

10 points ...

Briefsheet
June 2017

on Initial Coin Offerings (ICOs)

This KWM BriefSheet sets out 10 points on the what, how and why of ICOs

- **ICOs sell blockchain tokens (or coins)...** A token is an intangible asset stored on a [blockchain](#) which entitles a token holder to a bundle of rights (and possibly liabilities) set out in [smart contracts](#) and other relevant documentation (such as an offering document or a whitepaper).
- **... in a way like IPOs ...** ICOs are inspired by IPOs. Like an IPO, tokens which have not been available to the public previously are generally offered to raise a set amount of funds, within a defined period of time. Once purchased, the token may be able to be traded on exchanges accessible by the public.
- **... mixed in with crowd funding.** However, tokens can be issued to fund projects, and are not necessarily issued by a company (or even a legal entity). Early ICOs were actually called 'crowd sales'. Like raising money for a product through crowd-funding, ICO investors may purchase rights in connection with a project or venture that is (often) in beta or under construction.
- **Any "body" could offer tokens in an ICO ...** There is no inherent restriction on who can use this method of raising funds. Any body, be it a partnership, company, individual or even a [Decentralised Autonomous Organisation](#), which has the technological capability to create tokens, could seek to offer them on a blockchain to raise money to fund a new venture. Many, but not all, use the [Ethereum](#) platform.
- **... and people participate for different reasons ...** Like an IPO, each person has their own reasons for participating in an ICO. For example, the ability to quickly raise significant capital and the dramatic increase in value of tokens has drawn many innovators and purchasers to raise funds and participate in this manner.
- **... and the tokens can be very different.** As the function of tokens issued under an ICO is limited only by the imagination of their creator (or creators), not all tokens are the same, meaning not all token holders receive the same, or (in the worst case scenario) any rights as a result of their participation in the ICO. What legal requirements an ICO may need to comply with will depend on the functionality and features of the tokens it issues, to whom tokens are issued and the manner in which the ICO is conducted.
- **The tokens could be securities ...** In some circumstances, including if an investor has a right to benefit from the profits of the venture, or if a token provides some sort of beneficial interest in the token issuer (or another share), the ICO could be an issuance of securities. If so, the relevant laws relating to securities and their offering are likely to apply.
- **... or other financial products.** In other instances, if the value of the token is dependent on another asset, like a metal or a currency (including a digital currency), or it is used to make an investment, it may be a financial product and the corresponding laws relating to issuing and investing in financial products potentially apply.
- **Applying financial regulation to them requires careful thought ...** It is important to remember that whilst the classification and regulation of ICOs and their tokens has not been fully tested or clarified in many jurisdictions, tokens can generally be assessed under existing regulation according to their legal structure and the facts (not just their name). Further, even if a token issuer's operations are physically located in one jurisdiction, the laws of another jurisdiction may still apply to the ICO, the tokens, token holders, token issuer, the token wallet or a token exchange in certain circumstances. This all depends on the facts – and as with other products, jurisdictional limits must be considered. Any project connected with an ICO should also be analysed. As token sales have gained momentum and have more widespread applications, a number of regulators have issued clarifications and some have even issued new restrictions. We expect the law and regulation to continue to develop, in tandem with the evolution of digital currency regulation, as the two concepts are intertwined. Staying abreast of changes is essential.
- **... and they can be otherwise regulated.** Even if an ICO is not subject to financial regulation, this does not mean that no law or regulation applies. In particular, general contract principles, fraud, consumer protection laws, tax, anti-money laundering and counter-terrorist financing obligations and (in some jurisdictions) cross-border controls can apply when issuing, buying, selling or trading tokens.

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to help you



SCOTT FARRELL
Partner

T: +61 2 9296 2142
M: +61 409 042 883
scott.farrell
@au.kwm.com



URSZULA MCCORMACK
Partner

T: +852 3443 1168
M: +852 6796 6130
urszula.mccormack
@hk.kwm.com



STANLEY ZHOU
Partner

T: +86 21 2412 6000
M: +86 139 1691 2182
stanley.zhou
@cn.kwm.com



HANNAH GLASS
Solicitor

T: +61 2 9296 2069
M: +61 421 175 274
hannah.glass
@au.kwm.com