



Regulation of Cryptocurrency in Selected Jurisdictions

Argentina • Australia • Belarus • Brazil • Canada
China • France • Gibraltar • Iran • Israel • Japan
Jersey • Mexico • Switzerland

June 2018

LL File No. 2018-016055
LRA-D-PUB-002439

This report is provided for reference purposes only.
It does not constitute legal advice and does not represent the official
opinion of the United States Government. The information provided
reflects research undertaken as of the date of writing.
It has not been updated.

Contents

Introduction.....1

Argentina.....2

Australia.....5

Belarus17

Brazil.....21

Canada.....25

China30

France.....34

Gibraltar40

Iran45

Israel.....49

Japan53

Jersey.....59

Mexico63

Switzerland66

Introduction

Hanibal Goitom
Foreign Law Specialist

This report summarizes the cryptocurrency policies and regulatory regimes in fourteen jurisdictions around the world. Among the key issues covered in the report are matters relating to the legality of cryptocurrency markets; the tax treatment of cryptocurrencies; and the applicability of anti-money laundering, anti-organized crime, and anti-terrorism-financing laws.

In terms of the legal recognition of cryptocurrency markets, the jurisdictions included in this report may be categorized into two groups. In the first category are countries that permit cryptocurrency markets to operate, and within this group some countries (including Belarus, Gibraltar, Jersey, and Mexico) have been proactive in that they have enacted specific laws recognizing and regulating the cryptocurrency markets, while others (such as Brazil, Argentina, and France) allow the markets to exist but have yet to issue industry-specific laws. The second category of countries includes those that have taken steps to restrict the cryptocurrency markets, mainly by barring financial institutions within their borders from participating in them (China and Iran).

Of the countries that permit cryptocurrency markets to operate, many impose taxes. However, the tax treatment of income generated from a cryptocurrency transaction may vary depending on how it is categorized. For instance, in Argentina a transaction of this nature would be taxed in a manner similar to revenue generated from the sale of securities and bonds, whereas in Switzerland cryptocurrency is categorized as a foreign currency for tax purposes. Some of the countries included in the report do not levy taxes on cryptocurrency transactions (Belarus and Jersey).

Many of the countries that permit cryptocurrency markets to operate have enacted laws subjecting organizations that participate in these markets to rules designed to prevent money-laundering, terrorism financing, and organized crime. These include Australia, Belarus, Canada, Gibraltar, Japan, Jersey, and Switzerland. While a bill that would have the same effect is working its way through the Brazilian legislative process, countries like Argentina, France, and Mexico have yet to follow suit.

Argentina

Graciela Rodriguez-Ferrand
Senior Foreign Law Specialist

SUMMARY Bitcoins are not considered legal currency in Argentina because they are not issued by the Central Bank and therefore are not considered legal tender. Although bitcoins are not specifically regulated, they are increasingly being used. Bitcoin may be considered a good or a thing under the Civil Code, and transactions with bitcoins may be governed by the rules of the sale of goods under the Civil Code. In 2014, finance authorities warned entities and individuals who are required by law to report suspicious transactions involving money laundering or terrorism financing to be particularly alert with regard to operations carried out with virtual currency. In December 2017 an amendment to the Law on Income Tax provided that the profits derived from the sale of digital currency will be considered income from stock and bonds and taxed as such.

I. Applicable Rules

Under the National Constitution of Argentina¹ the only authority capable of issuing legal currency is the Central Bank.² Bitcoins are not legal currency strictly speaking, because they are not issued by the government monetary authority and therefore are not legal tender.³ They may be considered money but not legal currency, since they are not a mandatory means of cancelling debts or obligations.⁴ Although bitcoins are not specifically regulated, they are increasingly being used in Argentina, a country that has strict control over foreign currencies.⁵ According to some experts⁶ a bitcoin may be considered a good or a thing under the Civil Code,⁷ and

¹ CONSTITUCIÓN DE LA NACIÓN ARGENTINA [NATIONAL CONSTITUTION OF ARGENTINA] art. 75, para. 6, BOLETÍN OFICIAL [BO], Aug. 22, 1994, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm>, archived at <https://perma.cc/XN2T-C5G7>.

² Ley No. 24.144, Carta Orgánica del Banco Central de la República Argentina [Law No. 24,144, Charter of the Central Bank of the Republic of Argentina] art. 30, BO, Oct. 13, 1992, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/542/texact.htm>, archived at <https://perma.cc/2CVW-8VNX>.

³ El Banco Central Argentino Considera Riesgoso Operar con Bitcoins [Central Bank of Argentina Considers Risky Operations with Bitcoins], INFOTECHNOLOGY (May 28, 2014), <http://www.infotechnology.com/internet/El-Banco-Central-argentino-considera-riesgoso-operar-con-bitcoins-20140528-0003.html>, archived at <https://perma.cc/746A-JBYG>.

⁴ Mara Laudonia, *El Vacío Legal del Bitcoin, ¿Es o No Es Dinero?* [The Legal Vacuum of the Bitcoin, Is It or Is It Not Money?], TELAM (Feb. 28, 2018), <http://www.telam.com.ar/notas/201702/180185-el-vacio-legal-del-bitcoin-es-no-es-dinero.html>, archived at <https://perma.cc/P2WE-L8F9>.

⁵ José Crettaz, *Bitcoin: Fiebre Argentina por la Máquina de Dinero Digital* [Bitcoin: Argentine Fever for the Digital Money Machine], LA NACIÓN (June 30, 2013), <http://www.lanacion.com.ar/1596773-bitcoin-pasion-argentina-por-la-nueva-maquina-de-hacer-billetes-digitales>, archived at <https://perma.cc/PMU9-KWB5>; Diego Geddes, *Argentina es uno de los países que más usa el bitcoin* [Argentina Is One of the Countries that Uses the Bitcoin], CLARÍN (Dec. 31, 2013), http://www.clarin.com/sociedad/Argentina-paises-Bitcoin-moneda-virtual_0_1057694271.html, archived at <https://perma.cc/N8SA-5H9L>.

transactions with bitcoins may be governed by the rules of the sale of goods under the Civil Code.⁸

A formal recognition of electronic currency was issued by the Unidad de Información Financiera (UIF) (Financial Information Unit) of the Ministry of Finance through Resolution 300/2014, which warned entities and individuals required by law to report suspicious transactions involving money laundering or terrorism financing to be particularly alert with regard to operations carried out with virtual currency.⁹ The UIF Resolution differentiates “virtual currency” and “electronic currency,” stating that the latter involves the electronic transfer of legal tender while virtual currency transactions do not involve legal tender.¹⁰

In spite of the expectations for the G20 meeting of finance ministers and central bank governors of the G20 countries in Buenos Aires, Argentina on March 19–20, 2018, no specific guidelines or regulatory framework on cryptocurrencies were issued.¹¹ The group only mentioned the issue, giving alerts as to its risks for the consumer and investors, but gave no indication as to the way it should be approached by the authorities, except for a call upon international standard-setting bodies to monitor cryptocurrencies and their risks while evaluating a multilateral response if appropriate.¹²

The government is planning to regulate transactions with bitcoins in the country this year.¹³ The plan is to amend the Law on Money Laundering to add stock markets, wallets, and brokers as entities required to report transactions with bitcoins to official entities.¹⁴

⁶ See, e.g., Andres Chomczyk, *Situación Legal del Bitcoin en Argentina*, ELBITCOIN.ORG (Oct. 10, 2013), <http://elbitcoin.org/situacion-legal-de-bitcoin-en-argentina>, archived at <https://perma.cc/43K8-ZYYK>.

⁷ CÓDIGO CIVIL [CIVIL CODE] art. 2311, http://servicios.infoleg.gob.ar/infolegInternet/anexos/105000-109999/109481/texactley340_libroIII_tituloI.htm, archived at <https://perma.cc/Y3Q7-JT25>.

⁸ *Id.* art. 1323.

⁹ Unidad de Información Financiera, Resolución 300/14 Prevención del Lavado de Activos y de la Financiación del Terrorismo, para. 9, BO, July 10, 2014, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/230000-234999/231930/norma.htm>, archived at <https://perma.cc/G2L7-9S2Q>.

¹⁰ *Id.* art. 2.

¹¹ Froilan Fernández, *Sin Decisiones sobre los Criptoactivos Concluye Reunión del G20 [G-20 Meeting Concludes Without a Decision on Cryptocurrency]*, CRYPTONOTICIAS (Mar. 20, 2018), <https://www.cryptonoticias.com/regulacion/sin-decisiones-criptoactivos-concluye-reunion-g20/>, archived at <https://perma.cc/WH34-FQSE>.

¹² Communiqué, Finance Ministers & Central Bank Governors, G20, Mar. 19–20, 2018, Buenos Aires, Argentina, https://back-g20.argentina.gob.ar/sites/default/files/media/communique_g20.pdf, archived at <https://perma.cc/65UD-BB58>.

¹³ Olivera Doll & Camila Russo, *Argentina Supervisaría Operaciones en Bitcoins a Partir de 2018*, BLOOMBERG LATAM NOTICIAS (Dec. 7, 2017) <https://www.bloomberg.com/latam/blog/argentina-supervisaria-operaciones-en-bitcoins-partir-de-2018/>, archived at <https://perma.cc/K6NS-GQYL>.

¹⁴ *Id.*

II. Taxation

The latest amendment to the Income Tax law provides that the profit derived from the sale of digital currency will be considered income and taxed as such.¹⁵ Income derived from the sale of digital currency is taxed at 15% when derived from either Argentine or foreign sources.¹⁶ The tax treatment of cryptocurrency corresponds with the treatment of profits on securities and bonds, which represent a liability in favor of the holder, which is not true in the case of cryptocurrencies.¹⁷

¹⁵ Ley 27430 de Modificación del Impuesto a las Ganancias [Law 27430 Amending the Income Tax Law] art. 2, BO, Dec. 29, 2017, <http://www.telam.com.ar/notas/201702/180185-el-vacio-legal-del-bitcoin-es-o-no-es-dinero.html>, archived at <https://perma.cc/9PBP-BLUJ>.

¹⁶ *Id.* art. 90, para. 2.

¹⁷ BITCOIN ARGENTINA, SOBRE EL PROYECTO DE GRAVAR LAS MONEDAS DIGITALES COMO RENTA FINANCIERA DE ACCIONES Y BONOS [ABOUT THE BILL THAT TAXES DIGITAL CURRENCY AS A FINANCIAL INCOME FROM STOCK AND BONDS] 2, last para. (Nov. 17, 2017), <https://www.bitcoinargentina.org/wp-content/uploads/sites/6/2017/11/proyecto-impuesto-a-las-ganancias-bitcoin.pdf>, archived at <https://perma.cc/B8TG-XQYP>.

Australia

Kelly Buchanan
Chief, Foreign, Comparative, and
International Law Division I

SUMMARY Regulatory approaches to digital currencies have been considered in some detail in Australia in recent years. A Senate committee completed its inquiry into this issue in 2015, providing an overview of existing legislation and the views of relevant agencies, considering risks and opportunities arising from the advent of digital currencies, and recommending several changes as well as ongoing monitoring and research. At that time, the Australian Taxation Office had already produced several public rulings regarding different aspects of the tax treatment of digital currencies, holding that transactions involving such currencies should be treated akin to barter arrangements for the purposes of income tax. In line with the Senate committee’s recommendations, provisions in the goods and services tax legislation were subsequently amended to avoid a double taxation effect with regard to digital currency transactions. Guidance from the ATO also addresses the capital gains tax and fringe benefit tax consequences of utilizing digital currencies.

The Senate committee also recommended that digital currency exchange businesses be brought under the anti-money laundering and counterterrorism financing (AML/CTF) legislation. Changes to this legislation were subsequently enacted in 2017, with the effect that such businesses will now need to register with the relevant regulatory body, implement an AML/CTF program, maintain certain records, and report suspicious transactions.

Other areas covered by the committee’s report included financial regulation and consumer protection, and payments system regulation. The Australian Securities and Investments Commission has published guidance on its website regarding the risks of investing in digital currencies. This includes the fact that these investments are generally not regulated, as they are not considered to be financial products under the relevant legislation.

Australia’s consumer protection agency reported that it received a large number of consumer complaints in 2017 involving cryptocurrency scams.

I. Parliamentary Inquiry into Digital Currencies

In August 2015, the Australian Parliament’s Senate Economic References Committee published a report titled *Digital Currency – Game Changer or Bit Player*,¹ following the completion of an inquiry into “how to develop an effective regulatory system for digital currency, the potential impact of digital currency technology on the Australian economy, and how Australia can take

¹ SENATE ECONOMIC REFERENCES COMMITTEE, DIGITAL CURRENCY – GAME CHANGE OR BIT PLAYER (Aug. 2015), https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Digital_currency/~/_media/Committees/economics_ctte/Digital_currency/report.pdf, archived at <https://perma.cc/9C8Z-L76P>.

advantage of digital currency technology.”² The inquiry involved receiving submissions and holding public hearings, and a delegation traveled to Canada and Singapore to discuss matters related to digital currency with relevant government officials. The Committee’s report noted that

like Australia, Canada also treats digital currencies, such as Bitcoin, as commodities, and transactions using digital currencies as barter transactions. In this context, committee members were able to exchange views on the regulatory risks related to digital currencies particularly given the rapid rate of changing technology.³

A. Discussion and Recommendations

The Senate Committee’s report provided an explanation of digital currencies, including referencing a 2014 report by the Financial Action Task Force (FATF),⁴ and described Australia’s regulatory framework as it existed at the time. It also discussed risks and opportunities associated with digital currencies and made several recommendations for addressing gaps or other issues in the regulatory framework.

1. Risks and Opportunities

Chapter 3 of the Committee’s report discusses the opportunities and risks related to the advent of digital currencies. It particularly refers to findings of the European Securities and Markets Authority and the European Banking Authority, which each cited the lower transaction costs and the speed of transacting with digital currencies as being key attractions for users.⁵ However, the Committee noted that, given Australia’s existing payment systems, which are “overwhelmingly digital in nature,” digital currencies “do not offer much more additional capability.”⁶

The distributed ledger technology used by digital currencies such as Bitcoin was noted as being “unique and genuinely new,” and worth considering in the context of improving Australia’s payment system in the future.⁷ There was also the potential for digital currencies to contribute to the international remittance market. However, the Reserve Bank of Australia (RBA) explained that existing improvement work in this area may lessen this potential, particularly in light of the price volatility of digital currencies.⁸

² *Digital Currency*, PARLIAMENT OF AUSTRALIA, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Digital_currency (last visited Mar. 1, 2018), archived at <https://perma.cc/T5XB-BNY2>.

³ SENATE ECONOMIC REFERENCES COMMITTEE, *supra* note 1, at 2.

⁴ *Id.* at 3–5; FINANCIAL ACTION TASK FORCE, VIRTUAL CURRENCIES: KEY DEFINITIONS AND POTENTIAL AML/CFT RISKS (June 2014), <http://www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf>, archived at <https://perma.cc/MB2J-K36K>.

⁵ SENATE ECONOMIC REFERENCES COMMITTEE, *supra* note 1, at 15–16.

⁶ *Id.* at 17.

⁷ *Id.*

⁸ *Id.* at 18–19.

In terms of risks, the Committee noted that there were concerns regarding noncompliance with taxation; potential risks for financial stability or the Australian economy should there be a significant increase in the use of digital currencies; risks to consumers due to inherent price volatility; the pseudo-anonymity of digital currencies, which may make it difficult for law enforcement to determine the true owners, and mean that digital currencies can be used in criminal activities; risks arising from the potential for hacking; and the potential for scams.⁹

2. Tax Treatment of Digital Currencies

At the time the Committee's report was published, several public rulings of the Australian Tax Office (ATO) had been finalized in December 2014. These expressed the view that transacting with digital currency was akin to a barter arrangement. The rulings, discussed further in Part II(A) below, covered various potential tax implications of such transactions, including capital gains tax, goods and services tax (GST), income tax, and fringe benefits tax.¹⁰

Chapter 4 of the Committee's report considered in some detail the tax treatment of digital currencies, with the Committee concluding that "the most immediate concern for Australian digital currency businesses is the current GST treatment of digital currencies."¹¹ The Committee recommended that digital currency be treated as money for the purposes of GST, in order to avoid a double taxation effect.¹² It also noted various concerns among submitters regarding other taxation issues, and recommended that there be further examination of the appropriate tax treatment of digital currencies, particularly in relation to income tax and fringe benefits tax.¹³

3. Financial Regulation and Consumer Protection

With regard to financial regulation and consumer protection matters arising from digital currencies, the report states that the RBA "considers digital currencies are currently in limited use and do not yet raise any significant concerns with respect to competition, efficiency or risk to the financial system; and are not currently regulated by the RBA or subject to regulatory oversight."¹⁴ However, the RBA indicated that it "would be assessing whether the current regulatory framework could accommodate alternative mediums of exchange such as digital currencies."¹⁵

The report also set out the view of the Australian Securities and Investments Commission (ASIC) that digital currencies "do not fall within the legal definition of 'financial product' under the Corporations Act 2001 (Corporations Act) or the Australian Securities and Investments

⁹ *Id.* at 20–25.

¹⁰ *Id.* at 5–7.

¹¹ *Id.* at 31.

¹² *Id.* at 34.

¹³ *Id.* at 35.

¹⁴ *Id.* at 8.

¹⁵ *Id.*

Commission Act 2001 (ASIC Act).”¹⁶ The Committee noted the existing warning to consumers on ASIC’s MoneySmart website, discussed further in Part II(B) below, which states that virtual currencies are not regulated and have less safeguards, values can fluctuate wildly, a person’s money can be stolen, and that they are popular with criminals.¹⁷

The Committee noted that ASIC’s approach to digital currencies had been described in a November 2014 report by its oversight committee, the Parliamentary Joint Committee on Corporations and Financial Services.¹⁸ That report stated that ASIC was monitoring developments, considering how legislation it administers might apply, and consulting other Australian regulators (including financial regulators and law enforcement agencies).¹⁹

The Committee expressed that, although ASIC does not consider digital currencies to be currency or money for the purposes of the ASIC Act or Corporations Act, “the general consumer protection provisions of the Competition and Consumer Act 2010 apply to digital currencies.”²⁰ This Act is administered by the Australian Competition and Consumer Commission (ACCC), which the Committee noted does not include warnings about digital currencies on its own website dealing with consumer protection.²¹

Chapter 5 of the report then discussed whether digital currency should be treated as a financial product for the purposes of the Corporations Act and ASIC Act, as well as how digital currency payments fit within the current payments system regulations.²² ASIC advised the Committee that extending the definition of financial products to include digital currencies “would not be straightforward as the decentralised framework means that the normal obligations on product issuers cannot be imposed.”²³ In addition, a number of industry participants, including overseas entities, may be required to obtain relevant Australian licenses as they would be providing financial products, which may cause difficulties to digital currency businesses and to ASIC.²⁴ ASIC did note that some digital currency businesses offer facilities, such as non-cash payment facilities, that may already be considered financial products.²⁵

¹⁶ *Id.*; Corporations Act 2001 (Cth), pt 7.1 div 3, <https://www.legislation.gov.au/Details/C2018C00064>, archived at <https://perma.cc/NSZ4-6FZK>; Australia Securities and Investments Commission Act 2001 (Cth), s 12BAA, <https://www.legislation.gov.au/Details/C2018C00077>, archived at <https://perma.cc/VBL6-NNV6>.

¹⁷ SENATE ECONOMIC REFERENCES COMMITTEE, *supra* note 1, at 8–9.

¹⁸ PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES, STATUTORY OVERSIGHT OF THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION, THE TAKEOVERS PANEL AND THE CORPORATIONS LEGISLATION 24–26 (Nov. 2014), https://www.aph.gov.au/~media/Committees/Senate/committee/corporations_ctte/asic%202014/rep0144/report.pdf?la=en, archived at <https://perma.cc/JQE5-F3YG>.

¹⁹ SENATE ECONOMIC REFERENCES COMMITTEE, *supra* note 1, at 9–10.

²⁰ *Id.* at 10.

²¹ *Id.*

²² *Id.* at 37.

²³ *Id.* at 41.

²⁴ *Id.*

²⁵ *Id.* at 43.

The Committee simply recommended that further research be conducted before any changes are made.²⁶

4. *Payments System Regulation*

At the time of publication of the Committee's report, the government's Financial System Inquiry (FSI) had been completed and the Treasury was conducting a consultation process on the resulting recommendations.²⁷ The FSI report, released in December 2014, had found that digital currencies were not being widely used in Australia but that their use could expand in the future.²⁸ Therefore, "it will be important that payments system regulation is able to accommodate them."²⁹ The FSI report recommended that the legislation be reviewed to ensure that "alternative mediums of exchange can be regulated . . . if a public interest case arises."³⁰

The Committee noted the findings of the FSI report, including with regard to the possibility of graduated regulation of payment facilities "to enable market entry and ensure regulation is targeted where it is most needed,"³¹ and making the existing ePayments Code mandatory.³² The Committee's report also set out different views regarding industry self-regulation, a "wait-and-see" approach to regulation by relevant agencies, and the need for further information.³³

The Committee subsequently recommended that the government establish a Digital Economy Taskforce to gather further information so that regulators can monitor the situation and determine whether it may be appropriate to regulate certain digital currency businesses.³⁴

5. *Anti-Money Laundering and Counterterrorism Financing Legislation*

With respect to law enforcement approaches to digital currencies, the Committee's report stated that digital currencies were not currently covered by the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (AML/CTF Act), although that Act does recognize "e-currency," which is defined as being backed, either directly or indirectly, by precious metal, bullion, or "a thing of a kind prescribed by the AML/CTF Rules."³⁵ The report stated that no

²⁶ *Id.* at 42.

²⁷ See AUSTRALIAN GOVERNMENT, IMPROVING AUSTRALIA'S FINANCIAL SYSTEM: GOVERNMENT RESPONSE TO THE FINANCIAL SYSTEM INQUIRY (2015), https://static.treasury.gov.au/uploads/sites/1/2017/06/Government_response_to_FSI_2015.pdf, archived at <https://perma.cc/CF5Q-WV53>.

²⁸ FINANCIAL SYSTEM INQUIRY FINAL REPORT 166 (Nov. 2010), http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf, archived at <https://perma.cc/52SC-VCKQ>.

²⁹ SENATE ECONOMIC REFERENCES COMMITTEE, *supra* note 1, at 10.

