



LEGAL REGULATION OF CRYPTOCURRENCIES: PAST PRESENT AND FUTURE

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460,000,000,000,000,000,000,000,000,000 pengő = \$1 US

Hungary, July 1946

1 Bitcoin = \$7,490.63 US

Ireland, May 2018

Cryptocompare.com at 10:30am this morning

\$5 billion US raised in ICOs in 2017

Autonomous Next



2 QUESTIONS

- Does token funding give rise to an equitable interest in a company? (Probably Yes)
- If not, what protection is available for consumers?

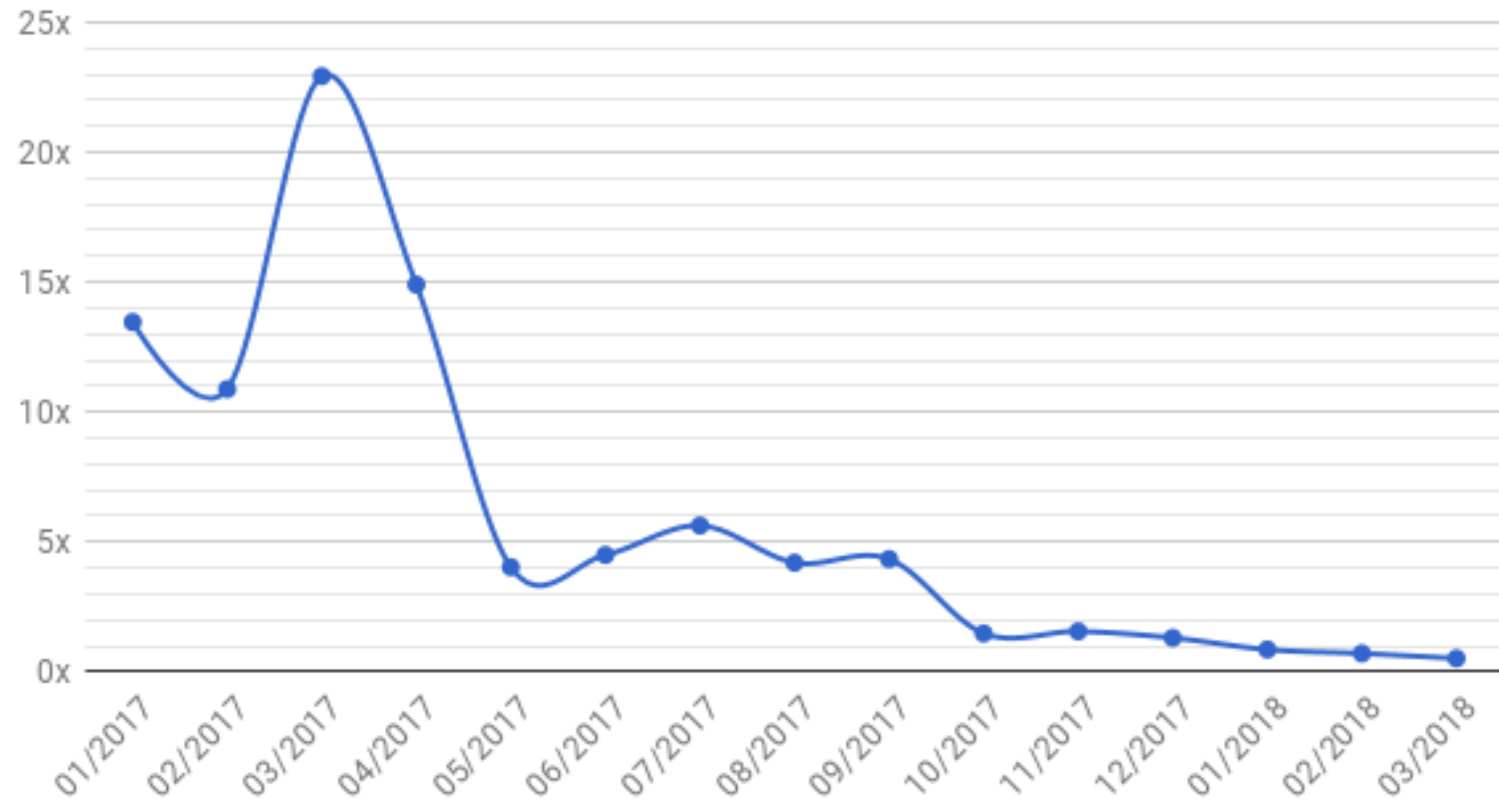
SOME LEGAL CONTEXT

New technologies are changing the financial industry and the way consumers and firms access services, creating opportunities for FinTech-based solutions to provide better access to finance and to improve financial inclusion for digitally connected citizens. It places customers in the driving seat, supports operational efficiency and increases further the competitiveness of the EU economy.

