018?docId=workspace%3A%2F%2FSpacesStore%2F57711a6c-4494-4215-993b-716870ffb182.

⁵⁸ The AMF Considers That the Offer of Cryptocurrency Derivatives requires Authorisation and That It is Prohibited to Advertise Such Offer Via Electronic Means, (Feb. 22, 2018), http://www.amf-france.org/en_US/Actualites/Communiqués-de-presse/AMF/annee-2018?docId=workspace%3A%2F%2FSpacesStore%2Fa225bf1d-de35-4f58-89e3-f03cb7e9e551.

⁵⁹ Joint Press Statement by the CNMV and the Banco de España on “Cryptocurrencies” and “Initial Coin Offerings” (ICOs) (Feb. 8, 2018), https://www.bde.es/f/webbde/GAP/Secciones/SalaPrensa/NotasInformativas/18/presbe2018_07en.pdf; CNMV Considerations on Cryptocurrencies and ICOs addressed to Market Professionals, (Feb. 8, 2018), <http://www.cnmv.es/Portal/verDoc.axd?t=%7b62395018-40eb-49bb-a71c-4afb5c966374%7d>.

approaches or regulatory developments at the national, European or international level.”⁶⁰

Poland

In a joint statement by the National Bank of Poland and Financial Supervision Commission, the regulatory authorities said cryptocurrencies are not considered legal tender.⁶¹ As a result of this lack of legal tender, the government issued warnings about investing.⁶² The government makes a clear distinction between investing in DLT and virtual currencies.⁶³ The government says that DLT’s may be subject to other laws that don’t apply to virtual currencies.⁶⁴ The statement does not explicitly prohibit financial institutions from participating in the crypto market but advised these institutions not to invest.

While there is some indication that Poland’s government is open to the possibility of a national digital currency,⁶⁵ the National Bank of Poland was quick to assert that only the National Bank of Poland is authorized to issue money and to determine and implement monetary policy, and that they are not carrying out work on the issue of “so called digital currency”.⁶⁶

In addition, Poland’s Ministry of Finance released an interpretation of Poland’s tax code in April 2018 which states that in connection with the obligations to file a tax return for 2017, all income from cryptocurrency transaction are subject to either an 18

⁶⁰ *Id.*

⁶¹ Announcement of the National Bank of Poland and the Polish Financial Supervision Authority regarding virtual currencies (2017), http://www.nbp.pl/home.aspx?f=aktualnosci_2017/ww-pl.html, last visited (Jan 20, 2018)

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Arnab Shome, Poland is Developing National Cryptocurrency, Finance Magnates (Jan. 17, 2018), <https://www.financemagnates.com/cryptocurrency/news/poland-developing-national-cryptocurrency/>

⁶⁶ Statement of the NBP Press Office (Jan, 17, 2018), http://www.nbp.pl/home.aspx?f=aktualnosci/wiadomosci_2018/2018-01-17.html.

percent or a 32 percent tax rate, and that the sale and exchange of cryptocurrencies into traditional currency and vice versa, as well as the exchange of one cryptocurrency for another, could create a VAT tax obligation.⁶⁷

The Polish Financial Supervision Authority (KNF) issued an additional statement concerning ICO's specifically.⁶⁸ The statement laid out what an ICO was and the risks associated with investing.⁶⁹ Depending on the way the currency is structured, there can be a lack of legal protections if the currency does not fall under the regulations financial markets have to follow.⁷⁰

Lichtenstein

Until recently, Lichtenstein had been relatively silent with regards to taking a stance of whether securities law applied to ICO's and cryptocurrencies. In September of 2017, the Financial Market Authority came out with a fact sheet concerning ICO's and cryptocurrency.⁷¹ In the legality section, the government states that the applicability of securities and financial instrument law will depend on the rights attached to the token.⁷² If corporations have questions concerning ICO's, Lichtenstein has established a fast track fintech department to address these issues.⁷³

⁶⁷ Tax Effects of trading in Cryptocurrencies in PIT, VAT and PCC. (Apr. 04, 2018), https://www.mf.gov.pl/ministerstwo-finansow/wiadomosci/aktualnosci/ministerstwo-finansow2/-/asset_publisher/M1vU/content/skutki-podatkowe-obrotu-kryptowalutami-w-pit-vat-i-pcc.

⁶⁸ The KNF's statement on selling so-called coins or tokens (Initial Token Offerings – ITOs or Initial Coin Offerings – ICOs), (2017), http://www.knf.gov.pl/knf/en/komponentry/img/The_KNFs_statement_on_selling_socalled_coins_or_tokens_ICO_60238.pdf, (last visited Jan 20, 2018).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Fact Sheet on Initial Coin Offerings (2017), <https://www.fma-li.li/files/fma/fma-factsheet-ico.pdf>, (last visited Jan. 19, 2018).