³⁰ *Id.* at 10–11.

³¹ *Id.* at 45.

³² *Id.* at 46.

³³ *Id.* at 46–51.

³⁴ *Id.* at 51.

³⁵ *Id.* at 11–12; AML/CTF Act s 5.

rules had been issued that would bring digital currencies under the definition of e-currency in the AML/CTF Act.³⁶ However, it goes on to indicate that the existing AML/CTF regime does enable limited oversight of convertible digital currencies, since the transactions “will generally intersect with banking or remittance services which are regulated under the AML/CTF regime.”³⁷

At the time of the Committee’s report, the government was undertaking a review of the AML/CTF Act and, as part of that review, the Attorney-General’s Department stated that “[a] number of options to address the money laundering and terrorism financing issues created by the emergence of digital currency systems are being considered.”³⁸ In addition, a different parliamentary committee was also in the process of conducting an inquiry into financial-related crime and had received evidence relating to Bitcoin in that context.³⁹

Chapter 6 of the Committee’s report examined whether digital currencies should be brought within the AML/CTF regime. A spokesman for the Attorney-General’s Department noted that “one of the difficulties with digital currencies is peer-to-peer transfers as it means transactions using digital currencies can be made directly to people anywhere in the world,” which creates challenges when working out how to regulate digital currencies.⁴⁰ An additional challenge was finding a balance between trying to mitigate risks through regulation while allowing positive aspects of the industry to develop.⁴¹ The Committee was also advised that a change to the AML/CTF Act would be needed, not just the regulations.⁴²

The Committee strongly supported applying the AML/CTF regime to digital currency exchanges, “noting that similar steps have been taken in Canada, the UK and Singapore.”⁴³ It recommended that the statutory review being conducted by the Attorney-General’s Department consider this matter.⁴⁴

³⁶ SENATE ECONOMIC REFERENCES COMMITTEE, *supra* note 1, at 12.

³⁷ *Id.*

³⁸ *Id.* at 13.

³⁹ *Id.* See also PARLIAMENTARY JOINT COMMITTEE ON LAW ENFORCEMENT, INQUIRY INTO FINANCIAL RELATED CRIME ch. 6 (Sept. 2015), https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Financial_related_crime/~media/Committees/le_ctte/Financial_related_crime/report.pdf, archived at <https://perma.cc/S672-MZFE>.

⁴⁰ SENATE ECONOMIC REFERENCES COMMITTEE, *supra* note 1, at 58.

⁴¹ *Id.*

⁴² *Id.* at 60.

⁴³ *Id.* at 61.

⁴⁴ *Id.* at 62.

B. Government's Response

The government responded to the Committee's recommendations in May 2016.⁴⁵ Prior to this, in a March 2016 statement on financial technology, *Backing Australian FinTech*, the government had committed to reforming the GST treatment of digital currencies in order to address the double-taxation issue.⁴⁶ The government also noted the recommendation regarding further examination of the tax treatment of digital currencies, stating that the ATO was continuing to monitor developments.⁴⁷

With regard to establishing a task force to gather further information related to digital currencies in order to assist regulators, the government stated that its already established FinTech Advisory Group would be the appropriate mechanism for such work. The government also indicated its support for an existing industry association to continue work on improving industry standards, including via the development of a self-regulatory model.⁴⁸

The government agreed with the Committee's recommendation regarding extending the AML/CTF framework to cover digital currency exchanges, and noted existing work in that area, as well as developments in other countries.⁴⁹

The current rules in these different regulatory areas, which include recent developments related to the Committee's recommendations, are set out in Part II, below.

II. Current Regulatory Framework

A. Taxation

As noted above, the ATO finalized various rulings relating to the application of tax laws to Bitcoin and other cryptocurrencies in December 2014.⁵⁰ It has subsequently published a general guidance document on the tax treatment of virtual currencies.⁵¹

⁴⁵ Australian Government Response to the Senate Economic References Committee Report: Digital Currency – Game Changer or Bit Player (May 2016), <https://www.aph.gov.au/DocumentStore.ashx?id=4f9bcf03-5867-449c-85ad-b8dd01d7459c>, archived at <https://perma.cc/U6WP-VYKU>.

⁴⁶ AUSTRALIAN GOVERNMENT, BACKING AUSTRALIAN FINTECH 22 & 27 (Mar. 2016), <http://fintech.treasury.gov.au/files/2016/03/Fintech-March-2016-v3.pdf>, archived at <https://perma.cc/2MJ3-6MC6>.

⁴⁷ Australian Government Response to the Senate Economic References Committee Report: Digital Currency – Game Changer or Bit Player, *supra* note 45, at 2.

⁴⁸ *Id.* at 3.

⁴⁹ *Id.*

⁵⁰ ATO, Income Tax: Is Bitcoin a 'Foreign Currency' for the Purposes of Division 775 of the Income Tax Assessment Act 1997 (ITAA 1997)? (TD 2014/25), <https://www.ato.gov.au/law/view/document?src=hs&pit=9991231235958&arc=false&start=1&pageSize=10&total=7&num=3&docid=TXD/TD201425/NAT/ATO/00001&dc=false&tm=and-basic-TD 2014/25> (last visited Mar. 1, 2018), archived at <https://perma.cc/DS47-Y2JW>; ATO, Income Tax: Is Bitcoin a 'CGT Asset' for the Purposes of Subsection 108-5(1) of the Income Tax Assessment Act 1997? (TD 2014/26), <https://www.ato.gov.au/law/view/document?src=hs&pit=99991231235958&arc=false&start=1&pageSize=10&total=7&num=2&docid=TXD/TD201426/NAT/ATO/00001&dc=false&tm=phrase-basic-TD 2014/26> (last visited Mar. 1, 2018), archived at <https://perma.cc/B9QN-N4FM>; ATO, Income Tax: Is

According to the rulings and guidance, transacting with cryptocurrencies is “akin to a barter arrangement, with similar tax consequences.”⁵² This is because, in the view of the ATO, such currencies are “neither money nor a foreign currency.”⁵³ Individuals who engage in cryptocurrency transactions are advised to keep records of the date of transactions, the amount in Australian dollars (“which can be taken from a reputable online exchange”), what the transaction was for, and who the other party was (“even if it’s just their bitcoin address”).⁵⁴

In addition, cryptocurrencies may be considered assets for capital gains tax purposes, with the guidance stating: “Where you use bitcoin to purchase goods or services for personal use or consumption, any capital gain or loss from disposal of the bitcoin will be disregarded (as a personal use asset) provided the cost of the bitcoin is \$10,000 or less.”⁵⁵

With regard to business transactions, the ATO guidance states that the Australian dollar value of bitcoins (being the fair market value) received for goods and services must be recorded as part of ordinary income, in the same way as receiving non-cash consideration under a barter transaction.⁵⁶ A business that purchases items using bitcoin is “entitled to a deduction based on the arm’s length value of the item acquired.”⁵⁷ GST is also payable and is calculated on the market value of the goods or services, which is “ordinarily equal to the fair market value of the bitcoin at the time of the transaction.”⁵⁸

When a business disposes of bitcoin, there may be capital gains tax consequences. Furthermore, if a business gives bitcoin to an employee this may be considered either a fringe benefit (if there is a valid salary sacrifice arrangement in order to receive the bitcoin) or normal salary and wages.⁵⁹

Bitcoin Trading Stock for the Purposes of Subsection 70-10(1) of the Income Tax Assessment Act 1997 (ITAA 1997)? (TD 2014/27), <https://www.ato.gov.au/General/Gen/Tax-treatment-of-crypto-currencies-in-Australia---specifically-bitcoin/> (last visited Mar. 1, 2018), archived at <https://perma.cc/BS2E-UZKW>; ATO, Fringe Benefits Tax: Is the Provision of Bitcoin by an Employer to an Employee in Respect of their Employment a Property Fringe Benefit for the Purposes of Subsection 136(1) of the Fringe Benefits Tax Assessment Act 1986? (TD 2014/28), <https://www.ato.gov.au/law/view/document?src=mm&pit=99991231235958&arc=false&start=1&pageSize=10&total=7&num=0&docid=TXD/TD201428/NAT/ATO/00001&dc=true&tm=and-basic-TD 2014/25> (last visited Mar. 1, 2018), archived at <https://perma.cc/Y5FS-VYL3>.

⁵¹ *Tax Treatment of Crypto-Currencies in Australia – Specifically Bitcoin*, AUSTRALIAN TAXATION OFFICE (ATO), <https://www.ato.gov.au/General/Gen/Tax-treatment-of-crypto-currencies-in-Australia---specifically-bitcoin/> (last updated Dec. 21, 2017), archived at <https://perma.cc/UFZ7-QSUG>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

If an entity is in the business of mining bitcoin, or buying and selling bitcoin as an exchange service, any income derived must be included in its assessable income, and any expenses incurred may be deducted.⁶⁰

The ATO has also published separate guidance on the application of GST with respect to transactions involving digital currency.⁶¹ A previous ruling regarding GST was withdrawn in December 2017 following the passage of amendments to A New Tax System (Goods and Service Tax) Act 1999 and associated regulations, which apply to transactions after July 1, 2017.⁶² Under the amendments, sales and purchases of digital currency are not subject to GST. If a person is carrying on a business in relation to digital currency, or accepting digital currency as a payment as part of a business, then there are GST consequences.⁶³ The changes were aimed at removing “double taxation” of digital currencies under the GST system, as recommended by the Senate Committee.⁶⁴

According to news reports from January 2018, the ATO is consulting with tax experts “to help it identify and track cryptocurrency transactions and ensure all taxes are being paid.”⁶⁵

B. Financial Regulation and Consumer Protection

As noted above, ASIC does not consider cryptocurrencies to be financial products under the ASIC Act or Corporations Act. ASIC’s MoneySmart website provides information on virtual currencies, including how they work and different types, and sets out various risks associated with buying, trading, or investing in such currencies.⁶⁶ This includes statements that “[t]he exchange platforms on which you buy and sell digital currencies are not regulated, so if the platform fails or is hacked, you will not be protected and will have no legal recourse”; [a] cryptocurrency is not guaranteed by any bank or government” and “[i]nvesting in virtual currencies is considered highly speculative, as values can fluctuate significantly over short

⁶⁰ *Id.*

⁶¹ *GST and Digital Currency*, ATO, <https://www.ato.gov.au/business/gst/in-detail/your-industry/financial-services-and-insurance/gst-and-digital-currency/> (last updated Dec. 8, 2017), archived at <https://perma.cc/L2MT-WHHC>.

⁶² *Goods and Services Tax Ruling: GSTR 2014/W*, ATO, <https://www.ato.gov.au/law/view/document?DocID=GST/GSTR20143/NAT/ATO/00001> (last visited Mar. 1, 2018), archived at <https://perma.cc/6YAU-SYF3>; Treasury Laws Amendment (2017 Measures No. 6) Act 2017 (Cth), <https://www.legislation.gov.au/Details/C2017A00118>, archived at <https://perma.cc/6TB9-V9QU>.

⁶³ *GST and Digital Currency*, *supra* note 61.

⁶⁴ *GST – Removing the Double Taxation of Digital Currency*, ATO, <https://www.ato.gov.au/General/New-legislation/In-detail/Indirect-taxes/GST/GST--removing-the-double-taxation-of-digital-currency/> (last updated Dec. 18, 2017), archived at <https://perma.cc/L7KG-NWK2>.

⁶⁵ Duncan Hughes, *ATO Creates Specialist Task Force to Tackle Cryptocurrency Tax Evasion*, FINANCIAL REVIEW (Jan. 10, 2018), <http://www.afr.com/news/policy/tax/ato-creates-specialist-task-force-to-tackle-cryptocurrency-tax-evasion-20180109-h0fyaz>, archived at <https://perma.cc/VNY2-R6G3>.

⁶⁶ *Cryptocurrencies*, ASIC’S MONEYSMART, <https://www.moneysmart.gov.au/investing/investment-warnings/virtual-currencies> (last updated Mar. 19, 2018), archived at <https://perma.cc/VG4U-7AUD>.

periods of time”; and “[i]f hackers steal your digital currency you have little hope of getting it back.”⁶⁷

A separate page provides information about initial coin offerings (ICO), which ASIC calls a “high-risk speculative investment.”⁶⁸ It advises investors to check whether an ICO issuer is a company registered in Australia and whether it is a licensed financial services provider, noting that “[i]f the company is not registered and does not have a licence in Australia you will have little protection if things go wrong. But even if the company is registered in Australia, or has a licence, there are risks associated with investing in ICOs.”⁶⁹

In February 2018, ABC News reported that more than 1,200 Australians had made complaints to the ACCC about cryptocurrency scams in 2017, with losses totaling more than AU\$1.2 million.⁷⁰ The ASIC commissioner was quoted as saying that “[i]t’s been quite well documented that some of these products are scams, so please don’t invest unless you’re prepared to lose some or all of your money.”⁷¹

C. Anti-Money Laundering and Counterterrorism Financing Legislation

The government introduced a bill in Parliament in August 2017 in order bring digital currency exchange providers under the AML/CTF regulatory regime, as recommended by the Senate committee referred to above.⁷² The bill was enacted in December 2017 and the relevant provisions came into force on April 3, 2018.⁷³

The bill was developed following the release of a public discussion document and completion of a consultation process by the Attorney-General’s Department, as part of its statutory review of the AML/CTF Act.⁷⁴ Information regarding the bill in the Australian Parliamentary Library’s Bills Digest publication also states that

⁶⁷ *Id.*

⁶⁸ *Initial Coin Offerings (ICOs)*, ASIC’S MONEYSMART, <https://www.moneysmart.gov.au/investing/investment-warnings/initial-coin-offerings-icos> (last updated Mar. 19, 2018), archived at <https://perma.cc/3VUN-FM45>.

⁶⁹ *Id.*

⁷⁰ Liz Hobday, *More Than 1,200 People Complain to ACCC about Bitcoin Scams*, ABC News (Feb. 19, 2018), <http://www.abc.net.au/news/2018-02-19/more-than-1200-people-complain-to-acc-cc-about-bitcoin-scams/9462240>, archived at <https://perma.cc/K3Q7-Y7V3>.

⁷¹ *Id.*

⁷² *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2017*, PARLIAMENT OF AUSTRALIA, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5952 (last visited Mar. 26, 2018), archived at <https://perma.cc/3LS8-TZ5L>; *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017 (Cth) sch 1 pt 2*, <https://www.legislation.gov.au/Details/C2017A00130>, archived at <https://perma.cc/892P-DQ5W>.

⁷³ *Digital Currency Exchange Providers*, AUSTRAC, <http://www.austrac.gov.au/digital-currency-exchange-providers> (last updated Mar. 13, 2018), archived at <https://perma.cc/X4DK-SJ8X>.

⁷⁴ ATTORNEY-GENERAL’S DEPARTMENT, *REGULATING DIGITAL CURRENCIES UNDER AUSTRALIA’S AML/CTF REGIME: CONSULTATION PAPER* (Dec. 2017), <https://www.ag.gov.au/Consultations/Documents/AML-CTF/Regulating-digital-currencies-under-Australias-aml-ctf-regime.docx>, archived at <https://perma.cc/7U62-AW86>.

AML/CTF regulation of digital currency businesses was also recommended by the Senate Economics References Committee in August 2015 and the Productivity Commission in September 2015 in the context of broader reviews related to digital currency and business set up, transfer and closure respectively. Regulating digital currency exchange providers is consistent with FATF's guidance on a risk-based approach to digital currencies.⁷⁵

Under the legislation, digital currency exchanges will be required to enroll in a register maintained by AUSTRAC (the Australian Transaction Reports and Analysis Centre) and implement an AML/CTF program “to mitigate the risks of money laundering as well as identify and verify the identity of their customers.”⁷⁶ They will also be required to report suspicious transactions and maintain certain records.

The legislation contains the following definition of “digital currency,” replacing the definition of “e-currency”:

digital currency means:

(a) a digital representation of value that:

- (i) functions as a medium of exchange, a store of economic value, or a unit of account; and
- (ii) is not issued by or under the authority of a government body; and
- (iii) is interchangeable with money (including through the crediting of an account) and may be used as consideration for the supply of goods or services; and
- (iv) is generally available to members of the public without any restriction on its use as consideration; or

(b) a means of exchange or digital process or crediting declared to be digital currency by the AML/CTF Rules;

but does not include any right or thing that, under the AML/CTF Rules, is taken not to be digital currency for the purposes of this Act.⁷⁷

Although the definition of “money” in the AML/CTF included e-currency, it was not amended to include digital currency; digital currency is treated separately and there were “several

⁷⁵ Cat Barker, *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2017*, Bills Digest No. 47, 2017-18 (Oct. 25, 2017), Parliament of Australia, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1718a/18bd047, archived at <https://perma.cc/ECT9-GT6M>. See also PRODUCTIVITY COMMISSION, BUSINESS SET-UP, TRANSFER AND CLOSURE 240–44, recommendation 9.3 (Inquiry Report No. 75, Sept. 30, 2015), <https://www.pc.gov.au/inquiries/completed/business/report/business.pdf>, archived at <https://perma.cc/COF9-WVPZ>.

⁷⁶ Rohan Pearce, *Government Cracks Down on Bitcoin Money Laundering*, COMPUTERWORLD (Aug. 17, 2017), <https://www.computerworld.com.au/article/626134/government-cracks-down-bitcoin-money-laundering/>, archived at <https://perma.cc/GE5C-HHEK>.

⁷⁷ Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017 (Cth) sch 1 pt 2 cl 3 (inserting a new definition into section 5).

consequential amendments to amend existing references to money to instead refer to money or digital currency.”⁷⁸

AUSTRAC is currently developing changes to the AML/CTF Rules to implement amendments to the AML/CTF Act.⁷⁹ A new chapter will cover registration on the Digital Currency Register, the renewal of registration, suspension of registration, cancellation of registration, review of reviewable decisions, updating and correcting of information, the correction of entries on the register, and the publication of information. Amendments have also been drafted for two other chapters with regard to suspicious-matter reporting and “regarding threshold transaction reporting of digital currency exchange transactions (to include additional reporting identifiers specifically relevant to digital currency exchange providers).”⁸⁰

⁷⁸ Barker, *supra* note 75.

⁷⁹ *Draft AML/CTF Rules*, AUSTRAC, <http://www.austrac.gov.au/draft-aml-ctf-rules> (last modified Feb. 2, 2018), archived at <https://perma.cc/7BDB-85FU>.

⁸⁰ AUSTRAC, Explanatory Note for Consultation – Draft Amendments Resulting from the Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017, <http://www.austrac.gov.au/sites/default/files/draft-rules-digital-currency-exchange-providers.pdf> (last visited Mar. 28, 2018), archived at <https://perma.cc/ZE2E-ZPAS>.

Belarus

Nerses Isajanyan
Foreign Law Consultant

SUMMARY Belarusian legislation allows natural and legal persons to mine, buy, sell, and exchange cryptocurrencies and tokens. The Presidential Decree on the development of the digital economy, which took effect on March 28, 2018, regulates taxation, foreign exchange control, and other aspects of transactions with cryptocurrencies. Only legal entities operating in the special economic zone designated as the High Technologies Park are allowed to provide cryptocurrency-related services as operators of cryptocurrency exchanges and crypto-platforms.

I. Decree on the Development of the Digital Economy

The Presidential Decree on the development of the digital economy¹ is a comprehensive document regulating the issuance and use of cryptocurrencies and tokens. It was signed by the President of Belarus on December 21, 2017, and took effect on March 28, 2018. Most of its provisions are retroactive.² The Decree creates the legal framework for buying, selling, exchanging, creating, and mining cryptocurrencies and tokens. According to an official commentary published on the presidential website, Belarus thus became the world's first jurisdiction with a comprehensive regulation of businesses based on blockchain technology and the first country in the world to legalize smart contracts at the national level.³

Many of the regulations in the Decree extend only to legal entities operating on the territory of the High Technologies Park, a special economic zone. As a legal experiment, the Decree allowed residents of the Park to use “smart contracts” and elements of English contract law, such as convertible loans, options, clauses of indemnity, and nonsolicitation and noncompetition agreements, to create a “venture ecosystem.”⁴ Residents of the Park also enjoy a simplified procedure for recruiting and employing foreign workers.⁵

¹ Decree of the President of the Republic of Belarus No. 8 of Dec. 21, 2017, NATIONAL LEGAL INTERNET PORTAL OF THE REPUBLIC OF BELARUS, Dec. 27, 2017, No. 1/17415, <http://pravo.by/document/?guid=12551&p0=Pd1700008&p1=1&p5=0> (in Russian), archived at <https://perma.cc/7PJ7-YEKA>, available in English at <http://law.by/document/?guid=3871&p0=Pd1700008e>, archived at <https://perma.cc/V7UZ-TYM8>.

² *Id.* § 3.4.

³ Press Release, President of the Republic of Belarus, Commentary to Decree No. 8 of December 21, 2017 (Dec. 27, 2017), http://president.gov.by/ru/news_ru/view/kommentarij-k-dekretu-8-ot-21-dekabrja-2017-g-17715/ (in Russian), archived at <https://perma.cc/A7B7-WJBS>.

⁴ Decree No. 8, § 5.

⁵ *Cryptocurrency Silicone Valley in Belarus*, HAPPY COIN CLUB (Apr. 22, 2018), <https://happycoin.club/kriptoalyutnaya-silikonovaya-dolina-v-belarusi/> (in Russian), archived at <https://perma.cc/997B-85CB> (click “See the screenshot view”).

II. Authorized Transactions

The Decree defines “cryptocurrency” as bitcoin or other digital signs (tokens) that is used in international circulation as a universal means of exchange.⁶ A “digital sign” (token) is defined as an entry in the transaction block registry (blockchain) or other distributed information system, which certifies that the owner of the digital sign (token) is entitled to civil law protections and/or is a cryptocurrency.⁷

Natural persons are expressly allowed to own tokens; mine them; store them in virtual wallets; exchange tokens for other tokens; acquire them or dispose of them in exchange for Belarusian rubles, foreign currency, or electronic money; and donate or bequeath them.⁸ At the same time, individuals are not allowed to buy goods or services with cryptocurrency.⁹ The Decree clarifies that tokens are not subject to declaration and that the mining, acquisition, or disposal of tokens is not considered entrepreneurial activity as long as the natural person acts alone and does not engage other individuals as employees or contractors.¹⁰

Legal entities are allowed, through a resident of the Park, to create and place their own tokens in Belarus or abroad, to store tokens in virtual wallets, and to acquire or dispose of them through crypto-platform operators, cryptocurrency exchange operators, or other residents of the Park.¹¹

III. Crypto-Platform Operators and Cryptocurrency Exchange Operators

The Decree introduced two new types of companies operating in the field of cryptocurrency, “crypto-platform operators” and “cryptocurrency exchange operators.” All companies working in this field must be residents of the High Technology Park. A “crypto-platform operator” is a provider of information systems to businesses and individuals, who are not necessarily Belarusian residents, with the purpose of facilitating such transactions as the exchange, sale, or purchase of tokens between natural or legal persons.¹² Crypto-platform operators are allowed to place tokens and buy, sell, or exchange them in their own interests or the interests of their clients. Crypto-platform operators cannot exchange tokens for property other than Belarusian rubles, foreign currency, electronic money, or other tokens.¹³

⁶ Decree No. 8, Annex 1.

