



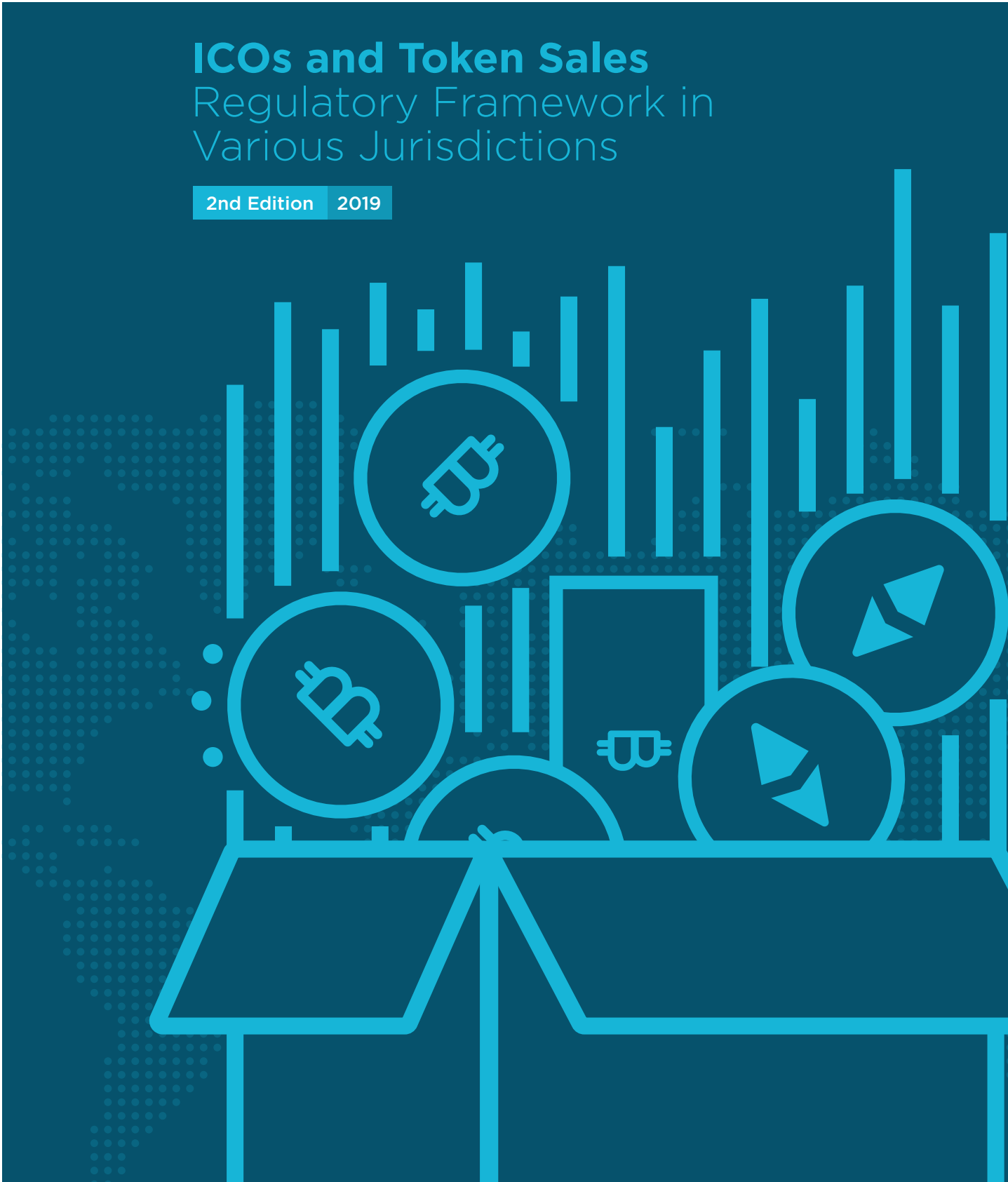
**LEGALINK**

INTERNATIONAL BUT PERSONAL

# ICOs and Token Sales

## Regulatory Framework in Various Jurisdictions

2nd Edition 2019



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## THE **13** QUESTIONS WE ASKED

- 1 Does your country allow or prohibit ICOs and Token Sales?
- 2 Does your country regulate ICOs and Token Sales?
- 3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?
- 4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.
- 5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.
- 6 If a foreign entity conducts an ICO and offers tokens to residents of your country, will your government require the foreign entity to comply with any rules and regulations? If so, please provide an overview of how ICOs conducted by foreign entities are regulated by the government of your jurisdiction.
- 7 What is the legal nature of crypto in your country (for example, is crypto considered a security, commodity, currency etc.)?
- 8 Has the government of your country prosecuted, civilly or criminally, any ICO issuers, token developers or crypto exchanges for violating your country's laws? If so, please provide an executive summary of the most significant prosecution(s).
- 9 In your country, are there any significant commercial disputes or civil cases (non- government) involving crypto? If so, please provide an executive summary of the most significant dispute(s)/ case(s).
- 10 Does your jurisdiction tax crypto transactions? If so, please provide a basic explanation of how and at what rate they are taxed.
- 11 Separate from ICOs, does your jurisdiction regulate crypto trading or crypto exchanges? If so, please provide an overview of the regulation.
- 12 Does your country offer any unique or important benefit to crypto-focused companies (for example, clear regulatory guidance)? If so, please describe the unique/ important benefit.
- 13 Please identify a point of contact at your firm for cryptocurrency- related matters.

# SOUTH AFRICA

## FLUXMANS INC.

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

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

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

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

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

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

**4** If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

Not applicable yet.

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

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

# SOUTH AFRICA

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

**6** If a foreign entity conducts an ICO and offers tokens to residents of your country, will your government require the foreign entity to comply with any rules and regulations? If so, please provide an overview of how ICOs conducted by foreign entities are regulated by the government of your jurisdiction.

Not applicable at present.

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

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

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## FLUXMANS INC.

**8** Has the government of your country prosecuted, civilly or criminally, any ICO issuers, token developers or crypto exchanges for violating your country's laws? If so, please provide an executive summary of the most significant prosecution(s).

Not as far as we are aware.

**9** In your country, are there any significant commercial disputes or civil cases (non-government) involving crypto? If so, please provide an executive summary of the most significant dispute(s)/ case(s).

Not as far as we are aware.

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

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

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

Not at present.

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

Not at present.

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

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