

Conference Paper

Comparative Analysis of Legal Regulation of ICO in Selected Countries

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Abstract

The article analyzes popular jurisdictions for conducting ICO. The tendencies of legal regulation in different countries are considered.

Keywords: crypto-currency, block, ICO, crowdsale, means of attraction of investments, safety, financial technologies

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1. Introduction

Undoubtedly ICO can be called the financial theme of 2017th year. Getting financing through it has acquired significant scale – more than \$ 1.5 billion has been raised since the beginning of the year [1]. There are at least 20 placements in the world every month. Interest in the ICO has grown, among other things, because of the growing interest in the technology of blockchain by the states.

The traditional way to attract large capital is the IPO (Initial Public Offering) – “the initial public placement of securities.” The company sells its securities through the exchange, earning a profit that can far exceed its annual income. IPO is one of the most expensive ways to raise funds from an unlimited range of people, and the preparation process takes a long time up to a year [2].

The market of crypto-currencies is more democratic. New processes and phenomena appeared with its popularization including ICO. ICO (Initial Coin Offering) [2] is an instrument for attracting capital by involving investors in a start-up that develops and promotes a service / technology / platform associated with crypto currency. ICO is a new financial tool that helps young crypto-currencies start correctly. The beginning of the ICO is usually announced during the profile crypto-exchange forums (bitcointalk.org), which contain all the key and technical information about the project: goal, timeframe for the ICO, team, project features, roadmap for the development of the site and other details. The release occurs by adding to the blockchain a transaction with description, quantity and unique ID. The attraction of capital takes place

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at the expense of a preliminary sale at the price of digital tokens established by the ICO organizer. The value of the tokens is not guaranteed by anyone other than the company that issues them. Investors – platform users – buy tokens, by paying with crypto currency. Anyone can raise funds using ICO but more important that the concept has to attract users. There are several ways of developing tokens for investors in the future: either pay them on more favorable terms for services inside the platform, or wait for these tokens to grow in price, go out to the stock exchange and exchange them for other crypto-currencies or fiat money and thus to profit.

However, one must understand that ICO is not the same as IPO. IPO investors purchase a share in a company and become its co-owners, while ICO sponsors only get internal currency. The legal status of the ICO is not defined either, the investors are not legally protected in case their financing object fails on the market. [2] There is a lot of fraud in ICO despite of its youth. Companies raise funds, but they fail on the market or do not go for it at all. There are cases when companies get the funding and willfully never make a product. The anonymity of transactions and the absence of regulators in the face of government agencies are the dark side of the blockchain market and crypto-currency, they allow using crypto-exchanges for money laundering and financing of terrorism. Today, governments are only trying to fight against it, and it is difficult to assess the effectiveness of their actions.

2. Analytical part

Countries are trying to find the most effective model for regulating transactions with crypto-currencies, including ICO. Obviously, the country that is more successful and is quicker to implement ICO regulation will attract more investors, because participation in ICO is a high yield, but also it presents high risks. Therefore, it is necessary to solve a number of issues, including the definition of a crypto currency, the status of mining, the correlation between a crypto currency and fiat money, and, finally, the legal status of the ICO.

3. RUSSIAN FEDERATION

The legal status of crypto-currency is not defined in Russia. Article 75 of the Constitution of the Russian Federation prohibits money surrogates, to which bitcoin and its analogs can be assigned. Nevertheless, the technology of blockchain, which is the basis of crypto-currency, is not prohibited. Although Roskomnadzor has repeatedly

made proposals to prohibit the use of bitcoin in Russia, at the moment the Bank of Russia is discussing with the Ministry of Finance and Rosfinmonitoring the issue of recognizing the bitcoin.

President of the Russian Federation Vladimir Vladimirovich Putin instructed the government and the Central Bank to regulate the taxation and registration of companies involved in mining, as well as the procedure for regulating the ICO by parity of reasoning with the regulation of IPOs [3]. It will be necessary to determine the status of digital technologies such as "crypto-currency", "token", "digital mortgage" and others. Corresponding amendments should be introduced into the legislation before July 1, 2018. A special regulatory platform based on the Central Bank will be created to test innovative financial technologies until the end of December 2017. The State Duma announced the open tender for expert-analytical study on the topic "Legislative regulation of the introduction and practical application of modern financial technologies". The Finance University under the Government of the Russian Federation won the contest. The results of the research work are going to be used by the State Duma to formulate legislative initiatives for integration and legislative support for the most promising financial technologies.

4. THE UNITED STATES OF AMERICA

Technological start-ups around the world are attracting more and more funds. The United States Securities and Exchange Commission (SEC) pay particular attention to the active development of the crowdsale market. In summer of 2017, the US regulator issued a report recognizing the DAO token, which held one of the first ICO securities [4]. According to the commission opinion, they correspond to the legal criteria by which they could be attributed to securities, and therefore fell under federal securities laws. After then the SEC began an investigation to establish a violation of US law when selling The Dao's tokens. The goal was that crowdinvesting in the crypto currency should first of all protect the rights of investors. The SEC did not intend to file charges, but rather warned the industry and the market that federal securities laws apply to everyone who offers and sells securities in the United States. It does not depend on the form of distribution, or whether the issuing organization is a traditional company or a decentralized autonomous organization, or whether these securities are purchased using US dollars or virtual currencies. Nevertheless, it is difficult to foresee how the Securities and Exchange Commission will evaluate each new token, because not every ICO company provides profit for investors.