⁷ *Id.*

⁸ *Id.* § 2.2.

⁹ Tatyana Melnichuk, *Crypto-Freedom in Belarusian. Will Lukashenko Create a Digital Power?*, BBC (Mar. 29, 2018), <https://www.bbc.com/russian/features-43578798> (in Russian), archived at <https://perma.cc/X5NR-QCCH>.

¹⁰ Decree No. 8, § 2.2.

¹¹ *Id.* § 2.1.

¹² *Id.* Annex 1.

¹³ *Id.* § 2.2.

A “cryptocurrency exchange operator” on its own behalf and in its own interests exchanges, sells, or purchases tokens using software and hardware systems operating in self-service mode.¹⁴

IV. Licensing Requirements

The Decree specifically excludes operations with tokens from the application of licensing and other requirements of banking and securities legislation.¹⁵ Licensing requirements pertaining to cryptography and information protection also generally do not apply to the mining, storage, acquisition, and alienation of tokens. The minimum capital requirements are 1 million Belarusian rubles (approximately US\$505,000) for crypto-platform operators and 200,000 rubles (approximately US\$101,000) for cryptocurrency exchange operators.¹⁶ The Decree has not established rules for the operation of ICO operators and crypto-exchanges; these areas will be left to self-regulation.

V. Foreign Exchange Controls

Regulations on foreign exchange are generally not applicable to transactions with tokens.¹⁷ The use of foreign currency in transactions between residents of Belarus is authorized if such transactions are conducted through crypto-platform operators or on foreign trading platforms.¹⁸ Payments between cryptocurrency exchange operators and residents of Belarus must be made in Belarusian rubles.¹⁹

VI. Taxes and Financial Reporting

The Presidential Decree exempts from income tax the income of the residents of the Park as well as the income of natural persons generated from the mining, creation, acquisition, or alienation of tokens.²⁰ The Decree also exempts the sale of tokens from value-added tax (VAT).²¹ These tax benefits will be effective until January 1, 2023.²² Moreover, the Decree clarifies that investments attracted as a result of the creation and placement of tokens are not considered taxable income.²³ Businesses operating in the Park only have to pay 1% of their turnover to the government. This arrangement is guaranteed by the government to last until 2049.

¹⁴ *Id.* Annex 1.

¹⁵ *Id.* § 3.3.

¹⁶ *Mining Is Allowed, Bitcoin Mining Has Been Legalized in Belarus*, RG.RU (Dec. 27, 2017), <https://rg.ru/2017/12/27/v-belarusi-legalizovali-dobychu-bitkoina.html> (in Russian), archived at <https://perma.cc/9DLQ-EMGX>.

¹⁷ Decree No. 8, § 3.2.

¹⁸ *Id.*

¹⁹ *Id.* Annex 1.

²⁰ *Id.* § 3.1.

²¹ *Id.*

²² *Id.*

²³ *Id.*

For purposes of financial reporting, acquired or “mined” tokens are considered assets. The placement of tokens created by legal entities results in increased liabilities. These accounting rules were further detailed by a decree of the Ministry of Finance.²⁴

VII. Anti-Money Laundering

On February 15, 2018, the National Bank of Belarus amended the anti-money laundering regulations to extend their application to crypto-platform operators and operators of cryptocurrency exchanges.²⁵ Crypto-platform operators and operators of cryptocurrency exchanges will be treated as high-risk clients similar to operators of lottery games and casinos.²⁶

On March 27, 2018, the Council of Ministers issued a press release stating that the use of cryptocurrencies and other tokens must comply with the Financial Action Task Force (FATF) recommendations for combating the laundering of criminal proceeds and the financing of terrorism. The business plans submitted by applicants for registration with the Park must contain comprehensive measures to address the issues of compliance with Belarus’s international obligations, compliance with FATF recommendations (including procedures for identifying customers), sufficient guarantees of financial stability, technological safety, and protection from cyberattacks.²⁷

²⁴ Resolution of the Ministry of Finance of the Republic of Belarus No. 16 of Mar. 6, 2018, NATIONAL LEGAL INTERNET PORTAL OF THE REPUBLIC OF BELARUS, Mar. 24, 2018, No. 8/32944, <http://www.pravo.by/document/?guid=12551&p0=W21832944&p1=1&p5=0> (in Russian), archived at <https://perma.cc/3EL9-CBR7>; see also David McNickel, *Belarus Leads the Way with New Crypto Accountancy Laws*, BRAVE NEW COIN (Mar. 28, 2018), <https://bravenewcoin.com/news/belarus-new-crypto-accountancy-laws-kick-in/>, archived at <https://perma.cc/3VGF-9SMC>.

²⁵ Resolution of the Board of the National Bank of the Republic of Belarus No. 62 of Feb. 15, 2018, NATIONAL LEGAL INTERNET PORTAL OF THE REPUBLIC OF BELARUS, Mar. 20, 2018, No. 8/32923, http://pravo.by/upload/docs/op/B21832923_1521493200.pdf (in Russian), archived at <https://perma.cc/D3CK-DQL6>.

²⁶ *Premiere of Digits, Belarus Is the First in the World to Comprehensively Legalize Cryptocurrencies*, RG.RU (Mar. 26, 2018), <https://rg.ru/2018/03/26/belarus-pervoj-v-mire-kompleksno-vvedet-kriptovaliuty-v-zakon.html> (in Russian), archived at <https://perma.cc/X258-2T5A>.

²⁷ Press Release, Council of Ministers of the Republic of Belarus (Mar. 27, 2018), <http://www.government.by/ru/content/7914> (in Russian), archived at <https://perma.cc/S899-4B9N>; see also Iana Largo, *The Decree “On the Development of the Digital Economy” Came into Force in Belarus, Legalizing the Cryptocurrency*, CRYPTO.PRO (Mar. 28, 2018), <https://news.crypto.pro/v-belarusi-v-stupil-v-silu-dekret-o-razvitii-cifrovoj-jekonomiki-legalizujushhij-kriptovaljutu/>, archived at <https://perma.cc/7ERA-9JB2>.

Brazil

Eduardo Soares
Senior Foreign Law Specialist

SUMMARY Cryptocurrencies have yet to be regulated in Brazil. The Brazilian Central Bank has issued statements regarding the risks posed by this type of currency and its lack of guarantee by the monetary authorities, and has advised that companies that trade in virtual currencies are not regulated, supervised, or licensed to operate by the Bank. Recently, the Brazilian Securities and Exchange Commission issued a statement saying, among other things, that cryptocurrencies could not be classified as financial assets and could not be acquired by investment funds. A bill of law currently under analysis in the Brazilian Chamber of Deputies seeks to include virtual currencies and air mileage programs under the supervision of the Brazilian Central Bank.

I. Brazilian Central Bank

A. Policy Statement No. 25,306 of February 19, 2014

On February 19, 2014, the Brazilian Central Bank (Banco Central do Brasil, BACEN) issued Policy Statement No. 25,306 on the risks related to the acquisition of the so-called “virtual currencies” or “encrypted currencies” and transactions carried out with these currencies.¹ The purpose of the statement was, inter alia, to clarify that virtual currencies should not be confused with electronic money (*moeda eletrônica*) as defined in Law No. 12,865 of October 9, 2013, and its regulations.²

“Electronic money” is defined in article 6(VI) of Law No. 12,865 as a resource stored in a device or electronic system that allows the final user to make payment transactions in the national currency (*Brazilian Real*).³ In contrast, the statement explained that virtual currencies are denominated in a different unit of account from the currencies issued by sovereign governments and are not stored in a device or electronic system in national currency.⁴

According to the statement, the usage of virtual currencies and whether the regulation applicable to financial and payments systems applies to them have been the theme of international debate and public announcements by monetary authorities and other public institutions, with few concrete conclusions thus far; virtual currencies are not issued or guaranteed by a monetary authority; these virtual assets are not regulated or supervised by the monetary authorities of any country; there is

¹ Banco Central do Brasil, Policy Statement No. 25,306 of February 19, 2014, <http://www.bcb.gov.br/pom/spb/ing/IComunicado25306.pdf>, archived at <https://perma.cc/NC7T-TVSR>.

² *Id.*

³ Lei No. 12.865, de 9 de Outubro de 2013, https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/112865.htm, archived at <https://perma.cc/5ZNY-3KVD>.

⁴ Policy Statement No. 25,306, *supra* note 1.

no government mechanism that guarantees the value in official currency of those instruments known as virtual currencies; and BACEN is monitoring the evolution of the usage of these instruments, as well as the related discussions in international forums—especially regarding their nature, ownership, and functioning—in order to possibly adopt measures within its sphere of legal competency, if necessary.⁵

B. Communiqué 31,379 of November 16, 2017

In another statement associated with the growing interest of individuals and companies in virtual currencies, on November 16, 2017, BACEN warned of the risks derived from storing and negotiating virtual currencies and reiterated that these currencies are neither issued nor guaranteed by any monetary authority.⁶

The statement further detailed that companies that negotiate or store virtual currencies on behalf of their owners, be they persons or companies, are neither regulated, licensed to operate, nor supervised by BACEN; there is no specific provision governing virtual currencies in the legal and regulatory frameworks associated with the National Financial System; and BACEN, in particular, neither regulates nor supervises transactions involving virtual currencies.⁷

The statement again reminded persons that virtual currencies are not to be confused with e-money, which is defined in accordance with Law No. 12,865 of October 9, 2013, and controlled by BACEN regulations approved under the guidelines of the National Monetary Council.⁸

In addition, the statement noted that carrying out international wire transfers referenced in foreign currencies through the use of virtual currencies and related instruments does not exempt companies from the obligation to comply with foreign exchange rules—especially the rule establishing that this type of transaction may only be performed by institutions authorized by BACEN to operate in the foreign exchange market.⁹

II. Brazilian Securities and Exchange Commission

On January 12, 2018, the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários, CVM) issued Statement No. 1, which was addressed to officers responsible for the administration and management of investment funds regulated by CVM Instruction No. 555 of December 17, 2014, that are investing in cryptocurrencies.¹⁰

⁵ *Id.*

⁶ Banco Central do Brasil, Communiqué 31,379 of November 16, 2017, <http://www.bcb.gov.br/ingles/norms/Virtual-currencies-Communique-31379-English.pdf>, archived at <https://perma.cc/N7KB-P5J9>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Comissão de Valores Mobiliários, Ofício Circular No. 1/2018/CVM/SIN, <http://www.cvm.gov.br/export/sites/cvm/legislacao/oficios-circulares/sin/anexos/oc-sin-0118.pdf>, archived at <https://perma.cc/486G-8TS4>.

The Statement noted that both in Brazil and in other jurisdictions the legal and economic nature of these investment modalities has been discussed, without having, especially in the domestic market and within its internal regulation, reached a conclusion on such a conceptualization.¹¹ Therefore, based on this uncertainty, the interpretation of the CVM's technical area is that cryptocurrencies cannot be classified as financial assets for the purposes of the provisions of article 2(V) of CVM Instruction 555/14, and for this reason its direct acquisition by regulated investment funds is not allowed.¹²

The Statement further explained that other inquiries have also reached the CVM regarding the possibility that investment funds may be set up in Brazil for the specific purpose of investing in other investment funds incorporated in jurisdictions where they are admitted and regulated that in turn have as their strategy the investment in cryptocurrencies, or investing in derivatives allowed to be traded in regulated environments in other jurisdictions.¹³ In this regard, the CVM emphasized that the existing discussions about the investment in cryptocurrencies, both directly by funds or in other way, are still in an initial stage and coexist with current Bill of Law No. 2,303/2015 (discussed below), which may prevent, restrict, or even criminalize the trading of such investment modalities.¹⁴

The CVM concluded that, based on its understanding of the technical area, it is undeniable that there are still many other inherent risks associated with such investments (such as cybersecurity and privacy risks), and with the future legality of their acquisition or trade, and that considering all these variables it was not possible for the CVM to reach a conclusion regarding the possibility of the constitution and structuring of indirect investments in cryptocurrencies. Therefore, in view of these circumstances, the CVM advised managers of investment funds to await further and more conclusive guidance from the CVM on the subject in order to structure indirect investments in cryptocurrencies as described, or even in other alternative forms that seek this nature of investment.¹⁵

III. Bill of Law No. 2,303 of 2015

A Bill of Law that would amend Law No. 12,865 of October 9, 2013, which provides for payment arrangements and payment institutions that are part of the Brazilian Payment System, and Law No. 9,613 of March 3, 1998, which provides for crimes of money laundering or concealment of assets and the prevention of the use of the financial system for the illicit activities foreseen in Law No. 9,613, is currently under analysis in the Brazilian Chamber of Deputies.¹⁶

¹¹ *Id.*

¹² *Id.* Article 2(V) of CVM Instruction 555/2014 lists the financial assets applicable to investment funds registered with CVM. Instrução CVM No. 555, de 17 de Dezembro de 2014, <http://www.cvm.gov.br/legislacao/instrucoes/inst555.html>, archived at <https://perma.cc/6LV3-X532>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Câmara dos Deputados, Projeto de Lei No. 2.303, de 2015, <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=1555470>, archived at <https://perma.cc/97Y2-NJDV>.

The Bill would provide for the inclusion of virtual currencies and air mileage programs in the definition of “payment arrangements” under the supervision of the BACEN, and would require individuals and companies engaged in investment businesses to closely monitor deals involving virtual currencies and air mileage programs for crimes of money laundering or concealment of assets.¹⁷

Law No. 12,865 currently defines “payment arrangement” as a set of rules and procedures that regulate the rendering of a particular service to the public that is accepted by more than one recipient, through direct access by end users, payers, and recipients.¹⁸

¹⁷ *Id.*

¹⁸ Lei No. 12.865 de 9 de Outubro de 2013, art. 6(I). https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/112865.htm, archived at <https://perma.cc/5ZNY-3KVD>.

Canada

Tariq Ahmad
Foreign Legal Specialist

SUMMARY Canada allows the use of digital currencies, including cryptocurrencies. However, cryptocurrencies are not considered legal tender in Canada. Canada’s tax laws and rules, including the Income Tax Act, also apply to cryptocurrency transactions. The Canada Revenue Agency has characterized cryptocurrency as a commodity and stated that the use of cryptocurrency to pay for goods or services should be treated as a barter transaction.

On June 19, 2014, the Governor General of Canada gave his royal assent to Bill C-31, which includes amendments to Canada’s Proceeds of Crime (Money Laundering) and Terrorist Financing Act. The new law treats virtual currencies as “money service businesses” for purposes of anti-money laundering provisions. The law is not yet in force, pending issuance of subsidiary regulations.

I. Legality of Cryptocurrencies

Canada allows the use of cryptocurrencies.¹ According to the Government of Canada webpage on digital currencies, “[y]ou can use digital currencies to buy goods and services on the Internet and in stores that accept digital currencies. You may also buy and sell digital currency on open exchanges, called digital currency or cryptocurrency exchanges.”² However, cryptocurrencies are not considered legal tender in Canada.³ According to the Financial Consumer Agency of Canada, “[o]nly the Canadian dollar is considered official currency in Canada.” The Currency Act⁴ defines “legal tender” as “bank notes issued by the Bank of Canada under the Bank of Canada Act” and “coins issued under the Royal Canadian Mint Act.”⁵

II. Taxation

Canada’s tax laws and rules also apply to digital currency transactions.⁶ The Canada Revenue Agency (CRA) “has characterized cryptocurrency as a commodity and not a government-issued

¹ *Digital Currency*, FINANCIAL CONSUMER AGENCY OF CANADA, <https://www.canada.ca/en/financial-consumer-agency/services/payment/digital-currency.html>, archived at <https://perma.cc/G3PY-H8NR>.

² *Id.*

³ *Id.*

⁴ Currency Act, R.S.C., 1985, c. C-52, <http://laws-lois.justice.gc.ca/eng/acts/c-52/page-1.html>, archived at <https://perma.cc/4A4E-3XBH>.

⁵ *Digital Currency*, *supra* note 1; Currency Act § 8.

⁶ *Id.*

currency. Accordingly, the use of cryptocurrency to pay for goods or services is treated as a barter transaction.”⁷

A. Payments in Cryptocurrencies

Digital currencies are subject to the Income Tax Act (ITA).⁸ According to the Financial Consumer Agency of Canada “[g]oods purchased using digital currency must be included in the seller’s income for tax purposes.”⁹ On the issue of taxation, the Canada Revenue Agency adds that,

[w]here digital currency is used to pay for goods or services, the rules for barter transactions apply. A barter transaction occurs when any two persons agree to exchange goods or services and carry out that exchange without using legal currency. For example, paying for movies with digital currency is a barter transaction. The value of the movies purchased using digital currency must be included in the seller’s income for tax purposes. The amount to be included would be the value of the movies in Canadian dollars.¹⁰

The Canada Revenue Agency has also said that “GST/HST [Goods and Services Tax/ harmonized sales tax] also applies on the fair market value of any goods or services you buy using digital currency.”¹¹

B. Trade in Cryptocurrencies

As noted, digital currency is characterized as a commodity under Canadian law. Thus, according to the Financial Consumer Agency “[w]hen you file your taxes you must report any gains or losses from selling or buying digital currencies.”¹² Any resulting gains or losses “could be taxable income or capital for the taxpayer.”¹³ The CRA has published a bulletin¹⁴ to “provide information that can help in determining whether transactions are income or capital in nature.”¹⁵ According to lawyers from the law firm Gowling WLG,

[i]n general terms, where a taxpayer does not engage in the business of trading in cryptocurrency (i.e., the taxpayer acquires such property for a long-term growth), any gain

⁷ Mariam Al-Shikarchy et al., Gowling WLG, *Canadian Taxation of Cryptocurrency . . . So Far*, LEXOLOGY (Nov. 14, 2017), <https://www.lexology.com/library/detail.aspx?g=6283077e-9d32-4531-81a5-56355fa54f47>.

⁸ *Id.*

⁹ *Digital Currency*, *supra* note 1.

¹⁰ *What You Should Know about Digital Currency*, CANADA REVENUE AGENCY, <https://www.canada.ca/en/revenue-agency/news/newsroom/fact-sheets/fact-sheets-2015/what-you-should-know-about-digital-currency.html> (last updated Mar. 17, 2015), archived at <https://perma.cc/CYV2-236S>.

¹¹ *Digital Currency*, *supra* note 1.

¹² *Id.*

¹³ *What You Should Know about Digital Currency*, *supra* note 10.

¹⁴ CRA, Interpretation Bulletin IT-479R, Transactions in Securities, <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/it479r/archived-transactions-securities.html>, archived at <https://perma.cc/NDV9-4BGA>.

¹⁵ *What you Should Know about Digital Currency*, *supra* note 10.

or loss generated from the disposition of cryptocurrency should be treated as on account of capital. However, where a taxpayer engages in the business of trading or investing in cryptocurrency, gains or losses therefrom should be treated as being on account of income. The cost to the taxpayer of property received in exchange for cryptocurrency (for example, another type of cryptocurrency) should be equal to the value of the cryptocurrency given up as consideration.¹⁶

The law firm also notes that “it is possible that a trader in cryptocurrency would also be required to collect GST/HST (and QST [Quebec Sales Tax]) on their supplies, but the CRA has not expressed a clear view on this point.”¹⁷

C. Mining Cryptocurrencies

Mining of cryptocurrencies can be undertaken for profit (as a business) or as a personal hobby (which is nontaxable).¹⁸ According to Gowling WLG,

[i]f the taxpayer mines in a commercial manner, the income from that business must be included in the taxpayer’s income for the year. Such income will be determined with reference to the value of the taxpayer’s inventory at the end of the year, established pursuant to the rules in section 10 of the ITA and Part XVIII of the Regulations regarding valuing inventory.¹⁹

III. Anti-Money Laundering Regime

On June 19, 2014, the Governor General of Canada gave his royal assent to Bill C-31 (An Act to Implement Certain Provisions of the Budget Tabled in Parliament on February 11, 2014, and Other Measures),²⁰ which includes amendments to Canada’s Proceeds of Crime (Money Laundering) and Terrorist Financing Act. The law treats virtual currencies, including Bitcoin, as “money service businesses” for purposes of anti-money laundering laws.²¹ As a result of the law, companies dealing in virtual currencies are required to register with the Financial Transactions and Reports Analysis Centre of Canada (Fintrac), put into effect compliance programs, “keep and retain prescribed records,” report suspicious or terrorist-related property transactions, and

¹⁶ Al-Shikarchy et al., *supra* note 7.

¹⁷ *Id.*

¹⁸ *Cryptocurrencies and Tax: Five Things Every Canadian Needs to Know*, WILDEBOER DELLELCE (Dec. 12, 2017), <http://www.wildlaw.ca/resource-centre/legal-updates/2017/cryptocurrencies-and-tax-five-things-every-canadian-needs-to-know/>, archived at <https://perma.cc/F7RC-R2D3>.

¹⁹ Al-Shikarchy et al., *supra* note 7.

²⁰ Bill C-31, An Act to Implement Certain Provisions of the Budget Tabled in Parliament on February 11, 2014, and Other Measures, Second Session, Forty-first Parliament, 62-63 Elizabeth II, 2013-2014, Statutes of Canada 2014 Ch. 20, <http://www.parl.ca/DocumentViewer/en/41-2/bill/C-31/royal-assent>, archived at <https://perma.cc/2N7Q-E68C>.