Cryptocurrency = property

European Commission, March COM(2018) 109/2

Returns on Initial Coin Offerings Investments



SOURCE: ICODATA.IO

IN IRELAND

- Central Bank does not presently regulate the buying and selling of cryptocurrencies.
- However, investment-style ICOs will likely give rise to equitable interest. And consumer law provides a very decent back-up plan.

ALERT ON INITIAL COIN OFFERINGS DECEMBER 2018, CENTRAL BANK OF IRELAND

Investors should be aware that they are exposed to the following risks when investing in ICOs:

- Unregulated activity, vulnerable to fraud or illicit activities
- High risk of losing all invested capital
- Lack of exit options and extreme price volatility
- Inadequate information
- Flaws in the technology

SEEKING EQUITY SHARE

- Efficacy of the law of equity and trusts:
- SEC v. W. J. Howey Co., 328 U.S. 293 (1946)
- Justice Murphy:
- “The test is whether the scheme involves [1] an investment of money in a common enterprise with [2] profits to come [3] solely from the efforts of others. If that test be satisfied, it is immaterial whether the enterprise is speculative or non-speculative or whether there is a sale of property with or without intrinsic value.”
- Likely to be endorsed in the E.U. (cff ISP liability in copyright law)

COINBASE MODEL 2016

AutoSave Off | A Securities Law Framework for Blockchain Tokens - Protected View - Excel

File Home Insert Page Layout Formulas Data Review View Help PDF Architect 5 Creator Search

PROTECTED VIEW Be careful—files from the Internet can contain viruses. Unless you need to edit, it's safer to stay in Protected View. [Enable Editing]

UPDATES AVAILABLE Updates for Office are ready to be installed, but first we need to close some apps. [Update now]

A1

A Securities Law Framework for Blockchain Tokens

To estimate how likely a particular blockchain token is be a security under US federal securities law

[Refer to: full legal analysis](#)

Instructions

Step 1: Copy to a new google sheet (File > Make a copy) or download as .xls

Step 2: Review each characteristic and determine whether or not it applies to the token

Step 3: Select Y or N for each characteristic from the drop down menu

Step 4: Review results at the bottom of this page

Element 1: Investment of Money

Is there an investment of money?

Characteristic	Points	Explanation	Examples	Y or N
There is no crowdsale. New tokens are given away for free, or are earned through mining	0	Tokens which are not sold for value do not involve an investment of money. For example, if all tokens are distributed for	There was never any token sale for Bitcoin. The only way to acquire new bitcoin is via mining.	

ENFORCING CONSUMER RIGHTS

- Directive (EU) 2015/2366 on payment services in the internal market (PSD2) which was transposed into Irish law on 13th January 2018 EUROPEAN UNION (PAYMENT SERVICES) REGULATIONS 2018 S.I. 6 of 2018
- Does not apply to decentralised, blockchain-based payment services. However, Prof Mary Donnelly from UCC says at least some aspects of these services will be governed within a successor to PSD2 (writing in the Commercial Law Practitioner)
- The goal is balancing consumer confidence with some element of moral hazard for consumers (Prof Mary Donnelly)
- Analogue consumer law applies (replacement, refund, repair). Any statement made about consumer goods must be true or the retailer is liable. And, regarding services, provider is liable for mistakes/loss.

A WONDERLAND FOR MATCHSTICK MEN



GOING FORWARDS

- Look at the U.S. and crypto leaders like Malta and France (who have recently reduced tax on profits of companies dealing in cryptocurrencies from 45% to 19%)
- The rapid advance of FinTech is driving structural changes in the financial sector. In such a fast-moving environment, overly prescriptive and precipitous regulation carries the risk of undesired outcomes. However, there are also risks that refraining from updating policy and regulatory frameworks may place EU financial service providers at a disadvantage in an increasingly global market. (European Commission March 2018)



QUESTIONS?

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