⁷² *Id.*

⁷³ *Id.*

In December of 2017, the Financial Market Authority issued the non-profit organization CBN a no action letter.⁷⁴ It is important to note that CBN's ICO currency did not come with any right to assets or property.⁷⁵ This could be seen as an indicator of the government's position on companies engaging in ICO/cryptocurrency activity.

China

The People Republic of China have taken a firm stance against ICO's, banning them entirely.⁷⁶ This also applies to the offering of coins and the exchanges used to trade the coins.⁷⁷ China believes that ICO's hurt the market because of potential deception and fraud.⁷⁸ The PRC recognizes that this has been going on in their country and as a result, issuers of these currencies must take steps to protect investors rights under the current laws.⁷⁹

Luxembourg

The Commission de Servellance du Secteur Financier (CSSF) is the regulatory authority tasked with the regulation of cryptocurrency. The CSSF has not issued any regulations by themselves, but in a recent "Warning on Initial Coin Offerings ("ICOs") and Tokens" it stated "[d]espite the lack of specific regulations that applies to ICOs, the activities related thereto or implied through the creation of tokens, the collection and raising of funds may, depending on their characteristics, be subject to certain legal provisions in Luxembourg and thus to certain supervisory requirements."⁸⁰

⁷⁴ CBN Foundation, <https://cbn.foundation/#>, (last visited Jan. 19, 2017).

⁷⁵ Steve Jurvetson, CBN Foundation Whitepaper, 41-2 (2017).

⁷⁶ 关于防范代币发行融资风险的公告, (2017), <http://www.cbrc.gov.cn/Chinese/home/docView/BE5842392CFF4BD98B0F3DC9C2A4C540.html> (last visited Jan. 19, 2018).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Warning on Initial Coin Offerings ("ICOs") and Tokens (Mar. 14, 2018), Commission de Surveillance du Secteur Financier

Costa Rica

There is currently no regulation of ICO's, cryptocurrency or blockchain technology in Costa Rica, however the Central Bank of Costa Rica released an opinion with respect to cryptocurrencies that states "bitcoin and other similar cryptocurrencies do not have the backing of the Central Bank of Costa Rica."⁸¹ As cryptocurrencies are also not issued by foreign central banks, they cannot be considered foreign currency and so cannot fall under the regulations of the exchange regime.⁸² It is emphasized that the Central Bank does not regulate or supervise cryptocurrencies and those that deal in cryptocurrencies do so at their own risk.⁸³

Argentina

Virtual currency is defined under Resolución 300/2014 by the Unidad de Información Financiera Aquellos (Financial Information Unit, Argentina's anti-money laundering agency) as "digital representation of value that may be the object of digital commerce and whose functions are to constitute a means of exchange, and/or a unit of account, and/or a reservation of value, but which have no legal tender, are not issued, and are not guaranteed by any country or jurisdiction."⁸⁴ The Resolution

http://www.cssf.lu/fileadmin/files/Protection_consommateurs/Avertissements/W_ICOS_140318_eng.pdf

⁸¹ Posición del Banco Central de Costa Rica (BCCR) y sus Órganos de Desconcentración Máxima (ODM) con respecto a las criptomonedas [Position of the Central Bank of Costa Rica (BCCR) and its Maximum Deconcentration Bodies (ODM) with Respect to Cryptocurrencies], (Oct. 9, 2017), https://www.bccr.fi.cr/seccion-noticias/Noticia/Posicion_bccr_criptomonedas.aspx.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Prevención del Lavado de Activos y de la Financiación del Terrorismo Resolución 400/2014 [Prevention of Money Laundering and Terrorism Financing Resolution 300/2014], (Jul. 4, 2014), <https://www.boletinoficial.gob.ar/#!DetalleNormaBusquedaAvanzada/108558/20140710>.

continues that those who proceed with transactions in this area should proceed with caution and must make certain disclosures.⁸⁵ The futures market of Mercado de Termino de Rosario is considering the application bitcoin.

Serbia

The National Bank of Serbia is the regulatory authority over ICO's in Serbia. Serbia has taken the position that financial institutional are not allowed to participate in ICO's or other cryptocurrency investments because they are not legal tender.⁸⁶ For individuals, the government warns against investment because of security issues.⁸⁷

In addition to the disallowance of cryptocurrency as legal tender, in 2016 the National Bank of Serbia stipulated that they would be considering regulation on the treatment of cryptocurrencies.⁸⁸ At the time of publication, no new regulation from the Serbian authorities existed.

Slovakia

Slovakia's regulatory body that deals with financial matters is the National Bank of Slovakia.⁸⁹ The national bank takes the view that cryptocurrencies are not considered money because countries enjoy monetary sovereignty.⁹⁰ This makes it difficult to regulate

⁸⁵ *Id.*

⁸⁶ NBS Warns that Bitcoin is Not Legal Tender in Serbia (2014), <http://www.nbs.rs/internet/english/scripts/showContent.html?id=7607&konverzija=yes> (last visited Jan. 22, 2018).