²¹ *Id.*; see also Tariq Ahmad, *Canada: Canada Passes Law Regulating Virtual Currencies as “Money Service Businesses”* GLOBAL LEGAL MONITOR (July 9, 2014), <http://www.loc.gov/law/foreign-news/article/canada-canada-passes-law-regulating-virtual-currencies-as-money-service-businesses/>, archived at <https://perma.cc/BOA6-K7MV>.

determine if any of their customers are “politically exposed persons.”²² The law will also apply to virtual currency exchanges operating outside of Canada “who direct services at persons or entities in Canada.”²³ The new amendments also bar banks from opening and maintaining accounts or having a “correspondent banking relationship” with companies dealing in virtual currencies, “unless that person or entity is registered with the Centre.”²⁴

The law is regarded as the “world’s first national law on digital currencies, and certainly the world’s first treatment in law of digital currency financial transactions under national anti-money laundering law.”²⁵ Though the law has received royal assent it is not yet in force, pending issuance of subsidiary regulations. Recent news reports indicate that the government may be about to issue those regulations.²⁶

IV. Securities Law

On August 24, 2017, the Canadian Securities Administrators (CSA) published CSA Staff Notice 46-307 Cryptocurrency Offerings,²⁷ “which outlines how securities law requirements may apply to initial coin offerings (ICOs), initial token offerings (ITOs), cryptocurrency investment funds and the cryptocurrency exchanges trading these products.”²⁸ On February 1, 2018, the *Globe and Mail* reported that the Ontario Securities Commission had approved the country’s first blockchain fund—Blockchain Technologies ETF.²⁹

V. Bank of Canada’s Blockchain Project

The Bank of Canada, Payments Canada, and R3, a distributed database technology company, are involved in a research initiative called Project Jasper “to understand how distributed ledger technology (DLT) could transform the wholesale payments system.”³⁰ Phases 1 and 2 of the project

²² Christine Duhaime, *Canada Implements World’s First National Digital Currency Law; Regulates New Financial Technology Transactions*, DUHAIME LAW (June 22, 2014), <http://www.duhaime.com/2014/06/22/canada-implements-worlds-first-national-bitcoin-law/>, archived at <https://perma.cc/4TLH-LTN5>.

²³ Bill C-31, § 255(2).

²⁴ *Id.* § 258.

²⁵ Duhaime, *supra* note 22.

²⁶ Corin Faife, *Canada Is Gearing Up to Regulate Cryptocurrency*, MOTHERBOARD (Mar. 20, 2018), https://motherboard.vice.com/en_us/article/d358zk/canada-is-gearing-up-to-regulate-cryptocurrency-parliament-hearing, archived at <https://perma.cc/K7AH-LDMZ>.

²⁷ CSA Staff Notice 46-307 Cryptocurrency Offerings (Aug. 24, 2017), http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20170824_cryptocurrency-offerings.htm, archived at <https://perma.cc/7XF6-3T3E>.

²⁸ Press Release, CSA, Canadian Securities Regulators Outline Securities Law Requirements that May Apply to Cryptocurrency Offerings (Aug. 24, 2017), <https://www.securities-administrators.ca/aboutcsa.aspx?id=1606>, archived at <https://perma.cc/4KL4-YSEV>.

²⁹ Clare O’Hara, *OSC Approves Canada’s First Blockchain ETF*, THE GLOBE AND MAIL (Feb. 1, 2018), <https://www.theglobeandmail.com/globe-investor/funds-and-etfs/etfs/osc-approves-canadas-first-blockchain-etf/article37828183/>, archived at <https://perma.cc/V6TD-KZ5C>.

³⁰ *Fintech Experiments and Projects*, BANK OF CANADA, <https://www.bankofcanada.ca/research/digital-currencies-and-fintech/fintech-experiments-and-projects/> (last visited Apr. 30, 2018), archived at <https://perma.cc/9F77-QHFN>.

are “focused on exploring the clearing and settlement of high-value interbank payments using DLT” and have been completed. Phase 1 of Project Jasper used the Ethereum platform as the basis for the DLT, while Phase 2 used the “custom-designed R3 Corda platform.”³¹

In June 2017, the Bank of Canada published a report on its preliminary findings from Phase 1 of Project Jasper and partly found that “[f]or critical financial market infrastructures, such as wholesale payment systems, current versions of DLT may not provide an overall net benefit relative to current centralized systems.”³² On September 29, 2017, the Bank of Canada, Payments Canada, and R3 released a white paper that describes the project’s findings to date.³³ On October 17, 2017, Payments Canada, the Bank of Canada, and TMX Group announced “a new collaboration to experiment with an integrated securities and payment settlement platform based on distributed ledger technology (DLT) as part of the third phase of the Project Jasper research initiative.”³⁴

³¹ Andrea Schneider, *Project Jasper Update: White Paper Release and Phase 3 Announcement*, CYBERLEX (Oct. 31, 2017), <https://www.canadiancybersecuritylaw.com/2017/10/project-jasper-update-white-paper-release-and-phase-3-announcement/>, archived at <https://perma.cc/948N-6Z8S>.

³² James Chapman et al., Bank of Canada, *Project Jasper: Are Distributed Wholesale Payment Systems Feasible Yet?* 1 (Financial System Review, June 2017), <https://www.bankofcanada.ca/wp-content/uploads/2017/05/fsr-june-2017-chapman.pdf>, archived at <https://perma.cc/UZU6-CL6L>.

³³ Payments Canada, Bank of Canada 1 & R3, *Project Jasper: A Canadian Experiment with Distributed Ledger Technology for Domestic Interbank Payments Settlement* (Sept. 29, 2017), https://www.payments.ca/sites/default/files/29-Sep-17/jasper_report_eng.pdf, archived at <https://perma.cc/PH5V-UJLK>.

³⁴ Payments Canada, Bank of Canada and TMX Group Announce Integrated Securities and Payment Platform as Next Phase of Project Jasper, TMX GROUP (Oct. 17, 2017), <https://www.tmx.com/newsroom/press-releases?id=615&year=2017>, archived at <https://perma.cc/2B5Q-C65R>.

China

Laney Zhang
Foreign Law Specialist

SUMMARY China does not recognize cryptocurrencies as legal tender and the banking system is not accepting cryptocurrencies or providing relevant services. The government has taken a series of regulatory measures to crack down on activities related to cryptocurrencies for purposes of investor protection and financial risk prevention. Those measures include announcing that initial coin offerings are illegal, restricting the primary business of cryptocurrency trading platforms, and discouraging Bitcoin mining. In the meantime, China’s central bank is reportedly considering issuing its own digital currency.

I. Introduction

China has not passed any legislation regulating cryptocurrencies. Regulators are not recognizing cryptocurrencies¹ as legal tender or a tool for retail payments, and the Chinese banking system is not accepting any existing cryptocurrencies or providing relevant services.² In a 2013 circular, the government defined Bitcoin as a virtual commodity, but while warning citizens about the risks of virtual commodities allowed them to freely participate in the online trading of such commodities.³

In recent years, especially since September 2017, however, the government has taken a series of regulatory measures to crack down on activities related to cryptocurrencies, mainly due to the concern over financial risks associated with such currencies.

II. Regulatory Measures on Cryptocurrencies

A. Ban on Initial Coin Offering

The practice of raising funds through initial coin offerings (ICOs) is completely banned in China. On September 4, 2017, seven Chinese central government regulators—the People’s Bank of China (PBOC), the Cyberspace Administration of China (CAC), the Ministry of Industry and Information Technology (MIIT), the State Administration for Industry and Commerce (SAIC), the China Banking Regulatory Commission (CBRC), the China Securities Regulatory Commission (CSRC), and the China Insurance Regulatory Commission (CIRC)—jointly issued the Announcement on

¹ The term 虚拟货币 (“virtual currencies”) is used in Chinese.

² Zhou Xiaochuan: *Future Regulation on Virtual Currency Will Be Dynamic, Imprudent Products Shall Be Stopped for Now*, XINHUANET (Mar. 1, 2018), http://www.xinhuanet.com/finance/2018-03/10/c_129826604.htm (in Chinese), archived at <https://perma.cc/2CW7-8F2T>.

³ People’s Bank of China, Ministry of Industry and Information Technology, China Banking Regulatory Commission, China Securities Regulatory Commission, and China Insurance Regulatory Commission Notice on Precautions Against the Risks of Bitcoins (Dec. 3, 2013), <http://www.miit.gov.cn/n1146295/n1652858/n1652930/n3757016/c3762245/content.html> (in Chinese), archived at <https://perma.cc/S4DN-DXHD> (all translations by author).

Preventing Financial Risks from Initial Coin Offerings (ICO Rules) for purposes of investor protection and financial risk prevention.⁴

Under the ICO Rules, ICOs that raise cryptocurrencies such as Bitcoin and Ethereum through the irregular sale and circulation of tokens are essentially engaging in public financing without official authorization, which is illegal. The ICO Rules warn that financial crimes may be involved in ICOs, such as the illegal issuance of tokens or securities, illegal fundraising, financial fraud, or pyramid selling.⁵ Cryptocurrencies involved in ICOs are not issued by the country's monetary authority and therefore are not mandatorily-accepted legal tender. They do not have equal legal status with fiat currencies and "cannot and should not be circulated and used in the market as currencies."⁶

B. Restrictions on Cryptocurrency Trading Platforms

The ICO Rules also impose restrictions on the primary business of cryptocurrency trading platforms. According to the ICO Rules, the platforms are prohibited from converting legal tender into cryptocurrencies, or vice versa. They are also prohibited from purchasing or selling cryptocurrencies, setting prices for cryptocurrencies, or providing other related agent services. Government authorities may shut down the websites and mobile applications of platforms that fail to comply, remove the applications from application stores, or even suspend the platform's business licenses.⁷

Following the issuance of the ICO Rules on September 4, 2017, senior executives of cryptocurrency trading platforms in China were reportedly summoned for "chats" by regulators. On September 15, 2017, for example, the Beijing Internet Finance Risk Working Group summoned senior executives of cryptocurrency trading platforms in Beijing. The platforms were reportedly ordered to immediately cease new client registration and announce the deadline by which time the platforms would cease all cryptocurrency trading.⁸ As a result, the cryptocurrency trading platforms essentially shut down their trading business in China.⁹ More recently, in February 2018, the *South China Morning Post* reported that China was planning to block websites

⁴ PBOC, CAC, MIIT, SAIC, CBRC, CSRC, and CIRC, Announcement on Preventing Financial Risks from Initial Coin Offerings (Sept. 4, 2017), <http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/3374222/index.html> (in Chinese), archived at <https://perma.cc/N88N-5CV5>. See Greg Pilarowski & Lu Yue, *China Bans Initial Coin Offerings and Cryptocurrency Trading Platforms*, CHINA REGULATION WATCH (Sept. 21, 2017), <http://www.pillarlegalpc.com/en/news/2017/09/21/china-bans-initial-coin-offerings-and-cryptocurrency-trading-platforms/>, archived at <https://perma.cc/VQ2W-T4HY>.

⁵ Announcement on Preventing Financial Risks from Initial Coin Offerings, *supra* note 4.

⁶ *Id.*

⁷ *Id.*

⁸ Wu Yujian, *Bitcoin Exchanges Ordered to Formulate Non-Risk Clearance Plan and Shut Down by End of September (Updated)*, CAIXIN (Sept. 15, 2017), <http://finance.caixin.com/2017-09-15/101145796.html> (in Chinese), archived at <https://perma.cc/NQ4S-MDBL>.

⁹ Xie Xu, *China to Stamp Out Cryptocurrency Trading Completely with Ban on Foreign Platforms*, SOUTH CHINA MORNING POST (Feb. 7, 2018), <http://www.scmp.com/business/banking-finance/article/2132009/china-stamp-out-cryptocurrency-trading-completely-ban>, archived at <https://perma.cc/42H4-F2AW>.

related to cryptocurrency trading and ICOs, including foreign platforms, in a bid to completely stamp out cryptocurrency trading.¹⁰

C. Requirements for Financial Institutions

The ICO Rules prohibited financial institutions and non-bank payment institutions from directly or indirectly providing services for ICOs and cryptocurrencies, including opening bank accounts or providing registration, trading, clearing, or liquidation services. They were also prohibited from providing insurance services relating to ICOs or cryptocurrencies.¹¹

In fact, a ban on bank and payment institution dealings in Bitcoin has been in place since 2013. According to the Notice on Precautions Against the Risks of Bitcoins jointly issued by the PBOC, MIIT, CBRC, CSRC, and CIRC on December 3, 2013, banks and payment institutions in China must not deal in Bitcoins; use Bitcoin pricing for products or services; buy or sell Bitcoins; or provide direct or indirect Bitcoin-related services, including registering, trading, settling, clearing, or other services. They are also prohibited from accepting Bitcoins or using Bitcoins as a clearing tool, or trading Bitcoins with Chinese yuan or foreign currencies.¹²

D. Discouraging Bitcoin Mining

In January 2018, China's Leading Group of Internet Financial Risks Remediation reportedly requested that local governments remove existing, preferential policies for Bitcoin mining companies in terms of electricity prices, taxes, or land use, and guide the orderly exit of such companies from the Bitcoin mining business. The localities must submit regular reports on Bitcoin mining operations in their jurisdictions.¹³ Since then regulations on Bitcoin mining have been strengthened, at least in some Chinese provinces. Many Bitcoin mines in China have stopped operating.¹⁴

III. Central Bank Digital Currency

Despite cracking down on privately-issued cryptocurrencies, China's central bank, the PBOC, is reportedly considering issuance of its own digital currency. According to a March 2018 interview with Zhou Xiaochuan, the then governor of the PBOC, the PBOC has been conducting a study of

¹⁰ *Id.*

¹¹ *Id.*

¹² PBOC, MIIT, CBRC, CSRC, and CIRC Notice on Precautions Against the Risks of Bitcoins, *supra* note 3.

¹³ Wu Yujian et al., *China Clamps Down on Preferential Treatment for Bitcoin Mines*, CAIXIN (Jan. 4, 2018), <https://www.caixinglobal.com/2018-01-04/china-clamps-down-on-preferential-treatment-for-bitcoin-mines-101193622.html>, archived at <https://perma.cc/8564-FEXC>.

¹⁴ Song Di, *Bitcoin Regulatory "Tight Inside and Loose Outside," Many "Mining Sites" Have Stopped Operating*, ECONOMIC OBSERVER NET (Jan. 13, 2018), <http://www.eeo.com.cn/2018/0113/320754.shtml> (in Chinese), archived at <https://perma.cc/49S8-JQVK>.

digital currency for over three years and has set up an Institute of Digital Money within the PBOC.¹⁵

In October 2017, the PBOC reportedly completed trial runs on the algorithms needed for a digital currency supply, “taking it a step closer to addressing the technological challenges associated with digital currencies.”¹⁶ The digital currency would be a digital form of the sovereign currency that is backed by the central bank. “Unlike Bitcoin or other digital money issued by the private sector, the digital fiat currency has the same legal status as the Chinese yuan, the only fiat currency issued by the People’s Bank of China.”¹⁷

¹⁵ Zhou Xiaochuan, *Future Regulation on Virtual Currency Will Be Dynamic, Imprudent Products Shall Be Stopped for Now*, *supra* note 2.

¹⁶ Wang Yanfei, *PBOC Inches Closer to Digital Currency*, CHINA DAILY (Oct. 14, 2017), http://www.chinadaily.com.cn/business/2017-10/14/content_33235955.htm, archived at <https://perma.cc/T4R8-R4PU>.

¹⁷ *Id.*

France

Nicolas Boring
Foreign Law Specialist

SUMMARY Cryptocurrencies remain largely unregulated in France. So far, only two ordinances containing provisions on blockchain technology have been issued, but their applicability remains very narrow. However, the government has set up several fact-finding missions and is actively working to establish a regulatory framework. French regulatory authorities are generally wary of cryptocurrencies, due to their high volatility and unregulated nature, but appear enthusiastic about the underlying blockchain technology. Additionally, French authorities have issued some limited guidance with regard to the tax treatment of cryptocurrencies, instructing that any profits from their sale is taxable, and that their value is to be taken into account when calculating the wealth tax.

I. Introduction

Cryptocurrencies remain largely unregulated in France, with two ordinances on blockchain technology being the only legislative action taken so far. However, the French government is actively studying the cryptocurrency phenomenon and moving towards establishing a regulatory regime. Statements from various quarters of the French government show that while many are wary of cryptocurrencies, there appears to be a real enthusiasm for the underlying blockchain technology.

II. Provisions Regarding Blockchain Technology

A 2016 ordinance included two provisions that allowed the use of blockchain technology for a specific type of zero-coupon bond called a “mini-bond” (*minibon*).¹ The main impact of this ordinance was to provide the first definition of “blockchain” in French law, but otherwise these provisions only had a very narrow application. Another ordinance, from December 2017, went further and will make it possible to use blockchain technology for a broader range of financial instruments.² This ordinance will come into force when the application decree is published, or on July 1, 2018, at the latest.³

¹ Ordonnance n° 2016-520 du 28 avril 2016 relative aux bons de caisse [Ordinance No. 2016-520 of 28 April 2016 Regarding Zero Coupon Bonds] art. 2, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00032465520&categorieLien=id>, archived at <https://perma.cc/K3UP-AJ9D>.

² Ordonnance n° 2017-1674 du 8 décembre 2017 relative à l'utilisation d'un dispositif d'enregistrement électronique partagé pour la représentation et la transmission de titres financiers [Ordinance No. 2017-1674 of 8 December 2017 Regarding the Use of a Shared Electronic Registration Method for the Representation and Conveyance of Financial Instruments], <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000036171908&categorieLien=id>, archived at <https://perma.cc/ESA7-89E6>.

³ *Id.* art. 8.

III. Positions of Financial Regulatory Authorities

A. Warnings about the Inherent Risks of Cryptocurrencies

The French Financial Market Authority (Autorité des marchés financiers, AMF) and Prudential Supervisory Authority (Autorité de contrôle prudentiel et de résolution, ACPR) recently issued a joint notice to investors, warning about the current unregulated nature of cryptocurrencies.⁴ This document notes that Bitcoin and other cryptocurrencies are not considered financial instruments under French law, and therefore do not fall under the regulatory framework of actual currencies or under the AMF's supervision.⁵ The AMF and ACPR warn that cryptocurrencies are unregulated and particularly volatile investments.⁶ This document is reminiscent of a slightly longer report that the French Central Bank (Banque de France) published in December 2013.⁷ This report explained that Bitcoin cannot be considered a real currency or means of payment under current French laws,⁸ and criticized it as a vehicle for speculation as well as an instrument for money laundering and other illegal activities.⁹ The 2013 report also suggested that the conversion between Bitcoin and real currencies should be considered a payment service, which therefore could only be performed by payment service providers authorized and supervised by the ACPR.¹⁰ The ACPR acknowledged this position in a 2014 document in which it stated that entities that habitually engage in the activity of purchasing or selling cryptocurrencies in exchange for actual legal tender must be licensed as payment services providers by the ACPR.¹¹ However, the AMF and ACPR's 2017 joint notice recognizes that "the purchase/sale of and investments in Bitcoin currently operate outside of any regulated market."¹²

Robert Ophèle, the President of the AMF, reiterated his skepticism of the economic value of cryptocurrencies in a January 2018 interview.¹³ In this interview, he described as "catastrophic"

⁴ *Achats de Bitcoin: l'AMF et l'ACPR mettent en garde les épargnants* [Bitcoin Purchases: The AMF and ACPR Warn Savers], AMF & ACPR (Dec. 4, 2017), <https://acpr.banque-france.fr/sites/default/files/medias/documents/20171204-cp-bitcoin.pdf>, archived at <https://perma.cc/CM6Q-EGUH>.

⁵ *Id.*

⁶ *Id.*

⁷ Banque de France, *Les dangers liés au développement des monnaies virtuelles: l'exemple du bitcoin* [The Dangers of the Development of Virtual Currencies: The Bitcoin Example], FOCUS No. 10, Dec. 5, 2013, https://publications.banque-france.fr/sites/default/files/medias/documents/focus-10_2013-12-05_fr.pdf, archived at <https://perma.cc/K93L-HLAC>.

⁸ *Id.* at 1.

⁹ *Id.* at 2–3.

¹⁰ *Id.* at 6.

¹¹ ACPR, *Position de l'ACPR relative aux opérations sur Bitcoins en France* [Position of the ACPR Regarding Bitcoin Operations in France] (Jan. 29, 2014), https://acpr.banque-france.fr/sites/default/files/20140101_acpr_position_bitcoin.pdf, archived at <https://perma.cc/M6YT-EG6J>.

¹² *Achats de Bitcoin*, *supra* note 4.

¹³ *Devises virtuelles: Leur banalisation serait une catastrophe, avertit l'AMF* [Cryptocurrencies: Their Trivialization Would be a Disaster, AMF Warns], CAPITAL (Jan. 12, 2018), <https://www.capital.fr/entreprises-marches/lamf-juge-quil-serait-desastreux-que-les-monnaies-virtuelles-soient-banalisees-1264945>, archived at <https://perma.cc/4EQJ-M72T>.

the prospect of cryptocurrencies, in their current form, spreading to become an everyday instrument of the economic circuit: “due to the nontraceability of operations [and] their quasi-irrational valuation, those are not really appropriate foundations for investment.”¹⁴

B. Warnings about the Risks of Acquiring Cryptoassets from Unregistered Sources

In March 2018, the AMF warned investors about the risks of purchasing cryptoassets from unregistered sources and published a list of websites of companies selling cryptoassets without having obtained prior authorization from the AMF.¹⁵ The AMF has also considered the status of cryptocurrency derivatives, and has concluded that “cash-settled cryptocurrency contracts may qualify as a derivative” and that, as a result, “online platforms which offer cryptocurrency derivatives fall within the scope of MiFID 2 [the European Union Markets in Financial Instruments Directive 2] and must therefore comply with the authorization, conduct of business rules, and the European Market Infrastructure Regulation (E.M.I.R.) trade reporting obligation to a trade repository.”¹⁶ Furthermore, such products are subject to the provisions of French law that ban the advertisement of certain financial contracts.¹⁷

C. Enthusiasm for Blockchain Technology

While its main purpose was to warn investors about the volatility and unregulated nature of cryptocurrencies, the AMF and ACPR’s 2017 joint notice also included a brief passage recognizing the potential benefits of blockchain technologies for the corporate world.¹⁸ This view was repeated by the President of the AMF in his above-mentioned January 2018 interview.¹⁹ While he sees the development of cryptocurrencies as potentially “catastrophic,” he also highlighted the “extremely positive contribution of the underlying technology, i.e. blockchain, which could bring deep changes to the financial sector because it has the ability to reduce costs and intermediaries.”²⁰

¹⁴ *Id.*

¹⁵ News Release, AMF, The Autorité des marchés financiers (AMF) Is Publishing a List on Its Website of Unauthorized Companies Proposing Atypical Investments without Being Authorised to Do So (Mar. 15, 2018), http://www.amf-france.org/en_US/Actualites/Communiqués-de-presse/AMF/annee-2018?docId=workspace://SpacesStore/3f85fe88-fc1f-45b8-a55e-0bc5aeb298ce, archived at <https://perma.cc/P38R-L8MQ>.