5. CHINA

Six representatives of China's blockchain industry participated in the creation of a protocol for the management and control of financial risks during the ICO in July 2017. The risks associated with the ICO included investment risks and security. The first one means assessment the released tokens and their liquidity. The second one is about the possibility of attacks from hackers and withdrawal of funds. The level of crypto currency is growing as fast as the number of applications of participants in the crypto-currency community about doubtful companies ICO. Taking steps to improve the management of crypto-currencies, as well as studying the functioning of the ICO, the National Bank of China in September 2017 stated that the initial placement of ICO (Initial Coin Offering) tokens is an illegal operation [5]. ICO conducting and exchanging of crypto currency for fiat money were banned. It was also given an order to return the funds collected for tokens and issued a warning of penalties applicable to those who would conduct ICO, and fines for those who had already held it. Companies associated with ICO were threatened with possible revoking of the licenses.

6. AUSTRALIA

The Australian Securities & Investments Commission (ASIC) publishes information on possible cases of application of the current legislation to the ICO in Australia. The legal status of the ICO depends on the structure of the projects and the rights associated with the tokens offered during the ICO [6]. Compared to the Chinese regulator, ASIC sympathizes with ICO's technologies, believing that they will be able to expand the collection of funds for business.

In some cases, the ICO will only be subject to the general law and the Australian consumer laws regarding the offer of services or products. In other cases, the ICO may be subject to the Corporations Act. [6]. If ICO offers a financial product, ICO operators may need to acquire a market license to sell tokens, and investors can get protection. If the tokens are not a financial product, the implementation of the ICO does not require a license and guarantees provided by law, and the regime for the protection of investors in accordance with the Corporations Act is not applied.

7. CANADA

Like other countries, Canada's securities regulators have also touched upon the question of ICO. The Transactions and Reports Analysis Centre of Canada (FINTRAC) has issued the almost obligatory statement expressing its concern about the dangers of money laundering and other crimes enabled by the anonymity of crypto-currency transactions [7]. Canadian regulators demonstrate considerable flexibility in their approaches. In their assessment many of the ICOs, which appeared on the market, can be called securities. The criterion for determining membership is similar to the criterion in the United States. Much like the SEC stated the encouraging comment that "Every ICO is unique and must be assessed on its own characteristics," illustrates a willingness to consider individual cases rather than resort to categorical, industry-wide bans.

8. SWITZERLAND

Another country that has taken a generally welcoming stance towards the industry is Switzerland. Long known as a global financial and banking center, the country's emergence as a center of blockchain and crypto-currency activity is unsurprising [7]. Due to the fact that in Switzerland the crypto currency is defined as a tangible asset, the Financial Market Supervisory Authority (FINMA) in its Guidance recited the position according to which many activities carried out within ICO, the turnover of crypto currency or tokens fall within the ambit of the legislation on financial markets. Depending on how an ICO is structured, however, FINMA intends to analyze the general purpose and specific characteristics of ICO projects and according to the results of the analysis, to apply or not those or other norms of the statutes in place. This concerns the following areas in particular: provisions on combating money laundering and terrorist financing; banking law provisions; provisions on securities trading; provisions set out in collective investment scheme legislation. [8]. Nowadays in Switzerland the registration of facilitating agent is possible only after a careful analysis of technical documentation by FINMA as a local regulator.

9. SINGAPORE

The Monetary Authority of Singapore (MAS) acts as a commission for financial services and as a regulator of the financial services sector. On August 1st, 2017, MAS clarified

that offer or issue of digital tokens in Singapore will be regulated by MAS if the digital tokens constitute products regulated under the Securities and Futures Act. Actually, MAS does not regulate the security and reliability of virtual currency intermediaries or the proper functioning of transactions with virtual currency. The future law will require ICO-projects to obtain a license from MAS and to divide payments into several categories. MAS is currently assessing how to regulate ML/TF risks associated with activities involving digital tokens that do not function solely as virtual currencies. [9], and is working to create a regulatory sandbox for companies whose work is based on blockchain technology.

10. Conclusion

The incentive to discuss the regulation of the ICO space is to increase the capitalization of the crypto-currency market, as well as security issues in this area. There is a question of the importance of international legislation in the field of Crypto-Currency and ICO, so that laws are to be synchronized with the laws of other countries. For instance, the Russian Association of Crypto-Currency and Blockchain (RACB) became the initiator of the creation of the International Decentralized Association of Crypto-Currency and Blockchain (IDACB) to develop uniform standards for regulating this sphere, which will also include the development of the basis for regulating the companies exit to the ICO. This review showed that some countries are trying to create the most comfortable conditions for projects, when others prohibit this procedure completely, but now there are no uniform ICO regulation standards. Moreover, there are no new institutes of law with respect to crypto-currency, the regulators attempt to draw a close analogy between cryptocurrencies and the already existing economic and law institutions leading to narrowing of understanding of cryptocurrency nature, its role and significance. The use of the current legislation allows defining general rules and liability of the parties. ICOs are now held according to the rules established by the crypto community itself. However, such rules are not mandatory: noncompliance does not entail any legal sanctions.

Large ICOs are more likely to choose jurisdictions where the authority and banking sector attitude to the crypto-currencies is fairly well defined so that in the future, in a country with a current token position, the change in legislation did not have a negative effect on the company conducting the ICO in this country. Among the most significant tendencies of governments we see the desire to legalize the ICO sector in order to provide innovative activity, diverse business development and income. As

governments seek to create favorable conditions for the ICO, they study a number of legal and regulatory steps that already have led to a balance of market and investors protection combined with the structures necessary to continue the development of the industry.

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