⁸⁷ *Id.*

⁸⁸ Bitcoin Will Not Replace Euro or Any Other Currency (2016), <http://www.nbs.rs/internet/latinica/scripts/showContent.html?id=9612&konverzija=yes> (last visited Jan. 27, 2018)

⁸⁹ Niekoľko úvah k virtuálnej mene bitcoin (2017), http://www.nbs.sk/_img/Documents/_PUBLIK_NBS_FSR/Biatec/Rok2013/08-2013/06_biatic13-8_nadasky.pdf (last visited Jan. 19, 2018).

⁹⁰ *Id.*

because cryptocurrencies cannot fall under the monetary policy of the country.⁹¹ This also means that cryptocurrencies do not fall under the definition of electronic money because there is no monetary value.

In March 2018, Slovakia's Ministry of Finance announced general guidance stating that income from cryptocurrency must be taxed.⁹² "Any type of exchange, for example, an exchange of a virtual currency for an asset' or its 'exchange for a service rendered or its paid transfer, including its exchange for another virtual currency' is considered to be a taxable sale."⁹³ The guidance is not binding but is considered best practices for 2017.⁹⁴

Slovenia

Slovenia's regulatory body for ICO transactions is the Bank of Slovenia. Slovenia issued a warning to investors about the dangers of ICO and cryptocurrency investment but have since declined to take a position on regulation.⁹⁵ Currently, there are no regulations or position taken by the government beyond the formal warning.⁹⁶

There is hope that when the government finally takes a stance on the treatment of ICO and cryptocurrency regulation it will be in hopes to foster innovation as opposed to restrict. In a statement, the Prime Minister said that the country is currently studying the technology in hopes of having Slovenia being the blockchain hub of the European Union.⁹⁷ One of the ways in which

⁹¹ *Id.*

⁹² Jan Stojaspal, Slovakia to Tax Cryptocurrency Income, Bloomberg Tax, (Mar. 28, 2018), <https://www.bna.com/slovakia-tax-cryptocurrency-n57982090526/> (from translated document at <http://src.bna.com/xod>).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Financial Stability Board Warning, (2017), <https://www.bsi.si/en/media/1138/financial-stability-board-warning>, (last visited Jan. 27, 2017).

⁹⁶ *Id.*

⁹⁷ Slovenia's Challenges 2020: A vision for the development of regulation of blockchain technology in modern society, (2017), http://www.vlada.si/en/prime_minister/news/a/

they are looking to accomplish this is through a Blockchain Think Tank, which allows companies a point of contact on compliance and development issues.⁹⁸

Myanmar

Myanmar officials have not taken a position on blockchain technology. The current regulatory power in Myanmar is the Central Bank of Myanmar. If there was to be any regulation in the country surrounding ICO's or cryptocurrency's, it would be coming from this power.

Sweden

The Swedish regulatory authority finansinspektionen (FI) controls the regulation around ICO's and cryptocurrency. The FI has taken the stance that ICO's are investment products that may be traded.⁹⁹ Although there is no explicit ban on financial companies raising money through ICO's, no Swedish company has attempted to do so yet.¹⁰⁰ Along with this notice, Sweden has also issued a warning about the risks associated with cryptocurrencies and the ICO market.¹⁰¹ Along with this general warning, FI cites the ESMA publications that reference, depending on the cryptocurrency structure, a possible triggering of securities law as well as other consequences.¹⁰²

V. Conclusion

The majority of the countries examined in this study permit ICO's and cryptocurrencies or do not explicitly prohibit them. Of the entirety of countries considered, only a very small minority has

slovenias_challenges_2020_a_vision_for_the_development_and_regulation_of_blockchain_technology_in_modern_society_1108/, (last visited Jan. 27, 2017).

⁹⁸ *Id.*

⁹⁹ FI role regarding innovation (2017), http://www.fi.se/contestassets/d3cd30fe473d4a7995f0c38209ddb7f1/fintech_report_eng.pdf, (last visited Jan 30, 2018).

¹⁰⁰ *Id.*

¹⁰¹ Warning for Risks with Initial Coin Offerings (ICO), (2017), <http://www.fi.se/sv/publicerat/nyheter/2017/varning-for-risker-med-initial-coin-offerings/>, (last visited Jan. 30, 2018)

¹⁰² *Id.*

banned ICO's and cryptocurrencies altogether. For the most part, the general view of the world governments appears to be that they are using existing laws to regulate cryptocurrencies or wait to see how other countries react to the crypto evolution. Regulatory efforts can take several forms but appear to involve some of the following approaches or permutations thereof: regulating ICOs, regulating cryptocurrencies, regulating DLT, mandating compliance programs, regulating exchanges, securities regulation, prohibition of exposed financial institutions, government suggestions to consumers not to participate.