¹⁶ New Release, AMF, The AMF Considers that the Offer of Cryptocurrency Derivatives Requires Authorization 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://SpacesStore/a225bf1d-de35-4f58-89e3-f03cb7e9e551, archived at <https://perma.cc/6323-NYAP>.

¹⁷ *Id.*

¹⁸ *Achats de Bitcoin*, *supra* note 4.

¹⁹ *Devises virtuelles: Leur banalisation serait une catastrophe, avertit l’AMF*, *supra* note 13.

²⁰ *Id.*

IV. Legislative and Executive Branches Considering Regulatory Options

A. Parliamentary Fact-Finding Missions

In parallel to the independent regulatory institutions mentioned above, the French legislative and executive branches are actively investigating how best to regulate cryptocurrencies. To that purpose, the National Assembly (Assemblée nationale, one of the two houses of the French Parliament) recently initiated a fact-finding mission on cryptocurrencies,²¹ and a separate fact-finding mission on “blockchains and other technologies for the certification of ledgers.”²² The mission on cryptocurrencies held its first (and so far, only) hearings on March 12, 2018,²³ while the mission on blockchains has not yet held any hearings. So far, neither mission has published any findings or opinions. Additionally, the Senate (the other house of the French Parliament) organized two hearings on February 7, 2018: one on blockchain technology, and one on the rise of cryptocurrencies.²⁴ Many of the speakers stressed the importance of establishing a new legal framework for cryptocurrencies, as the existing legislation is deemed inadequate. All appeared to agree on the necessity to minimize the illegal uses of cryptocurrencies (such as money laundering) and to provide some protection and transparency for investors, while at the same time avoiding stifling innovation.²⁵

B. Ministry of the Economy Fact-Finding Mission

The Minister of the Economy has recently tasked Jean-Pierre Landau, a former deputy governor of the Banque de France, with researching how to best regulate cryptocurrencies to “better control their development and to prevent their use for tax evasion, money laundering, or the financing of criminal or terrorist activities.”²⁶ Landau has the reputation of being a cryptocurrency skeptic after he wrote an op-ed in 2014 that criticized Bitcoin for being

²¹ *Mission d’information sur les monnaies virtuelles* [Information Mission on Cryptocurrencies], Assemblée nationale [National Assembly], <http://www2.assemblee-nationale.fr/15/commissions-permanentes/commission-des-finances/missions-d-information/monnaies-virtuelles> (last visited Mar. 19, 2018), archived at <https://perma.cc/JNU5-4MRG>.

²² Assemblée nationale [National Assembly], *Mission d’information commune sur les usages des bloc-chaînes* (blockchains) et autres technologies de certification de registres [Joint Information Mission on the Uses of Blockchains and Other Technologies for the Certification of Ledgers], [http://www2.assemblee-nationale.fr/15/commissions-permanentes/commission-des-finances/missions-d-information/chaines-de-blocs/\(block\)/47252](http://www2.assemblee-nationale.fr/15/commissions-permanentes/commission-des-finances/missions-d-information/chaines-de-blocs/(block)/47252) (last visited Mar. 19, 2018), archived at <https://perma.cc/3TKA-Y7L7>.

²³ *Monnaies virtuelles: Auditions diverses* [Cryptocurrencies: Miscellaneous Hearings], ASSEMBLEE NATIONALE [NATIONAL ASSEMBLY] (Mar. 12, 2018), http://videos.assemblee-nationale.fr/video.5668992_5aa68794a2acf (video).

²⁴ *Comptes Rendus de la Commission des Finances* [Minutes of the Finance Commission], SENAT [SENATE] (Feb. 7, 2018), <http://www.senat.fr/compte-rendu-commissions/20180205/fin.html#toc1>, archived at <https://perma.cc/J9LV-N8ZD>.

²⁵ *Id.*

²⁶ *Un ancien de la Banque de France chargé d’une mission sur le bitcoin* [Former Banque de France Official Tasked with a Mission on Bitcoin], AFP / LE POINT (Jan. 15, 2018), http://www.lepoint.fr/economie/un-ancien-de-la-banque-de-france-charge-d-une-mission-sur-le-bitcoin-15-01-2018-2186834_28.php, archived at <https://perma.cc/R6CD-GCV9>.

“unsuitable as a means of exchange” and primarily attractive for purposes of speculation, money laundering, and tax evasion.²⁷

C. Action Plan to be Unveiled Soon

On March 19, 2018, the Minister of the Economy and Finance published an op-ed in which he expressed the view that “France has every interest in becoming the first big financial center to offer an *ad hoc* legislative framework that would allow companies that launch an ICO to demonstrate their seriousness to potential investors.”²⁸ He announced an upcoming “Action Plan for Growth and Transformation of Companies,” to be unveiled by the government “in a few weeks,” that will allow the AMF to grant a certification of trustworthiness to companies that issue tokens, provided that they fulfill certain criteria to ensure the protection of investors.²⁹

It is also worth noting that France and Germany have jointly requested that cryptocurrencies be discussed by the G-20, so that coordinated initiatives may be taken at the international level.³⁰

V. Taxation

According to guidelines from the Direction générale des Finances publiques (DGFP, General Directorate for Public Finance), capital gains from the sale of cryptocurrency are subject to taxation.³¹ These gains will be taxed differently depending on whether the taxpayer’s acquisition and sale of cryptocurrency is an occasional activity (in which case it will be taxed as “non-commercial profit”) or a habitual activity (in which case it will be taxed as “industrial and

²⁷ David Meyer, *France’s Newly-Appointed ‘Monsieur Bitcoin’ Is a Notable Cryptocurrency Skeptic*, FORTUNE (Jan. 16, 2018), <http://fortune.com/2018/01/16/bitcoin-cryptocurrency-france-regulation-jean-pierre-landau/>, archived at <https://perma.cc/5H4H-ZNGV>.

²⁸ Bruno Le Maire, Minister of the Economy and Finance., Op-ed, *Cryptoactifs, Blockchain & ICO: Comment la France veut rester à la pointe* [*Cryptoassets, Blockchain & ICO: How France Wants to Stay at the Forefront*], NUMERAMA (Mar. 19, 2018), <https://www.numerama.com/politique/336943-tribune-cryptoactifs-blockchain-ico-comment-la-france-veut-rester-a-la-pointe-par-bruno-le-maire.html>, archived at <https://perma.cc/43EJ-6NQB>.

²⁹ *Id.*

³⁰ *Berlin et Paris veulent mobiliser le G20 sur les cryptomonnaies* [*Berlin and Paris Want to Mobilize the G20 on Cryptocurrencies*], REUTERS (Feb. 9, 2018), <https://fr.reuters.com/article/technologyNews/idFRKBN1FT19L-OFRIN>, archived at <https://perma.cc/RF3M-ZVZM>.

³¹ Extrait du Bulletin Officiel des Finances Publiques – Impôts [Excerpt from Official Bulletin of Public Finances – Taxes], Direction générale des Finances publiques [General Directorate for Public Finance], BNC – Champ d’application – Activités et revenus imposables – Exploitations lucratives et sources de profits – Professions ou activités dont la classification fiscale des revenus a donné lieu à des solutions administratives ou jurisprudentielles [BNC – Applicability – Taxable Income and Activities – For-Profit Activities and Sources of Profits – Professions or Activities for Which the Income Tax Classification was Subject to Administrative or Jurisprudential Solutions] ¶ 1080 (Feb. 3, 2016), <http://bofip.impots.gouv.fr/bofip/ext/pdf/createPdfWithAnnexePermalien/BOI-BNC-CHAMP-10-10-20-40-20140711.pdf?doc=2824-PGP&identifiant=BOI-BNC-CHAMP-10-10-20-40-20140711>, archived at <https://perma.cc/L5RG-7SE9>; Direction générale des Finances publiques, BNC – BIC – ENR – PAT – Régime fiscal applicable aux bitcoins [BNC – BIC – ENR – PAT – Tax Treatment Applicable to Bitcoins] (July 11, 2014), http://bofip.impots.gouv.fr/bofip/ext/pdf/createPdfWithAnnexe/BNC - BIC - ENR - PAT - R%C3%A9gime_fiscal_applicable_aux_bitcoins.pdf?id=9515-PGP, archived at <https://perma.cc/QWZ6-W7VF>.

commercial profit”).³² Additionally, cryptocurrencies are taken into account when calculating the basis for the French wealth tax, and the free transfer of cryptocurrencies from one person to another may be subject to the gift tax.³³ Beyond these guidelines, however, tax experts have commented that there still are a number of ambiguities that will need to be clarified by the government.³⁴

³² *Id.*

³³ Direction générale des Finances publiques, BNC – BIC – ENR – PAT – Régime fiscal applicable aux bitcoins [BNC – BIC – ENR – PAT – Tax Treatment Applicable to Bitcoins], *supra* note 31.

³⁴ *Face à l’envolée des devises virtuelles, le fisc est à l’affût* [Faced with the Soaring of Cryptocurrencies, the Tax Authorities Are on the Lookout], CAPITAL (Jan. 15, 2018), <https://www.capital.fr/entreprises-marches/face-a-la-flambee-des-cryptomonnaies-ladministration-fiscale-a-laffut-1265534>, archived at <https://perma.cc/Q4N4-35W5>.

Gibraltar

*Clare Feikert-Ahalt
Senior Foreign Law Specialist*

SUMMARY Gibraltar has actively legislated to regulate the operation of cryptocurrencies within its jurisdiction. It currently requires the registration of firms that use distributed ledger technology to store or transmit value belonging to others. The registration process involves the Gibraltar Financial Services Commission reviewing the application and, if satisfied that certain criteria are met, a license may be granted, enabling the holder to operate a business using distributed ledger technology. Gibraltar is also considering introducing regulations that will regulate initial coin offerings.

I. Introduction

The Gibraltar Financial Services Commission (GFSC) is the regulator of the financial services market in Gibraltar and is responsible for regulating providers of such services that conduct business in Gibraltar and overseas. The GFSC must undertake this responsibility “in an effective and efficient manner in order to promote good business, protect the public from financial loss and enhance Gibraltar’s reputation as a quality financial centre.”¹

Gibraltar has been considering regulating cryptocurrency for a number of years. In 2014, the Cryptocurrency Working Group, a private initiative, was established to consider cryptocurrencies and, in January 2016, the government of Gibraltar and the working group joined together and issued a discussion paper that considered various types of regulations for this area.²

The government recently introduced regulations governing the provision of distributed ledger technology (DLT)³ and is currently in the process of introducing draft legislation to regulate initial coin offerings (ICOs).⁴

¹ Press Release, GFSC, Distributed Ledger Technology (DLT) Regulatory Framework (Jan. 2, 2018), <http://www.gfsc.gi/news/distributed-ledger-technology-dlt-regulatory-framework-270>, archived at <https://perma.cc/7DPW-ANKK>.

² Press Release, HM Government of Gibraltar, Government Confirms Introduction of Government Confirms Introduction of Confirms Introduction of Distributed Ledger Technology (DLT) Regulatory Framework in January 2018, No. 610/2017 (Oct. 12, 2017), <http://www.fsc.gi/uploads/GoGPR12102017.pdf>, archived at <https://perma.cc/LV7Y-2B59>.

³ “Distributed ledger technology” is defined in the Financial Services (Investment and Fiduciary Services) Act 1989, Act No. 49-1989, sched. 3 ¶ 10(2), <http://www.gibraltarlaws.gov.gi/articles/1989-47o.pdf>, archived at <https://perma.cc/MUK3-5Q3T>, as “a database system in which – (a) information is recorded and consensually shared and synchronised across a network of multiple nodes; and (b) all copies of the database are regarded as equally authentic; and ‘Value’ includes assets, holdings and other forms of ownership, rights or interests, with or without related information, such as agreements or transactions for the transfer of value or its payment, clearing or settlement.”

⁴ *Statement on Initial Coin Offerings*, GFSC (Sept. 22, 2017), <http://www.gfsc.gi/news/statement-on-initial-coin-offerings-250>, archived at <https://perma.cc/CN3Z-A9AS>.

II. Regulation of Distributed Ledger Technology

In May 2017, the government published a consultation paper discussing proposals for a regulatory framework covering DLT.⁵ In September 2017, the GFSC issued a statement that a new regulatory framework for DLT would be introduced and, on October 12, 2017, the government of Gibraltar introduced the Financial Services (Distributed Ledger Technology Providers) Regulations 2017⁶ under the Financial Services (Investment and Fiduciary Services) Act.⁷ These regulations entered into force on January 1, 2018.⁸ The government of Gibraltar claims that the GFSC is the first regulator to introduce a framework regulating DLT.⁹ The aim of the legislation is to protect consumers, protect the reputation of Gibraltar as a well-regulated and safe environment for firms that use DLT, and enable Gibraltar to prosper from the use and growth of new financial technology.¹⁰

The regulatory framework covers firms that operate in or from Gibraltar and provide DLT services, defined in the Financial Services (Investment and Fiduciary Services) Act as “[c]arrying on by way of business, in or from Gibraltar, the use of distributed ledger technology for storing or transmitting value belonging to others.”¹¹ The regulations require firms that meet these criteria to apply for a license from the GFSC to become a DLT provider.¹²

In order to obtain a DLT provider’s license, a person must submit an initial application assessment request with a £2,000 fee¹³ (approximately US\$2,750) to the GFSC,¹⁴ which must then

- (a) assess the nature and complexity of the requester’s proposed business model and of the products and services which the requester proposes to offer; and
- (b) provide the requester with an initial assessment notice informing the requester of–

⁵ HM Government of Gibraltar et al., *Proposals for a DLT Regulatory Framework* 18 (Published for public consultation, May 2017), http://www.gibraltarfinance.gi/downloads/20170508-dlt-consultation-published-version.pdf?dc_%3D1494312876, archived at <https://perma.cc/K36X-47YD>.

⁶ Financial Services (Distributed Ledger Technology Providers) Regulations 2017, Legal Notice No. 204/2017, GIBRALTAR GAZETTE No. 4401 (Oct. 12, 2017), [http://www.gfsc.gi/uploads/DLT_regulations_121017_\(2\).pdf](http://www.gfsc.gi/uploads/DLT_regulations_121017_(2).pdf), archived at <https://perma.cc/QG2W-8TQ6>.

⁷ Financial Services (Investment and Fiduciary Services) Act 1989, §§ 5, 7, 53, 56.

⁸ Financial Services (Distributed Ledger Technology Providers) Regulations 2017, reg 1(2). *See also* Press Release, GFSC, *supra* note 1.

⁹ Press Release, GFSC, *supra* note 1.

¹⁰ *Id.*

¹¹ Financial Services (Investment and Fiduciary Services) Act, sched. 3, ¶ 10.

¹² *Distributed Ledger Technology Regulatory Framework (DLT Framework)*, GFSC, <http://www.gfsc.gi/dlt> (last visited Apr. 30, 2018), archived at <https://perma.cc/L753-37RN>.

¹³ Financial Services Commission (Fees) Regulations 2016, LN 2016/071, sched. 2, <http://www.gibraltar.laws.gov.gi/articles/2016s071.pdf>, archived at <https://perma.cc/7KHF-LXNJ>.

¹⁴ GFSC, DLT APPLICATION PROCESS AND FEE STRUCTURE (Oct. 4, 2017), http://www.fsc.gi/uploads/DLT_Application_Process_and_Fee_Structure_Public.pdf, archived at <https://perma.cc/96VL-T4TJ>.

- (i) any steps which the requester must take before applying for a DLT Provider's licence;
- (ii) the documents and other information which must accompany any application; and
- (iii) the prescribed fee which is payable.¹⁵

Upon receiving an application assessment notice from the GFSC, the person may then apply for a DLT Provider's license conforming with the requirements of the notice and including an additional fee that ranges from £8,000 (approximately US\$11,000) to £28,000 (approximately US\$39,000), depending upon the complexity of the application, which is determined during the initial application assessment.¹⁶ The GFSC may issue the license if it is satisfied that the applicant will comply with nine regulatory principles,¹⁷ which are contained in schedule 2 of the regulations and provide as follows:

1. A DLT Provider must conduct its business with honesty and integrity.
2. A DLT Provider must pay due regard to the interests and needs of each and all its customers and must communicate with them in a way that is fair, clear and not misleading.
3. A DLT Provider must maintain adequate financial and non-financial resources.
4. A DLT Provider must manage and control its business effectively, and conduct its business with due skill, care and diligence; including having proper regard to risks to its business and customers.
5. A DLT Provider must have effective arrangements in place for the protection of customer assets and money when it is responsible for them.
6. A DLT Provider must have effective corporate governance arrangements.
7. A DLT Provider must ensure that all of its systems and security access protocols are maintained to appropriate high standards.
8. A DLT Provider must have systems in place to prevent, detect and disclose financial crime risks such as money laundering and terrorist financing.
9. A DLT Provider must be resilient and have contingency arrangements for the orderly and solvent wind down of its business.¹⁸

In a paper discussing the introduction of these regulations, the government noted that,

[i]n determining whether a principle is met, the GFSC will have regard to similarities in such matters as risk profile, use case, business model and product. The principles will be applied proportionately and on a risk-based approach.¹⁹

¹⁵ Financial Services (Distributed Ledger Technology Providers) Regulations 2017, reg 4(2).

¹⁶ Financial Services Commission (Fees) Regulations 2016, sched. 2.

¹⁷ Financial Services (Distributed Ledger Technology Providers) Regulations 2017, regs 4(3) & 5(1).

¹⁸ *Id.*

DLT license holders are further required to pay an annual fee, charged at a flat rate of £10,000 (approximately US\$14,000), although an additional fee of up to £20,000 (approximately US\$28,000) may be charged “depending upon the complexity of regulating the DLT Provider.”²⁰ Companies that are currently licensed under the existing financial legislation in Gibraltar and use DLT to improve their procedures and processes do not need a separate license unless the activities that DLT is used for are not within the scope of the current license. Banks that wish to provide virtual currency services and warrants need to obtain a new DLT license for these activities.²¹

DLT providers are required to comply with the anti-money laundering and combatting terrorist financing requirements of Gibraltar, as well as those of any jurisdiction in which they also operate.²²

Providing DLT services without a license under the regulations is an offense, punishable with a fine of up to £10,000.²³

III. Proposals to Regulate Initial Coin Offerings

The government of Gibraltar has expressed concern over the use of tokenized digital assets (tokens) and cryptocurrency given by companies to raise capital and bypass the traditional, regulated, capital-raising process required by financial institutions or venture capitalists.²⁴ It is currently working to develop legislation to regulate the use of tokens, “essentially those created and traded using [DLT]”²⁵ that will align with the DLT regulations,²⁶ and expects a bill to be before Parliament by the second quarter of 2018.²⁷

It has stated that “one of the key aspects of the token regulations is that we will be introducing the concept of regulating authorized sponsors who will be responsible for assuring compliance

¹⁹ HM Government of Gibraltar et al., *supra* note 5. Further guidance on the principles is available at *Distributed Ledger Technology Regulatory Framework (DLT Framework)*, GFSC, <http://www.fsc.gi/dlt?print> (last visited Apr. 30, 2018), archived at <https://perma.cc/6T44-CNT3>.

²⁰ Financial Services Commission (Fees) Regulations 2016, LN 2016/071, sched. 1, <http://www.gibraltarlaws.gov.gi/articles/2016s071.pdf>, archived at <https://perma.cc/7KHF-LXNJ>.

²¹ *Distributed Ledger Technology Regulatory Framework (DLT Framework)*, *supra* note 19.

²² *Id.*

²³ Financial Services (Penalty Fees) Regulations 1993, LN 1993/147, sched., <http://www.gibraltarlaws.gov.gi/articles/1993s147.pdf>, archived at <https://perma.cc/A58V-PQ2C>.

²⁴ *Statement on Initial Coin Offerings*, GFSC (Sept. 22, 2017), <http://www.fsc.gi/news/statement-on-initial-coin-offerings-250>, archived at <https://perma.cc/HD3M-N6UB>.

²⁵ Press Release, HM Government of Gibraltar and Ministry of Commerce, HM Government of Gibraltar and the Gibraltar Financial Services Commission Announce Plans for Token Legislation (Feb. 12, 2018), <http://www.gfsc.gi/news/hm-government-of-gibraltar-and-the-gibraltar-financial-services-commission-announce-plans-for-token-legislation-272>, archived at <https://perma.cc/9FVC-L4Z8>.

²⁶ *Distributed Ledger Technology Regulatory Framework (DLT Framework)*, *supra* note 19.

²⁷ Press Release, HM Government of Gibraltar and Ministry of Commerce, *supra* note 25.

with disclosure and financial crime rules.”²⁸ The regulations will cover the sale, promotion, and distribution of coins in Gibraltar, secondary market activities that involve tokens that are carried out in or from Gibraltar, the provision of investment advice connected to tokens, and measures to detect and prevent financial crimes.²⁹ The laws will also include disclosure rules that must provide clear, concise, and balanced information to anyone who purchases the tokens.³⁰

²⁸ *Id.*

²⁹ *Id.*

³⁰ Huw Jones, *Gibraltar Moves Ahead with World’s First Initial Coin Offering Rules*, REUTERS (Feb. 8, 2018), <https://www.reuters.com/article/us-gibraltar-markets-cryptocurrencies/gibraltar-moves-ahead-with-worlds-first-initial-coin-offering-rules-idUSKBN1FT1YN>, archived at <https://perma.cc/LV7Y-2B59>.

Iran

Barry Lerner

Legal Research Analyst

SUMMARY Iran’s Central Bank announced in late April 2018 that it was prohibiting all Iranian financial institutions, including banks, credit institutions, and currency exchanges, from handling cryptocurrencies. The Central Bank’s decision was in line with the Iran’s recent efforts to address deficiencies in its policies on anti-money laundering and combating the financing of terrorism—efforts undertaken to comply with the action plan of the Financial Action Task Force on Money-Laundering (FATF). The Bank’s decision was preceded by debate between those in the country who were concerned about the risks inherent in the use of cryptocurrencies and those who believe their use is the wave of the future and essential to the country’s financial stability in light of US financial sanctions.

I. Current Government Policy Toward Cryptocurrencies

The Central Bank of Iran (CBI) officially announced on April 22, 2018, that it has prohibited the handling of cryptocurrencies by all Iranian financial institutions, including banks and credit institutions. The decision also bans currency exchanges from buying and selling virtual currencies or adopting measures to facilitate or promote them.¹

The CBI’s action was in line with Iran’s recent efforts to address deficiencies in its policies on anti-money laundering and combating the financing of terrorism, with the aim of complying with the action plan of the Financial Action Task Force on Money-Laundering (FATF). The FATF, an intergovernmental organization established to combat international money-laundering and terrorist financing, will determine at its plenary meeting in June 2018 whether to remove Iran from the FATF list of Non-Cooperative Countries or Territories.² Previously, the CBI had only sought to warn people of the potential risks inherent in cybercurrencies,³ although a directive passed by the Money and Credit Council, the most important policy decision-making organ of the CBI, “[had]

¹ *Iranian Financial Institutions Barred from Using Crypto-Currencies*, FINANCIAL TRIBUNE (Apr. 22, 2018), <https://financialtribune.com/articles/business-and-markets/85114/iranian-financial-institutions-barred-from-using-crypto> (available by subscription).

² *Id.*; Barry Lerner, *Iran: IMF Evaluates Iran’s Legislative and Institutional Efforts to Combat Money Laundering and Terrorism Financing*, GLOBAL LEGAL MONITOR (Apr. 13, 2018), <http://www.loc.gov/law/foreign-news/article/iran-imf-evaluates-irans-legislative-and-institutional-efforts-to-combat-money-laundering-and-terrorism-financing>, archived at <https://perma.cc/J5NX-YLWK>.

³ *No Bitcoin Trade for Moneychangers*, FINANCIAL TRIBUNE (Dec. 23, 2017), <https://financialtribune.com/articles/economy-business-and-markets/78454/no-bitcoin-trade-for-moneychangers>, archived at <https://perma.cc/8EM7-XESG>. The CBI is responsible for, inter alia, “formulating the monetary and credit system of the country, formulating the regulations pertaining to outflow as well as repatriation of Iranian and foreign currency, [and] foreign exchange transactions.” *Laws & Regulations*, CENTRAL BANK OF THE ISLAMIC REPUBLIC OF IRAN, <https://www.cbi.ir/section/1454.aspx> (last visited Mar. 19, 2018), archived at <https://perma.cc/38FZ-SXVC>.

deemed non-physical and virtual transactions against the law, meaning that Iranian [currency exchanges could] not deal in cryptocurrencies.”⁴

II. Previous Objections to Cryptocurrencies

According to the CBI’s statement of April 22, the decision to ban cryptocurrencies was actually made on December 30, 2017, during the thirtieth meeting of Iran’s High Council on Anti-Money Laundering.⁵ While the Bank’s decision is in accord with CBI governor Valiollah Seif’s statement of January 10, 2018, that the CBI “[did] not approve of Bitcoin in any way” and that investors were urged to choose safer investment options,⁶ Seif was reported as saying eleven days earlier that “CBI is also striving to bring about relative security to [the trade of Bitcoin].”⁷ Moreover, the head of the Electronic Banking Department at the Monetary and Banking Research Institute had stated in October 2017 that the general air surrounding cryptocurrencies was positive at the Central Bank, which viewed them as something that could be controlled and not as multilevel marketing or a pyramid scheme.⁸

In the view of CBI officials, cryptocurrencies are problematic because no one clearly knows which people or entities are behind them and no one is accountable if someone’s capital is lost, a result made more likely when multilevel marketing and pyramid schemes are used to introduce Bitcoin as an attractive option for investment.⁹ CBI officials see cryptocurrencies as risky investments because they experience excessive fluctuations and have “turned into arbitrary mechanisms which market participants can interpret ambiguously—thus triggering speculation.”¹⁰ Moreover, because virtual currencies, unlike money, are not issued by the Central Bank, the Bank has no means of

⁴ *No Bitcoin Trade for Moneychangers*, *supra* note 3; CENTRAL BANK OF THE ISLAMIC REPUBLIC OF IRAN, CENTRAL BANKING IN IRAN, at 12–13, <https://www.cbi.ir/page/4252.aspx> (last visited Mar. 19, 2018), archived at <https://perma.cc/92DQ-CM3B>.

⁵ *Iranian Financial Institutions Barred from Using Crypto-Currencies*, *supra* note 1.

⁶ *CBI Does Not Approve of Bitcoin*, FINANCIAL TRIBUNE (Jan. 11, 2018), <https://financialtribune.com/articles/economy-business-and-markets/79771/cbi-does-not-approve-of-bitcoin>, archived at <https://perma.cc/L9G3-AJAB>.

⁷ *CBI Governor Urges Caution on Bitcoin Trade*, FINANCIAL TRIBUNE (Dec. 31, 2017), <https://financialtribune.com/articles/economy-business-and-markets/78986/cbi-governor-urges-caution-on-bitcoin-trade>, archived at <https://perma.cc/7HZM-DFMF>.

⁸ Maziar Motamedi, *Fate of Cryptocurrency in Iran Hangs in Balance*, FINANCIAL TRIBUNE (Oct. 19, 2017), <https://financialtribune.com/articles/economy-business-and-markets/74533/fate-of-cryptocurrency-in-iran-hangs-in-balance>, archived at <https://perma.cc/L7DR-M376>.

⁹ *Iran Cryptocurrency Policy Soon*, FINANCIAL TRIBUNE (Jan. 3, 2018), <https://financialtribune.com/articles/economy-business-and-markets/79209/iran-cryptocurrency-policy-soon>, archived at <https://perma.cc/YG88-RLWT>; *Iran’s CB Issues Warning over Bitcoin and Other Cryptocurrencies*, FINANCIAL TRIBUNE (Nov. 14, 2017), <https://financialtribune.com/articles/economy-business-and-markets/76148/irans-cb-issues-warning-over-bitcoin-and-other>, archived at <https://perma.cc/U8W7-VH3>.

¹⁰ *Iran’s CB Issues Warning over Bitcoin and Other Cryptocurrencies*, *supra* note 9; *Iran Central Bank Warns on Cryptocurrency Investment*, IRNA (Feb. 1, 2018), <http://www.irna.ir/en/News/82816292>, archived at <https://perma.cc/4CBE-ORD2>.

controlling them,¹¹ and transactions made with them through illegal money lenders causes damage to the national interest.¹²

Outside the Bank, the head of the Majlis (Parliament) Economic Commission offered a religious objection to cryptocurrencies, stating that “[d]eals and transactions made through Bitcoin are in no way in accordance with Islamic and economic fundamentals, therefore related entities, especially the central bank, must exert the necessary supervision over these deals.”¹³

III. Ongoing Discussions on Cryptocurrencies

The Bank’s decision to ban the use of cryptocurrencies by financial institutions is a blow for those in Iran who viewed virtual currencies as a means of overcoming problems related to the banking industry and international sanctions.¹⁴ Before the ban was announced, the CBI’s Information Technology Chief, Nasser Hakimi, had reported that, along with the adoption of a framework that should be adhered to for using cryptocurrencies, the Central Bank was considering the adoption of a national virtual currency, either to be generated by the Central Bank or another entity.¹⁵ One of the motivations for developing such a currency was that it could potentially be used to replace the US dollar, an attractive prospect for Iran because US sanctions over Iran’s nuclear program bar Iran from using the US financial system.¹⁶

Iran’s Minister of Information and Communications Technology in February 2018 had announced a plan for Iran to develop its own virtual currency, a move that had the backing of Iran’s cybersecurity authority provided that virtual currencies were properly regulated.¹⁷ Even the CBI’s Hakimi believes that the blockchain system and cryptocurrencies like bitcoin will eventually replace the current systems,¹⁸ a view shared by Masoud Khatouni, the deputy for information technology and communications network at Iran’s biggest bank, Bank Melli Iran (BMI), who has stated that cryptocurrencies are “currently shaping the future of banking” and should be recognized and widely accepted in the banking system and used by the banks themselves.¹⁹

¹¹ *Id.*

¹² *Iran Cryptocurrency Policy Soon*, *supra* note 9.

¹³ *Iranian Lawmakers to Discuss Bitcoin*, FINANCIAL TRIBUNE (Dec. 19, 2017), <https://financialtribune.com/articles/economy-business-and-markets/78221/iranian-lawmakers-to-discuss-bitcoin>, archived at <https://perma.cc/8LV6-4XLE>.

¹⁴ *Iran’s Banks Banned from Dealing in Crypto-currencies*, BBC NEWS (Apr. 23, 2018), <http://www.bbc.com/news/technology-43865105>, archived at <https://perma.cc/TQD5-889D>.

¹⁵ *Iran’s CB Issues Warning over Bitcoin and Other Cryptocurrencies*, *supra* note 9.

¹⁶ *CBI Governor Urges Caution on Bitcoin Trade*, *supra* note 7.

¹⁷ *Iran’s Banks Banned from Dealing in Crypto-currencies*, *supra* note 14.

¹⁸ *Iranian Lawmakers to Discuss Bitcoin*, *supra* note 13.

¹⁹ *Iranian Banker Calls for Cryptocurrency Recognition*, FINANCIAL TRIBUNE (Jan. 7, 2018), <https://financialtribune.com/articles/economy-business-and-markets/79459/iranian-banker-calls-for-cryptocurrency-recognition>, archived at <https://perma.cc/H9HS-AGWK>.

Khatouni opposes imposing any limitations on the use of digital currencies so that the country's businesses and players can employ them with more confidence and with higher levels of transparency. In his opinion, delaying the formal introduction of digital currencies into the country will result in damage to the country's banking system, and the devising of "comprehensive, precise and transparent rules and regulations for the use of digital currencies" on the basis of global experience by a specialized group of CBI regulators is essential to prevent the many people in the country who buy and sell digital currencies from doing so secretly.²⁰

The secretary of Iran's High Council of Cyberspace (HCC) likewise welcomes the idea of bitcoin and other cryptocurrencies if they are harnessed by clearly-stated regulations for the reason that many in Iran are already purchasing, selling, or mining digital currencies, dealing with them in exchange shops, and creating content and establishing startups with them.²¹ The head of the Iranian Association of Moneychangers had also recommended that cryptocurrencies "be met with regulatory frameworks that would create the opportunity of their use because a lack of regulations will eventually lead to fraud."²² Regarding certified currency exchanges, the CBI's Hakimi had also recommended that they start dealing in bitcoin where possible because such virtual currencies can assist traders who are unable to open lines of credit as a result of banking hurdles.²³

²⁰ *Id.*

²¹ *Iran Cyberspace Authority Welcomes Bitcoin and Other Crypto-Currencies*, FINANCIAL TRIBUNE (Nov. 25, 2017), <https://financialtribune.com/articles/economy-business-and-markets/76776/iran-welcomes-cryptocurrencies>, archived at <https://perma.cc/VB87-YGF3>.

²² *No Bitcoin Trade for Moneychangers*, *supra* note 3.

²³ Motamedi, *supra* note 8.

Israel

Ruth Levush
Senior Foreign Law Specialist

SUMMARY In accordance with regulations issued in 2016, virtual currency is considered a “financial asset” in Israel, for which the provision of financial services requires a license. As a financial asset, trade in virtual currency is subject to capital gains taxation.

In 2014 the Bank of Israel (Israel’s central bank), together with several regulatory agencies, issued a warning about the dangers associated with the use of virtual currency, including bitcoin. In a statement made by the Bank in January 2018 it clarified that it does not recognize virtual currencies as actual currencies, but rather as a financial asset. Although virtual currencies are not recognized as actual currency by the Bank of Israel, the Israel Tax Authority has proposed that the use of virtual currencies should be considered as a “means of virtual payment” and subject to taxation.

The legitimacy of a bank’s refusal to provide banking services to a company that trades in bitcoin is currently under review by the Israeli Supreme Court. The Court has issued a temporary injunction against the bank’s complete blockage of the company’s activities in the account.

I. Licensing Requirements for Trading in Virtual Currency

The Supervision on Financial Services (Regulated Financial Services) Law 5776-2016 requires persons engaging in providing services involving a “financial asset” to obtain a license issued by the Supervisor on Financial Services Providers appointed in accordance with the Law.¹ The license enumerates conditions and types of activities approved for the licensee.² “Virtual currency” is included in the definition of a “financial asset” for which providing services requires a license.³

A license will generally be issued to an Israeli citizen or a resident who has reached the age of majority; is legally competent; and has not been declared bankrupt or, in the case of a corporation, has not been required to dissolve. Additional licensing requirements include that the licensee has a minimum specified equity and, for individuals, has not been convicted of an offense that due to its nature makes the licensee unfit to handle financial transactions.⁴

¹ Supervision on Financial Services (Regulated Financial Services) Law 5776-2016, § 12, SEFER HAHUKIM [BOOK OF LAWS, official gazette] 5776 No. 2570 p. 1098, *as amended*.

² *Id.* §§ 2 & 12.

³ *Id.* § 11, subsec. 7 (defining “financial asset”).

⁴ *Id.* § 15.

II. Warning Regarding Risks Associated with Trading in Virtual Currency

A statement issued by Bank of Israel and several regulatory agencies on February 19, 2014, warned the public against dealing in virtual currencies. The warning laid out the dangers associated with trading in virtual currencies, including fraud, money laundering, and financing of terrorism, among others.⁵

III. Legal Status and Taxation of Virtual Currency

The Bank of Israel said in a January 2018 statement that “it would not recognize virtual currencies such as bitcoin as actual currency and . . . it was difficult to devise regulations to monitor the risks of such activity to the country’s banks and their clients,” according to Reuters.⁶

Although virtual currencies are not recognized as actual currency by the Bank of Israel, the Israel Tax Authority has proposed that the use of virtual currencies should be considered as a “means of virtual payment” and subject to taxation.⁷ Specifically, for the purpose of income tax and value added tax requirements, virtual currency is viewed as “an asset” and is taxed in accordance with relevant transaction classifications under the Income Tax Ordinance (New Version), 1961, and the Value Added Tax Law, 5736-1975.⁸ Accordingly,

[u]nlike a regular currency, the Israel Tax Authority will regard an increase in the value of a cryptocurrency as a capital gain rather than an exchange fluctuation, making it subject to capital gains tax. Individual investors will not be liable for value-added tax, but anyone engaging in cryptocurrency mining will be classified as a “dealer” and subject to VAT, according to the circular. Anyone trading as a business will be classified as a “financial institution” for tax purposes, meaning that they will be unable to reclaim VAT on expenses but will be subject to an extra 17 percent “profit tax” applied to financial institutions.⁹

The Israel Tax Authority requires documentation of trade transactions involving virtual currency to enable verification of their existence and scope.¹⁰

⁵ Joint Press Release, Bank of Israel et al., Public Announcement Regarding Possible Risks Contained in Virtual Coins Such as Bitcoin (Feb. 19, 2014), <http://www.boi.org.il/>, archived at <https://perma.cc/VQ7Z-GDRQ>.

⁶ Steven Scheer, *Bitcoin Is an Asset, Not a Currency - Israel's Central Bank*, REUTERS (Jan. 8, 2018), <https://www.reuters.com/article/uk-bitcoin-israel/bitcoin-is-an-asset-not-a-currency-israels-central-bank-idUSKBN1EX18E>, archived at <https://perma.cc/3458-ZY58>.

⁷ Israel Tax Authority, Taxation of Activity by Means of Virtual Payment (Known as ‘Virtual Currencies’), Israel Tax Authority Circular No. 05/2018 (Jan. 17, 2018), <https://taxes.gov.il/incometax/documents/hozrim/horacc%2015.2.18.pdf> (in Hebrew), archived at <https://perma.cc/SJ48-L77X>.

⁸ *Id.* §§ 3.1–3.2; Income Tax Ordinance (New Version), 1961, 1 LAWS OF THE STATE OF ISRAEL [LSI] (New Version) 1967 & Value Added Tax Law, 5736-1975, 30 LSI 46 (1975/76), both as amended.

⁹ Matthew Kalman, *Israel Taxman's Guidelines Killing Cryptocurrency Boom?*, BNA (Feb. 21, 2018), <https://www.bna.com/israel-taxmans-guidelines-n57982089034/>, archived at <https://perma.cc/J8DE-6AJQ>.

¹⁰ Israel Tax Authority Circular No. 05/2018, *supra* note 7, § 3.3.

IV. Legitimacy of Refusal to Provide Banking Services to Traders in Bitcoin

On February 25, 2018, the Supreme Court issued a temporary injunction prohibiting a bank from blocking activities in an account held by a company engaging in trade in bitcoin until a decision is made in an appeal over the district court ruling recognizing the legitimacy of permanent authorization for such blockage.¹¹

The bank argued that its decision to block the company's activities had been reached in accordance with the 2014 warning by the Bank of Israel and the regulatory agencies regarding risks associated with the bitcoin trade. It further asserted that the dangers described in the warning had in fact materialized "by the occurrence of several events perceived to be connected to fraud, furtherance of criminal objectives including suspicions for money laundering and financing of terrorism."¹² The bank alleged that activities exposing the bank to such unlawful acts might harm its reputation and public trust in the bank.¹³

In her decision Justice Anat Baron noted that the review of a request for a temporary injunction for the duration of an appeal requires an evaluation of two cumulative elements: the chances that the appeal will be accepted, and a balancing of the respective inconvenience caused to either party if a temporary injunction is not approved.¹⁴

According to Justice Baron the reasonableness of a bank's decision to refuse enabling trade activities in virtual currencies is an issue that has not yet been determined by the Supreme Court. The issue involves a determination regarding the nature of the risk posed by trade in virtual currencies, especially in view of the characteristics of the company's activities as a company the objective of which is to trade in bitcoin. The risk evaluation must also take into account the steps undertaken by the company to minimize the risk. It similarly must evaluate legal questions regarding the proper balancing between the duty of a bank to provide banking services vis-à-vis its responsibility to prevent prohibited activity such as money laundering or the financing of terrorism. An examination of these questions, Justice Baron concluded, leads to a conclusion that the chances of the appeal cannot be said to be null.¹⁵

According to Justice Baron a rejection of the request for temporary relief would result in endangering the continued existence of the company. Considering the financial guarantees deposited by the company with the Court, and the bank's proven ability to prevent unlawful activities, Baron concluded that the temporary injunction should be granted as the bank would be able to obtain a remedy if it incurred damages as a result of the injunction.¹⁶

¹¹ CA 6389/17 Bits of Gold Ltd. v. Bank Leumi LeIsrael Ltd., ¶¶ 3–4, available at the Nevo Legal Database, <http://www.nevo.co.il> (by subscription, in Hebrew), archived at <https://perma.cc/R76Z-2AQX>.

¹² *Id.* ¶ 4.

¹³ *Id.*

¹⁴ *Id.* ¶ 11.

¹⁵ *Id.* ¶ 12.

¹⁶ *Id.* ¶ 13.

To remove any doubt, Baron emphasized that although the injunction prohibited the bank from fully blocking the company's account activities, it did not affect the bank's right to examine individual activities in the account, nor did it affect the bank's ability to take steps to minimize risks it deemed to be associated with the business activities of the company.¹⁷

¹⁷ *Id.* ¶ 14.

Japan

Sayuri Umeda
Foreign Law Specialist

SUMMARY Since April 2017, cryptocurrency exchange businesses operating in Japan have been regulated by the Payment Services Act. Cryptocurrency exchange businesses must be registered, keep records, take security measures, and take measures to protect customers, among other things. Cryptocurrency exchanges are also subject to money laundering regulations.

I. Background

After Mt. Gox, then one of biggest bitcoin exchanges, alleged the theft of around 850,000 bitcoins that it was holding for itself and on behalf of its customers and claimed insolvency in 2014,¹ the Japanese government started to develop new regulations for cryptocurrencies. A study group and a working group on “sophistication of payment and settlement operations” were established in the Financial Services Agency (FSA) in 2014 and 2015.² The working group’s final report recommended

- the introduction of a registration system for cryptocurrency exchange businesses,
- making cryptocurrency transactions subject to money laundering regulations, and
- the introduction of a system to protect cryptocurrency users.³

¹ David Meyer, *After Bitcoin Spike, MtGox Creditors Want to Yank the Failed Exchange Out of Bankruptcy*, FORTUNE (Dec. 13, 2017), <http://fortune.com/2017/12/13/bitcoin-mtgox-bankruptcy-creditors/>, archived at <https://perma.cc/SEJ2-A5CX>.

² 議事録・資料等 [*Minutes and Materials*], FSA, https://www.fsa.go.jp/singi/singi_kinyu/base_gijiroku.html (last visited Apr. 5, 2018), archived at <https://perma.cc/DPV4-WXZP>.

³ 決済業務等の高度化に関するワーキング・グループ報告 [REPORT FROM THE WORKING GROUP ON SOPHISTICATION OF PAYMENT AND SETTLEMENT OPERATIONS], ch. 5 (Dec. 22, 2015), https://www.fsa.go.jp/singi/singi_kinyu/tosin/20151222-2/01.pdf, archived at <https://perma.cc/SR3V-FG84>.

The report was submitted to the Financial Council of the FSA. Later, the government submitted a bill to amend the Payment Services Act, among other things, to the Diet (Japan's parliament),⁴ and the Act was amended in 2016.⁵ The amendments took effect on April 1, 2017.⁶

II. Registration of Cryptocurrency Exchange Business

The Payment Services Act defines “cryptocurrency”⁷ as

- property value that can be used as payment for the purchase or rental of goods or provision of services by unspecified persons, that can be purchased from or sold to unspecified persons, and that is transferable via an electronic data processing system; or
- property value that can be mutually exchangeable for the above property value with unspecified persons and is transferable via an electronic data processing system.⁸

The Act also states that cryptocurrency is limited to property values that are stored electronically on electronic devices; currency and currency-denominated assets are excluded.⁹

Under the Payment Services Act, only business operators registered with a competent local Finance Bureau are allowed to operate cryptocurrency exchange business.¹⁰ The operator must be a stock company or a “foreign cryptocurrency exchange business” that is a company, has a representative who is resident in Japan, and an office in Japan.¹¹ A “foreign cryptocurrency exchange business” means a cryptocurrency exchange service provider that is registered with a foreign government in the foreign country under a law that provides equivalent registration system to the system under the Japanese Payment Services Act.¹² Documents that show its system for properly conducting a cryptocurrency exchange business must be attached to the registration

⁴ 情報通信技術の進展等の環境変化に対応するための銀行法等の一部を改正する法律案 [Bill to Amend Parts of the Bank Act and Other Acts in Order to Correspond with Changes in the Environment Made by Information and Communications Technologies], Cabinet Bill No. 43 of the 190th Diet Session, http://www.shugiin.go.jp/internet/itdb_gian.nsf/html/gian/honbun/g19005043.htm, archived at <https://perma.cc/CZ97-Y9VX>.

⁵ 情報通信技術の進展等の環境変化に対応するための銀行法等の一部を改正する法律 [Act to Amend Parts of the Bank Act and Other Acts in Order to Correspond with Changes in the Environment Made by Information and Communications Technologies], Act No. 62 of 2016.

⁶ 資金決済に関する法律 [Payment Services Act], Act No. 59 of 2009, amended by Act No. 62 of 2016.

⁷ In Japanese, the phrase 仮想通貨 (“virtual currency”) is used.

⁸ Payment Services Act art. 2, para. 5.

⁹ *Id.*

¹⁰ *Id.* arts. 63-2 & 63-3. Because the Cabinet delegates its authority over most of the matters under the Payment Services Act to the Financial Services Agency (FSA), *id.* art. 104, the FSA is the regulatory agency that handles cryptocurrency transactions. See also *Details of Screening for New Registration Application as Virtual Currency Exchange Service Provider*, FSA, <http://www.fsa.go.jp/en/news/2017/20170930-1/02.pdf> (last visited Apr. 30, 2018), archived at <https://perma.cc/BVU7-PGSW>.

¹¹ Payment Services Act art. 63-5, para. 1.

¹² *Id.* art. 2, para. 9.

application.¹³ The competent Finance Bureau examines the application; if it reject the registration it must notify the applicant of the reasons.¹⁴

III. Regulation of Cryptocurrency Exchange Businesses

The Act requires cryptocurrency exchanges businesses to establish security systems to protect the business information they hold.¹⁵ When such a business entrusts part of its operations to a contractor, it must take measures to ensure that business is appropriately conducted.¹⁶ The Act also requires cryptocurrency exchange businesses to provide information regarding fees and other contract terms to their customers.¹⁷ Cryptocurrency exchange businesses must separately manage customers' money or cryptocurrency apart from their own. The state of such management must be reviewed by certified public accountants or accounting firms.¹⁸ The exchange business must have a contract with a designated dispute resolution center with expertise in cryptocurrency exchanges if such a designated center exists. If not, it must establish its own system to deal with complaints from customers.¹⁹ It appears that there is no designated cryptocurrency dispute resolution center at present.

IV. Supervision

Cryptocurrency exchange businesses must keep accounting records of cryptocurrency transactions²⁰ and submit annual reports on business to the Financial Services Agency (FSA).²¹

The FSA is authorized to order exchange businesses to submit reports and reference materials and to dispatch its officials to inspect the offices of an exchange business where necessary to secure the exchange business's proper conduct.²² The FSA may issue orders to such businesses to improve their practices.²³ The FSA may rescind registration of a cryptocurrency exchange business or suspend its business for up to six months in cases where

¹³ *Id.* art. 63-3, para. 2.

¹⁴ *Id.* art. 63-5.

¹⁵ *Id.* art. 63-8.

¹⁶ *Id.* art. 63-9.

¹⁷ *Id.* art. 63-10.

¹⁸ *Id.* art. 63-11.

¹⁹ *Id.* art. 63-12, para. 1.

²⁰ *Id.* art. 63-13.

²¹ *Id.* art. 63-14.

²² *Id.* art. 63-15.

²³ *Id.* art. 63-16.

- the exchange business no longer meets one or more of the requirements for registration,
- the FSA discovers that the exchange business applied for registration illegally, or
- the exchange business violates the Payment Services Act or orders based on the Act.²⁴

On January 26, 2018, Coincheck, one of Japan's biggest cryptocurrency exchange businesses, lost about \$400 million in NEM (cryptocurrency) tokens. The local Finance Bureau ordered Coincheck to submit a report on the same day, examined it and issued an order of business improvement on January 29, 2018.²⁵ The following day the FSA requested all cryptocurrency exchange businesses to review their system-risk management plans and report the results to the FSA.²⁶ On March 2, 2018, the FSA conducted an on-site inspection of Coincheck. On March 8, 2018, local Finance Bureaus issued business-improvement orders to seven exchange businesses,²⁷ again including Coincheck.²⁸ Two of the seven were ordered to suspend business for a specified period.²⁹

A group of cryptocurrency exchange businesses publicized their decision to form new self-regulating body on March 2, 2018. All registered exchange businesses will join it.³⁰ They aim to obtain authorization from the FSA under the Payment Services Act.³¹

²⁴ *Id.* art. 63-17.

²⁵ コインチェック株式会社に対する行政処分について [Regarding Administrative Disposition against Coincheck Company], KANTO FINANCE BUREAU (Jan. 29, 2018), http://kantou.mof.go.jp/rizai/pagekthp013000001_00004.html, archived at <https://perma.cc/6Q6W-K5XX>.

²⁶ 仮想通貨交換業者に対するシステムリスク管理態勢の自己点検について [Regarding Self-check Request of System-risk Management System Against Cryptocurrency Service Providers], FSA (Jan. 30, 2018), http://www.fsa.go.jp/policy/virtual_currency/08.pdf, archived at <https://perma.cc/LM5W-RC8K>.

²⁷ Yuki Hagiwara et al, 金融庁：仮想通貨交換業者7社を行政処分、2社に業務停止命令 [FSA: Administrative Disposition for 7 Cryptocurrency Exchange Businesses, Suspension of Business Order for 2], BLOOMBERG (Mar. 8, 2018), <https://www.bloomberg.co.jp/news/articles/2018-03-08/P58WVH6JJUP01>, archived at <https://perma.cc/RGM9-DXCH>.

²⁸ コインチェック株式会社に対する行政処分について [Regarding Administrative Disposition Against Coincheck Company], KANTO FINANCE BUREAU (Mar. 8, 2018), http://kantou.mof.go.jp/rizai/pagekthp013000001_00013.html, archived at <https://perma.cc/QBG7-JE6A>.

²⁹ Hagiwara et al., *supra* note 27.

³⁰ 仮想通貨の自主規制団体、「みなし業者も参加を」 [Cryptocurrency Self-regulated Body, "Calling for Registration-pending Business, Too"], NIKKEI (Mar. 5, 2018), <https://www.nikkei.com/article/DGXMZO27693400V00C18A3000000/>, archived at <https://perma.cc/Z8EQ-S4X2>.

³¹ Payment Services Act art. 87.

V. Money Laundering Regulation

When the Payment Services Act was amended in 2016, the Act on Prevention of Transfer of Criminal Proceeds³² was amended by the same bill.³³ The amended Act added cryptocurrency exchange businesses to the list of entities subject to money laundering regulations.³⁴ The cryptocurrency exchange businesses are obligated to check the identities of customers who open accounts, keep transaction records, and notify authorities when a suspicious transaction is identified.³⁵

VI. Possible ICO Regulation

The regulations under the current Payment Services Act do not cover initial coin offerings (ICOs). The FSA established a new study group on cryptocurrency exchange businesses in March 2018. The study group will discuss the regulation of ICOs, among other things.³⁶ The first meeting was held on April 10, 2018.³⁷ Meanwhile, a private study group comprised of Japan's three megabanks and big security companies released their recommendations, consisting of seven basic rules and two guidelines, on April 5, 2018. One of the group members commented that he hopes the recommendations will facilitate discussion of new regulations for ICOs.³⁸

VII. Taxation

According to the National Tax Agency (NTA), the profit earned by sales of cryptocurrency is, in principle, considered miscellaneous income,³⁹ rather than capital gains,⁴⁰ under the Income Tax Act. The NTA compiled questions and answers regarding the tax treatment of cryptocurrency and

³² 犯罪による収益の移転防止に関する法律 [Act on Prevention of Transfer of Criminal Proceeds], Act No. 22 of 2007, amended by Act No. 67 of 2017.

³³ Act No. 62 of 2016, *supra* note 5.

³⁴ Act on Prevention of Transfer of Criminal Proceeds, art. 2, para. 2, item 31.

³⁵ *Id.* arts. 4, 7–8.

³⁶ Press Release, FSA, 「仮想通貨交換業等に関する研究会」の設置について [Regarding the Establishment of “Cryptocurrency Exchange Business Study Group”] (Mar. 8, 2018), <https://www.fsa.go.jp/news/30/singi/20180308.html>, archived at <https://perma.cc/ZV4E-KB7M>.

³⁷ Press Release, FSA, 「仮想通貨交換業等に関する研究会」（第1回）の開催について [Regarding the First Meeting of “Cryptocurrency Exchange Business Study Group”] (Apr. 5, 2018), <https://www.fsa.go.jp/news/30/singi/20180405-1.html>, archived at <https://perma.cc/7VUE-BFHP>.

³⁸ Yuki Hagiwara & Yuji Nakamura, 仮想通貨によるICO、活用のルール提言－3メガ参加研究会 [ICO of Cryptocurrency, Rules Recommended – By Study Group that 3 Megabanks Joined], BLOOMBERG (Apr. 5, 2018), <https://www.bloomberg.co.jp/news/articles/2018-04-05/P6OS8U6S972B01>, archived at <https://perma.cc/Q2DB-ZQJA>.

³⁹ 所得税法 [Income Tax Act], Act No. 33 of 1965, amended by Act No. 74 of 2017, art. 35.

⁴⁰ *Id.* art. 33.

posted it online on December 1, 2017.⁴¹ Miscellaneous income is added to the amount of other income, excluding specified capital gains,⁴² when a person's taxable income is calculated and taxed.⁴³

⁴¹ NTA, 仮想通貨に関する所得の計算方法等について（情報） [Regarding Calculation Method of Income Relating to Cryptocurrency (Information)], Individual Taxation Information, No. 4 (Dec. 1, 2017), <http://www.nta.go.jp/law/joho-zeikaishaku/shotoku/shinkoku/171127/01.pdf>, archived at <https://perma.cc/M22N-53ME>.

⁴² 租税特別措置法 [Act on Special Measures concerning Taxation], Act No. 26 of 1957, amended by Act No. 4 of 2017, arts. 8 through 8-5.

⁴³ Income Tax Act art. 89.

Jersey

Clare Feikert-Ahalt
Senior Foreign Law Specialist

SUMMARY Jersey has introduced legislation that regulates cryptocurrency exchanges with an annual turnover of £150,000 (approximately US\$210,000) or more. These exchanges are supervised by the Jersey Financial Services Commission and must comply with anti-money laundering and counterterrorist financing laws, including know-your-customer requirements. By excluding exchanges with a turnover below £150,000, Jersey aims to create a means for companies to test various methods of financial technology without being subject to regulation.

I. Introduction

Jersey is a Crown Dependency of the United Kingdom and is a low-tax jurisdiction with a large financial sector. The jurisdiction issued a consultation on the regulation of cryptocurrencies in 2015, noting “[t]he creation of a business-friendly framework that encourages innovation, jobs and growth in both the financial services and digital sectors is a priority for the Government of Jersey.”¹ The majority response to the consultation was that cryptocurrencies should be regulated only insofar as necessary to ensure compliance with anti-money laundering laws and to counter the financing of terrorism.² The government of Jersey rejected “a full prudential and conduct of business regime” for cryptocurrencies, as it considered it was too early to issue such regulations given that cryptocurrencies are in the early stages of development and that doing so could be overburdensome, and restrict development and innovation.³

II. Policy and Laws Regulating Cryptocurrencies

The result of the consultation was the issuance of a policy document that aims to

further enhance Jersey’s proposition as a world leading Fintech jurisdiction . . . [and] outline Jersey’s commitment to creating an environment that encourages confidence and innovation in the digital sector whilst protecting the Island from the most prominent money laundering and terrorist financing risks that are presented by virtual currencies in their current form.⁴

¹ Chief Minister’s Department, *Regulation of Virtual Currency: Consultation Paper* (July 9, 2015; presented to the States July 10, 2015), available at <http://www.statesassembly.gov.je/assemblyreports/2015/r.80-2015.pdf>, archived at <https://perma.cc/K5PY-GZRP>.

² Chief Minister’s Department, *Regulation of Virtual Currency Policy Document* ¶ 1.1 (Oct. 21, 2015), available at [https://www.gov.je/SiteCollectionDocuments/Government and administration/P Regulation of Virtual Currency 20151021 GP.PDF](https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/P%20Regulation%20of%20Virtual%20Currency%2020151021%20GP.PDF), archived at <https://perma.cc/9QBL-YQNT>.

³ *Id.* ¶ 1.2.

⁴ *Id.* at 2.

Jersey's anti-money laundering laws and counterterrorist financing laws were extended to cover cryptocurrencies, entering into force on September 26, 2016.⁵ "Virtual currencies" are defined in the Proceeds of Crime Act as a currency rather than a commodity, thus enabling the currency to fall within the pre-existing regulatory framework and be regulated by the Jersey Financial Services Commission.⁶ Specifically, the Proceeds of Crime Act defines virtual currency as

- (4) . . . any currency which (whilst not itself being issued by, or legal tender in, any jurisdiction)–
 - (a) digitally represents value;
 - (b) is a unit of account;
 - (c) functions as a medium of exchange; and
 - (d) is capable of being digitally exchanged for money in any form.
- (5) For the avoidance of doubt, virtual currency does not include any instrument which represents or stores (whether digitally or otherwise) value that can be used only to acquire goods and services in or on the premises of, or under a commercial agreement with, the issuer of the instrument.⁷

A "virtual currency exchange" is defined in the Act as "the exchange of virtual currency for money in any form, or vice versa," but "a reference to providing a service to third parties shall not include a company's providing that service to a connected company."⁸

Virtual currencies were also brought within the ambit of the Money Laundering (Jersey) Order 2008,⁹ which requires individuals operating a "money service business" to register with the Jersey Financial Services Commission¹⁰ and comply with the jurisdictions anti-money laundering and counter terrorism financing laws if they have an annual turnover greater than £150,000 (approximately US\$210,000).¹¹ These laws require such businesses to adopt policies and procedures to prevent and detect money laundering and terrorist financing, appoint a money laundering compliance officer and reporting officer, and ensure that record keeping and customer

⁵ Proceeds of Crime (Miscellaneous Amendments) (Jersey) Regulations 2016, R&O 63/2016, <https://www.jerseylaw.je/laws/enacted/PDFs/RO-063-2016.pdf>, archived at <https://perma.cc/F2H5-2KNV>; Proceeds of Crime (Supervisory Bodies) (Virtual Currency Exchange Business) (Exemption) (Jersey) Order 2016, REVISED LAWS OF JERSEY, <https://www.jerseylaw.je/laws/revised/PDFs/08.785.80.pdf>, archived at <https://perma.cc/A8W9-7753>.

⁶ Proceeds of Crime Act 1999, Sched. 2, Part B, ¶ 9, <https://www.jerseylaw.je/laws/revised/Pages/08.780.aspx#Toc468266188>, archived at <https://perma.cc/K2YU-7KA4>.

⁷ *Id.* Sched. 2, Part B, ¶¶ 4, 5.

⁸ *Id.* Sched. 2, Part B, ¶ 9(2)(a)–(b).

⁹ Money Laundering (Jersey) Order 2008, REVISED LAWS OF JERSEY, <https://www.jerseylaw.je/laws/revised/Pages/08.780.30.aspx>, archived at <https://perma.cc/2ENA-U4AQ>.

¹⁰ Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, REVISED LAWS OF JERSEY, <https://www.jerseylaw.je/laws/revised/PDFs/08.785.pdf>, archived at <https://perma.cc/U5CQ-EQGY>;

¹¹ Money Laundering (Jersey) Order 2008, REVISED LAWS OF JERSEY, <https://www.jerseylaw.je/laws/revised/Pages/08.780.30.aspx>, archived at <https://perma.cc/PT5L-A4X6>.

due diligence measures are implemented,¹² such as know-your-customer measures, prior to entering into a business relationship with a person, or before conducting a “one-off” for all transactions greater than €1,000 (approximately US\$1,220).¹³

III. Exemptions

Individuals who operate a virtual currency exchange as a business but have an annual turnover of less than £150,000 are exempt from the Act. These businesses must notify the Jersey Financial Services Commission that they are conducting such a business, but that they are exempt.¹⁴ There is no fee for this notification, but it makes the business known to the Jersey Financial Services Commission and enables them to “build a good profile of the businesses in this sector”¹⁵ and to investigate the business for any suspected breaches of legislation.¹⁶ The aim of this exemption is to create “an innovative regulatory sandbox . . . allowing Exchangers with turnover of less than £150,000 per calendar year to test virtual currency exchange delivery mechanisms in a live environment without the normal registration requirements and associated costs.”¹⁷

IV. High Value Dealers

Businesses that trade in goods and receive payments in cryptocurrency of €15,000 (approximately US\$18,500) and above per transaction, or in groupings of transactions, are considered to be “high value dealers” under the Proceeds of Crime Act 1999.¹⁸ Such dealers must be registered and supervised by the Jersey Financial Services Commission and comply with Jersey’s money laundering and counterterrorist financing laws.¹⁹

¹² “Customer due diligence measures” are defined in the Proceeds of Crime Act 1999, Sched. 2, Part B, ¶ 3.

¹³ Chief Minister’s Department, *Regulation of Virtual Currency Policy Document*, *supra* note 2, ¶ 1.14. See also Money Laundering (Jersey) Order 2008, Revised Laws of Jersey, <https://www.jerseylaw.je/laws/revised/Pages/08.780.30.aspx>, archived at <https://perma.cc/5QDP-PE8Y>.

¹⁴ Proceeds of Crime (Supervisory Bodies) (Virtual Currency Exchange Business) (Exemption) (Jersey) Order 2016, REVISED LAWS OF JERSEY, <https://www.jerseylaw.je/laws/revised/PDFs/08.785.80.pdf>, archived at <https://perma.cc/A8W9-7753>; see also *Jersey Strengthens Financial Crime Regulation with Extension to Cover Virtual Currency*, JERSEY FINANCE (Oct. 24, 2016), https://www.jerseyfinance.je/news/jersey-strengthens-financial-crime-regulation-with-extension-to-cover-virtual-currency#.WrI4_v6os5s, archived at <https://perma.cc/TX8J-KE5R>.

¹⁵ Chief Minister’s Department, *Regulation of Virtual Currency Policy Document*, *supra* note 2, ¶ 1.8.

¹⁶ *Id.*

¹⁷ *Virtual Currency Regulation in Jersey Takes Effect*, OGIER (Oct. 4, 2016), <http://www.ogier.com/publications/virtual-currency-regulation-in-jersey-takes-effect>, archived at <https://perma.cc/AHT8-HJBZ>.

¹⁸ Proceeds of Crime Act 1999, Sched. 2, Part B, ¶ 4.

¹⁹ *Id.*; *AML/CFT Handbook for Estate Agents and High Value Dealers*, JERSEY FINANCIAL SERVICES COMMISSION, <https://www.jerseyfsc.org/pdf/Consolidated-Estate-Agents-and-HVD-Section-1-to-10.pdf> (last visited Mar. 21, 2018), archived at <https://perma.cc/H5CA-UEGK>.

V. Distributed Ledger and Blockchain Technology

At the time of the consultation, the government considered the regulation of distributed ledger and blockchain technology, but determined that this area was evolving too quickly to regulate effectively.²⁰ It opted to actively monitor these areas for development and consideration of regulation in the future.²¹

²⁰ Chief Minister's Department, *Regulation of Virtual Currency Policy Document*, *supra* note 2, ¶ 1.34.

²¹ *Id.* ¶ 1.36.

Mexico

Gustavo Guerra
Senior Foreign Law Specialist

SUMMARY In March 2018, Mexico enacted a law that provides broad rules applicable to virtual assets (i.e., cryptocurrencies). These assets, which are not legal currency, are defined as representations of value electronically registered, utilized, and transferred by the public as a means of payment. Mexico’s central bank has been granted broad powers on virtual assets, to be exercised through the issuance of pertinent regulations to be published within a year from the enactment of the law. Furthermore, services involving virtual assets is an activity classified as vulnerable to money laundering. As such, relevant transactions that reach or exceed a certain amount must be reported to the Mexican government starting in September 2019.

I. Law on Virtual Assets

Mexico’s Law to Regulate Financial Technology Companies, enacted in March 2018, includes a chapter on operations with “virtual assets,” commonly known as cryptocurrencies.¹ This chapter defines virtual assets as representations of value electronically registered and utilized by the public as a means of payment for all types of legal transactions, which may only be transferred electronically.² It also provides that Mexico’s legal currency may not, under any circumstance, be considered a virtual asset.³

Mexico’s central bank, Banco de México, is granted broad powers under the Law to regulate virtual assets, including

- specifying those virtual assets that financial companies are allowed to operate with in the country, defining their particular characteristics, and establishing the conditions and restrictions applicable to transactions with such assets;
- authorizing financial companies to perform transactions with virtual assets; and
- imposing fines due to unauthorized transactions using virtual assets.⁴

¹ Ley para Regular las Instituciones de Tecnología Financiera [Law to Regulate Financial Technology Companies] arts. 30–34, DIARIO OFICIAL DE LA FEDERACIÓN [D.O.F], Mar. 9, 2018, available as originally enacted on the website of Mexico’s House of Representatives at http://www.diputados.gob.mx/LeyesBiblio/pdf/LRITF_090318.pdf, archived at <https://perma.cc/SB6N-RQY7>.

² *Id.* art. 30.

³ *Id.*

⁴ *Id.* arts. 30–32, 88, 104(I).

Pertinent regulations applicable to these assets must be issued by Mexico's central bank within a year from the enactment of the law.⁵

Financial companies that carry out transactions with virtual assets must disclose to their clients the risks applicable to these assets.⁶ At a minimum, these companies must inform their clients, in a clear and accessible manner on their respective websites or through the means that they utilize to provide services, that

- a virtual asset is not a legal currency and is not backed by the federal government nor by Mexico's Central Bank;
- once executed, transactions with virtual assets may be irreversible;
- the value of virtual assets is volatile; and
- technological, cybernetic, and fraud risks are inherent in virtual assets.⁷

II. Law on Anti-Money Laundering Pertaining to Virtual Assets

Providing services involving virtual assets is an activity classified as vulnerable to money laundering.⁸ Thus, providers of such services must report relevant transactions that reach or exceed a particular amount (equivalent to approximately US\$2,780 as of April 2018) to the Mexican government starting in September 2019.⁹ Furthermore, providers of such services will have a number of additional duties, including

- identifying their clients and verifying their identity through official identification documents, a copy of which must be kept by the provider;
- asking the client for information on his/her occupation if a business relationship is established; and
- keeping records pertaining to transactions and clients.¹⁰

Regulations further detailing pertinent requirements for financial companies are to be published by August 2018.¹¹

⁵ *Id.* DISPOSICION TRANSITORIA SEXTA (II).

⁶ *Id.* art. 34.

⁷ *Id.*

⁸ Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita [Federal Law for the Prevention and Identification of Transactions with Resources of Illicit Origin] art. 17(XVI), Nota de vigencia, D.O.F., Oct. 17, 2012, available as amended through March 2018 on the website of Mexico's House of Representatives at http://www.diputados.gob.mx/LeyesBiblio/pdf/LFPIORPI_090318.pdf, archived at <https://perma.cc/4UVN-GM98>.

⁹ *Id.*

¹⁰ *Id.* arts. 17, 18.

¹¹ Ley para Regular las Instituciones de Tecnología Financiera art. 58, DISPOSICION TRANSITORIA SEGUNDA.

III. Taxation

Tax experts opined that, as of March 2018, Mexican law did not appear to provide for clear statutory rules on taxation pertaining to virtual assets.¹² These experts also indicated that pertinent regulations on virtual assets must be enacted in order to determine the specific tax rules applicable to such assets.¹³

¹² Dainzú Patiño, *Se abre camino para cobrar impuestos a bitcoins*, EXPANSION.MX (Mar.14, 2018), <https://expansion.mx/economia/2018/03/14/se-abre-camino-para-cobrar-impuestos-a-bitcoins>, archived at <https://perma.cc/K9NF-ALYK>.

¹³ *Id.*

Switzerland

*Jenny Gesley
Foreign Law Specialist*

SUMMARY Switzerland classifies virtual currencies as assets (property). It has relaxed regulatory burdens on and entry barriers for innovative Fintech companies, while keeping risks associated with Initial Coin Offerings (ICOs) and cryptocurrencies related to investor protection, financial crime, and cyber threats in mind. There are currently no ICO-specific regulations, but depending on how the ICO is designed, financial market laws may be applicable. This is assessed on a case-by-case basis. Money laundering and securities regulation are the most relevant laws in this respect. Cryptocurrencies may also be subject to wealth, income, and capital gains tax.

I. Introduction

In 2014, the Swiss Federal Council, the Swiss government, published a report on virtual currencies that explained their economic significance, legal treatment, and risks.¹ The term “virtual currencies” is generally used synonymously with “cryptocurrencies.” The report stated that a virtual currency is a “digital representation of a value which can be traded on the Internet” and takes on the role of money, but is not regarded as legal tender and therefore should be classified as an asset (property).² It concluded at that point that the economic importance of virtual currencies as a means of payment was marginal and would remain so.³

This evaluation has changed since publication of the report. The Federal Council still cautions against risks in the areas of money laundering, terrorist financing, and investor protection, but emphasizes the advantages and potential that new technologies, in particular blockchain technologies, have to offer.⁴ In light of this, regulatory barriers for Fintech firms, including providers of mobile payment systems, virtual currencies, and online peer-to-peer lending, were reduced by amending the Banking Regulation.⁵ By exempting providers that accept public funds

¹ FEDERAL COUNCIL, FEDERAL COUNCIL REPORT ON VIRTUAL CURRENCIES IN RESPONSE TO THE SCHWAAB (13.3687) AND WEIBEL (13.4070) POSTULATES (June 25, 2014), <https://www.news.admin.ch/NSBSubscriber/message/attachments/35355.pdf>, archived at <http://perma.cc/7VAB-FNBJ>.

² *Id.* at 7.

³ *Id.* at 3.

⁴ Press Release, Swiss Federal Department of Finance [FDF], G20 Meeting of Finance Ministers in Argentina: Challenge of Digitization (Mar. 20, 2018), https://www.efd.admin.ch/efd/en/home/dokumentation/nsb-news_list.msg-id-70165.html, archived at <http://perma.cc/YJ57-ZHMY>.

⁵ FDF, BACKGROUND DOCUMENTATION (Nov. 2, 2016), <https://www.newsd.admin.ch/newsd/message/attachments/45938.pdf>, archived at <http://perma.cc/RR63-L3RM>; Press Release, Federal Council, Federal Council Puts New Fintech Rules Into Force (July 5, 2017), <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-67436.html>, archived at <http://perma.cc/9A6A-LVE3>; Verordnung über die Banken und Sparkassen [Bankenverordnung] [BankV] [Regulation on Banks and Savings Banks] [Banking Regulation], Apr. 30, 2014, SYSTEMATISCHE RECHTSSAMMLUNG [SR] [SYSTEMATIC COLLECTION OF LAWS] 952.02, art. 5, para. 3, let. c, art. 6, <https://www.admin.ch/opc/de/classified-compilation/20131795/201708010000/952.02.pdf>, archived at

up to a total value of CHF1 million (approximately US\$1.05 million) from the requirement to have a banking license, Switzerland aims to create a means for companies to “test innovative business ideas within a limited framework without having to comply with costly and time-consuming regulations” (regulatory sandbox).⁶ Firms that take advantage of this exemption must inform their customers in writing that the firm is not subject to supervision by the Swiss Financial Market Supervisory Authority (Eidgenössische Finanzmarktaufsicht, FINMA) and that the deposits are not protected by deposit insurance.⁷

Furthermore, in January 2018, the Swiss State Secretariat for International Finance (Staatssekretariat für internationale Finanzfragen, SIF) reported that it would set up a working group on blockchain and initial coin offerings (ICOs).⁸ The working group will work together with the Federal Ministry of Justice and FINMA and involve interested businesses. It will study the legal framework for financial sector-specific use of blockchain technology with a particular focus on ICOs and report back to the Federal Council by the end of 2018. The goal is to become a “blockchain and fintech nation in international terms.”⁹

II. Federal Regulatory Framework

A. Anti-Money Laundering Legislation

The Anti-Money Laundering Act generally applies to “financial intermediaries,” who are defined as natural and legal persons who accept or hold deposit assets for third parties or who assist in the investment or transfer of such assets on a professional basis.¹⁰ In its 2014 report, the Federal Council concluded that professional trading in virtual currencies and the operation of trading platforms in Switzerland generally come under the scope of the Anti-Money Laundering Act and therefore give rise to a range of due diligence obligations.¹¹ The due diligence requirements include verifying the identity of the contracting party and establishing the identity of the beneficial owner.¹²

<http://perma.cc/UTN4-MEVM>, unofficial English translation available at <https://assets.kpmg.com/content/dam/kpmg/ch/pdf/ordinance-on-banks-and-savings-banks-en.pdf>, archived at <http://perma.cc/L2ZK-KAX9>.

⁶ Banking Regulation art. 6, para. 2; FDF, *supra* note 5, at 4, no. 5.

⁷ Banking Regulation art. 6, para. 2, let. c.

⁸ Press Release, FDF, Blockchain/ICO Working Group Established (Jan. 18, 2018), <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-69539.html>, archived at <http://perma.cc/9WHU-K2D5>.

⁹ Press Release, *supra* note 4.

¹⁰ Geldwäschereigesetz [GwG] [Anti-Money Laundering Act] [AMLA], Oct. 10, 1997, SR 955.0, art. 2, para. 1, let. a, art 2, para. 3, <https://www.admin.ch/opc/de/classified-compilation/19970427/201601010000/955.0.pdf>, archived at <http://perma.cc/E9UX-3EBW>, unofficial English translation available at <https://www.admin.ch/opc/en/classified-compilation/19970427/201601010000/955.0.pdf>, archived at <http://perma.cc/M4M6-UW5U>.

¹¹ Federal Council, *supra* note 1, at 14–17.

¹² AMLA arts. 3, 4.

FINMA guidelines clarified that anti-money laundering legislation is applicable to persons who exchange cryptocurrencies for fiat money and vice versa as well as for a different cryptocurrency on a commercial basis (cryptocurrency exchanges), and to custodian wallet providers.¹³

B. Financial Market Law

1. FINMA's Strategic Goals for 2017 to 2020

In November 2016, FINMA published its strategic goals for the period 2017 to 2020. Among others things, the goals provide that innovative business model in the area of financial services should be supported by removing unnecessary regulatory obstacles and introducing specifically-tailored authorization categories.¹⁴

2. Regulatory Treatment of ICOs

On February 16, 2018, FINMA published guidelines on the regulatory treatment of ICOs,¹⁵ which complement its earlier FINMA Guidance from September 2017.¹⁶ Currently, there is no ICO-specific regulation, nor is there relevant case law, or consistent legal doctrine.¹⁷ FINMA stated that due to the fact that each ICO is designed in a different way, whether and which financial regulations are applicable must be decided on a case-by-case basis. In an ICO, investors receive blockchain-based coins or tokens in exchange for the funds they transfer. The tokens are created and stored either on a blockchain specifically created for the ICO or on a pre-existing blockchain.¹⁸

FINMA differentiates between payment tokens (cryptocurrencies), utility tokens, and asset tokens. Payment tokens (cryptocurrencies) are defined as tokens that are used as a means of payment or as a means of money or value transfer. Utility tokens are those that provide digital access to an application or service by means of a blockchain-based infrastructure. Asset tokens represent assets such as a debt or an equity claim against the issuer. According to FINMA, asset tokens are analogous to equities, bonds, and derivatives.¹⁹

¹³ FINMA, Guidelines for Enquiries Regarding the Regulatory Framework for Initial Coin Offerings (FINMA ICO Guidelines) (Feb. 16, 2018), <https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/1bewilligung/fintech/wegleitung-ico.pdf?la=en>, archived at <http://perma.cc/PV9L-5AEK>.

¹⁴ FINMA, STRATEGIC GOALS 2017–2020, goal no. 5 (Nov. 16, 2016), https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/finma-publikationen/20161116-finma-strat-ziele-2017-2020_de.pdf?la=en, archived at <http://perma.cc/DWV3-BCB8>.

¹⁵ FINMA ICO Guidelines, *supra* note 13.

¹⁶ FINMA, FINMA Guidance 04/2017. Regulatory Treatment of Initial Coin Offerings (FINMA Guidance) 7, no. 3.7 (Sept. 29, 2017), <https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/4dokumentation/finma-aufsichtsmittelungen/20170929-finma-aufsichtsmittelung-04-2017.pdf?la=en&hash=9DCC5C1FF8F61C9AA9412FAD2D7C70533F341EF2>, archived at <http://perma.cc/6YGB-LSCP>.

¹⁷ FINMA ICO Guidelines, *supra* note 13, at 2, no. 3.

¹⁸ *Id.* at 1, no. 1.

¹⁹ *Id.* at 3, no. 3.1.

Operators of financial market infrastructures are subject to authorization by FINMA.²⁰ If the tokens received in an ICO qualify as securities, trading will require authorization. “Securities” are defined as “standardised certificated or uncertificated securities, derivatives and intermediated securities which are suitable for mass standardised trading,”²¹ meaning they are “publicly offered for sale in the same structure and denomination or are placed with more than 20 clients, insofar as they have not been created especially for individual counterparties.”²² FINMA does not treat payment tokens or utility tokens whose sole purpose is to confer digital access rights as securities. However, utility tokens that have an additional investment purpose or a sole investment purpose at the time of issue, as well as asset tokens that are standardized and suitable for mass standardized trading, are classified as securities.²³

Funds raised in an ICO generally do not qualify as deposits within the meaning of the Banking Act. However, if there are liabilities with debt capital character—for example, a promise to return capital with a guaranteed return—then such an ICO would require the organizer to obtain a banking license.²⁴ When assets collected as part of the ICO are managed externally by third parties, the provisions of the Collective Investment Schemes Act apply.²⁵ Provisions on combating money laundering and terrorist financing (Anti-Money Laundering Act) apply to the ICO of a payment token (cryptocurrency) as soon as the tokens can be technically transferred on a blockchain infrastructure.²⁶

3. Fake Cryptocurrencies

In September 2017, FINMA closed down the unauthorized providers of the fake cryptocurrency “E-Coin,” liquidated the companies, and issued a general warning about fake cryptocurrencies to

²⁰ Finanzmarktinfrastrukturgesetz [FinfraG] [Financial Market Infrastructure Act] [FMIA], June 19, 2015, SR 958.1, art. 4, <https://www.admin.ch/opc/de/classified-compilation/20141779/201708010000/958.1.pdf>, archived at <http://perma.cc/5F64-2WFF>, unofficial English translation available at <https://www.admin.ch/opc/en/classified-compilation/20141779/201708010000/958.1.pdf>, archived at <http://perma.cc/WT73-EMWN>.

²¹ FMIA art. 2, let. b.

²² Finanzmarktinfrastrukturverordnung [FinfraV] [Financial Market Infrastructure Ordinance] [FMIO], Nov. 25, 2015, SR 958.11, art. 2, para. 1, <https://www.admin.ch/opc/de/classified-compilation/20152105/201708010000/958.11.pdf>, archived at <http://perma.cc/NW3S-JAGZ>, unofficial English translation available at <https://www.admin.ch/opc/en/classified-compilation/20152105/201708010000/958.11.pdf>, archived at <http://perma.cc/2423-R4HG>.

²³ FINMA ICO Guidelines, *supra* note 15, at 4, no. 3.2.1–3.2.3.

²⁴ *Id.* at 6, no. 3.4; Bankengesetz [BankG] [Banking Act], Nov. 8, 1934, SR 952.0, arts. 1, 3, <https://www.admin.ch/opc/de/classified-compilation/19340083/201601010000/952.0.pdf>, archived at <http://perma.cc/R5N5-E4KE>.

²⁵ FINMA ICO Guidelines, *supra* note 15, at 6, no. 3.5; Kollektivanlagengesetz [KAG] [Collective Investment Schemes Act] [CISA], June 23, 2006, SR 951.31, <https://www.admin.ch/opc/de/classified-compilation/20052154/201607010000/951.31.pdf>, archived at <http://perma.cc/9HHP-QTY6>, unofficial English translation available at <https://www.admin.ch/opc/en/classified-compilation/20052154/201607010000/951.31.pdf>, archived at <http://perma.cc/8NAX-442E>.

²⁶ FINMA ICO Guidelines, *supra* note 15, at 6, no. 3.6.

investors.²⁷ Furthermore, three other companies were put on FINMA's warning list due to suspicious activity and eleven investigations were conducted into other presumably unauthorized business models relating to such coins.²⁸

C. Tax Treatment

1. Wealth Tax

In Switzerland, the individual cantons, the Swiss states, are obligated to levy income tax and wealth tax on the total property (assets and rights with a cash value) of taxpayers that are resident in their canton.²⁹ Tax rates vary between the individual cantons. Cryptocurrencies are treated like foreign currencies for wealth tax purposes.³⁰ Holders of bitcoins or other cryptocurrencies are taxed at the rate determined by the tax authorities on December 31st of the fiscal year. As an example, the tax rate for bitcoins determined on December 31, 2017, by the Swiss Federal Tax Administration was CHF13,784.38 (about US\$14,500).³¹ The Swiss Federal Tax Administration provides tax rates for other cryptocurrencies in addition to bitcoins.³² These rates are a recommendation to the cantonal tax authorities for wealth tax purposes, but most follow them. The rates are based on the average value of different trading platforms.³³

2. Income Tax

If an employee receives bitcoins or other cryptocurrencies as a salary or benefit, it forms part of his or her taxable earned income. The Swiss Franc value of the cryptocurrency at the time it was received must be recorded on the salary statement.³⁴

²⁷ Press Release, FINMA, FINMA Closes Down Coin Providers and Issues Warning About Fake Cryptocurrencies (Sept. 19, 2017), <https://www.finma.ch/en/news/2017/09/20170919-mm-coin-anbieter/>, archived at <http://perma.cc/VN3C-2ZUK>.

²⁸ *Id.*

²⁹ Bundesgesetz über die Harmonisierung der direkten Steuern der Kantone und Gemeinden [StHG] [Federal Act on the Harmonization of Direct Taxes Levied by Cantons and Municipalities], Dec. 14, 1990, SR 642.14, art. 2, para. 1, <https://www.admin.ch/opc/de/classified-compilation/19900333/201801010000/642.14.pdf>, archived at <http://perma.cc/5QP8-2NXP>.

³⁰ See, e.g., Kanton Zug. Finanzdirektion. Steuerverwaltung [Canton Zug. Finance Directorate. Tax Administration], *Kryptowährungen (Bitcoin, Ethereum, Tokens usw.): Merkblatt Steuern für Privatpersonen [Cryptocurrencies (Bitcoin, Ethereum, Tokens etc.): Explanatory Leaflet for Private Persons]* (Nov. 30, 2017), <https://www.zg.ch/behoerden/finanzdirektion/steuerverwaltung/kryptowaehrungen/download/Kryptowaehrungen-Merkblatt-def.-30.11.2017.pdf/download>, archived at <http://perma.cc/VGX2-C5HS>.

³¹ *Course Listing Federal Income Tax 2018*, FEDERAL TAX ADMINISTRATION, <https://www.ictax.admin.ch/extern/en.html#ratelist/2018>, archived at <http://perma.cc/9JCD-MHSE>.

³² The other cryptocurrencies are currently Cardano, Bitcoin Cash, Ethereum, IOATA, Litecoin, Tron Coin, NEM, Stellar Lumens, Palladium, Platinum, and Ripple. The list is continuously updated.

³³ Kanton Zug, *supra* note 30, at 1, no. 3.

³⁴ *Id.* no. 4.

If a self-employed person receives bitcoins or other cryptocurrencies for providing goods or services, it must be included as part of the principal or additional income from self-employment at the Swiss Franc value of the cryptocurrency at the time it was received.³⁵

Any income that a natural person derives from mining cryptocurrencies by making available computational power for consideration must be included as assessable income for tax purposes. Depending on the specific work arrangement (employee or independent contractor), the compensation received will count as income from salaried work or self-employment.³⁶

3. *Professional Cryptocurrency Trading*

If cryptocurrency trading is done on a professional basis, any profits are taxable and losses are tax deductible. Cryptocurrencies that qualify as business assets are reported on the balance sheet with the book value. Price fluctuations have to be accounted for according to general accounting principles.³⁷

4. *Capital Gains Tax*

Capital gains from movable private assets, which include cryptocurrencies, are generally not subject to taxation and any capital losses are therefore not tax deductible.³⁸

III. Cantonal and Municipal Government Agencies

Individual Swiss cantons are also trying to attract Fintech, blockchain, and cryptocurrency firms and start-ups, in particular the Canton of Zug. One association that has been established in Zug is the “Crypto Valley Association,” On its website it describes itself as “an independent, government-supported association established to take full advantage of Switzerland’s strengths to build the world’s leading blockchain and cryptographic technologies ecosystem.”³⁹ Among other things, it facilitates exchanges between stakeholders and FINMA, for example with a recent roundtable on ICOs.⁴⁰

On November 2, 2017, the Commercial Register Office in the Canton of Zug started accepting bitcoin and ether as payment for administrative costs.⁴¹ Furthermore, the Commercial Register

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* nos. 5, 6.

³⁸ *Id.* no. 6.

³⁹ *About Us. The Association*, CRYPTO VALLEY ASSOCIATION, <https://cryptovalley.swiss/about-the-association/> (last visited Mar. 27, 2018), archived at <http://perma.cc/P63Y-JPHW>.

⁴⁰ FINMA, FINMA ROUNDTABLE ON ICOs (Mar. 2018), <https://cryptovalley.swiss/?mdocs-file=42114>, archived at <http://perma.cc/KA3F-B4UF>.

⁴¹ Press Release, Kanton Zug [Canton Zug], Handelsregisteramt Zug akzeptiert Kryptowährungen Bitcoin und Ether als Zahlungsmittel [Commercial Register Office Zug Accepts Cryptocurrencies Bitcoin and Ether as Means of Payment] (Nov. 2, 2017), <https://www.zg.ch/behoerden/volkswirtschaftsdirektion/handelsregisteramt/>

accepts cryptocurrencies as a contribution in kind for purposes of forming a company.⁴² In the city of Zug, municipal services (resident registration) of up to CHF200 (about US\$210) can be paid with bitcoins.⁴³

On January 1, 2018, the municipality of Chiasso, in the Swiss Canton of Ticino, started accepting bitcoins as a tax payment for an amount of up to CHF250 (around US\$263).⁴⁴

[aktuell/handelsregisteramt-zug-akzeptiert-kryptowaehrungen-bitcoin-und-ether-als-zahlungsmittel](#), archived at <http://perma.cc/384H-BEUE>.

⁴² Press Release, Kanton Zug [Canton Zug], HR Zug lässt Kryptowährungen als Sacheinlage zu [Commercial Register Office in Zug Accepts Cryptocurrencies as a Contribution in Kind] (Sept. 4, 2017), <https://www.zg.ch/behorden/volkswirtschaftsdirektion/handelsregisteramt/aktuell/bitcoin-als-sacheinlage?searchterm=bitcoin>, archived at <http://perma.cc/H5A7-AUJH>.

⁴³ Press Release, Stadt Zug [City of Zug], Von Bitcoin zu Blockchain-Anwendungen [From Bitcoin to Blockchain Applications] (Nov. 15, 2016), http://www.stadtzug.ch/de/ueberzug/ueberzugrubrik/aktuelles/aktuelles/informationen/welcome.php?action=showinfo&info_id=351680&ls=0&sq=&kategorie_id=&date_from=&date_to, archived at <http://perma.cc/LZL9-CNHR>.

⁴⁴ *Possibilità di pagamento imposte in Bitcoin* [Possibility to Pay Taxes in Bitcoin], COMUNE DI CHIASSO [MUNICIPALITY OF CHIASSO] (Feb. 1, 2018), <https://www.chiasso.ch/possibilita-pagamento-imposte-bitcoin/>, archived at <http://perma.cc/2VR9-STWR>.