



AddVANTE[★]

INITIAL COIN OFFERINGS (ICOs) SECURITY TOKEN OFFERINGS (STOs)

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INTRODUCTION

Recent statements by multitude of regulators around the world have demonstrate an increased concern of **Initial Coin Offerings** (ICOs) or **Token Generating Events** (TGEs), and most recently of **Security Token Offerings** (STOs) to protect investors and anti-money laundering related questions. In order to create a well-functioning global market for ICO/TGE/STO fundraisings, a professionalization of the ICO/TGE/STO process is urgently needed.

AddVANTE has launched an observatory that analyse the Spain and the international regulatory landscape applicable to ICOs/TGEs/STOs in order to formulate good practice principles for ICO/STO issuers from a regulatory and corporate governance perspective to mitigate their risk of liability in connection with the issuance.



WHAT DOES AN ICO/TGE/STO IS?

An **Initial Coin Offering (ICO)**, a **Token Generating Event (TGE)** or a **Security Token Offering (STO)** is a digital way (carried out via a Distributed ledger technology –DLT- application shared between users, conducted without a financial intermediary) to finance business enterprises through the sale of blockchain-based digital tokens. This offering raise funds from the public within a limited period of time by issuing a coin or a token that is related to a specific project, business model or business idea, in exchange of legal tender or cryptocurrencies. These tokens are created and disseminated using distributed ledger or blockchain technology and may be tradeable within several conditions on specific platforms.

TOKENS are “contracts” granting certain **rights to investors** (mainly economics rights), or to users of specific future services (rights to use the technology or rights to access the platform of services or products).

If the token issued **may represent Equity or Debt** of the start-up, the tokens are being called **SECURITY TOKENS** due to their security nature. The purchase of security tokens can be seen **as INVESTMENT** because **they represent ownership on an asset** such as debt or company stock. This means they may be **subject to Security Regulation**.

On the other hand, the tokens **can represent a right to use a product or service**, being in this case known as **UTILITY TOKENS**, and they are not designed as Investments and they provide users with future access to a product or service. This is why we normally refer to **a PARTICIPATION in an ICO or ACQUISITION** of tokens when the ICO/STO issues **UTILITY TOKENS**.



REGULATORY LANDSCAPE

Under the laws of many jurisdictions, in particular Spain, United Kingdom and the United States, tokens issued in an ICO/STO process have no official status at present. Some tokens, particularly those granting rights against either the token issuer or a third party, have features very similar to securities. Other tokens, particularly those without underlying assets or extensive rights against the issuer or a third party, have features resembling fiat currency. Nearly all regulators who have commented on ICOs/STOs thus far have noted that the status and treatment of tokens issued in an ICO/STO process must be considered on a case-by-case basis.

SPAIN

The National Securities and Exchange Commission of Spain (*Comisión Nacional del Mercado de Valores* or “CNMV”) has recently published several warnings regarding the potential risks associated with ICOs/STOs and several non-binding regulations (*Circulares informativas* and *Q&A*), but has not yet officially commented on the exact regulatory regime applicable to ICOs/STOs.

The following is an overview of the existing regulatory guidance and legal interpretation under Spanish Law relating to public offerings of tokens by means of an ICO/STO in Spain, subject to the developing CNMV practice.

Under Spanish Law, certain activities relating to financial instruments (ie. issuing, negotiating or commercializing have been made on Spanish territory) constitute regulated activities. The definition of “financial instruments” (*Instrumentos Financieros*)

is very broad and includes not only securities and derivatives but also for others figures that could be characterized case-by-case as securities. As a consequence, while the use and mining of Bitcoins does not constitute a regulated activity, certain other activities, such as trading or market making in Bitcoins, other cryptocurrencies, such as ether, or in tokens issued in an ICO/STO process, may fall within the scope of a regulated activity.

Spanish securities laws impose certain restrictions and obligations on issuers of financial instruments. This includes in particular certain registration & disclosure obligations in case of public offerings. Whether tokens are subject to securities laws needs to be assessed on a case by case basis depending on the features of the token and their functionality, their underlying protocol and the market and distribution activity.



EUROPEAN UNION

In relation to public offerings in the European Union, ESMA has published statements reiterating that certain EU legislation should be taken into consideration by ICO/STO issuers and advisors when conducting, advising or facilitating a token offering in the European Union.

OTHER JURISDICTIONS

Various regulatory authorities worldwide have issued statements on their respective national regulatory treatment of ICOs/STOs and have confirmed their respective views that tokens issued in ICOs/STOs may qualify as securities and have issued warnings for investors to be cognizant of the risks of participating in ICOs/STOs. Others has been more definitive by issuing a guide to digital token offerings including various case studies indicating which tokens would qualify as securities and which not. In the United States, an ICO/STO has become subject of the first-class action lawsuit.



HOW CAN WE HELP YOU?

PRIOR TO LAUNCHING THE ICO/STO PROCESS

- Analyse the business model.
- Evaluate the business plan and the financial model.
- Prepare material information for potential investors as a white paper, and terms and conditions for the ICO/STO.
- Seek legal and commercial advice by independent third-party advisors.
- Seek early contact with relevant regulators.
- Specifically target the markets or type of investors in which tokens are offered.
- Mandate an independent expert to render a valuation report on the business model and/or services in order to substantiate the ICO/STO.
- Implement an advisory and/or supervisory board with an adequate experience.
- Limit the amount of tokens offered based on the actual financial needs of the token issuer or based on a valuation of the token issuer or project.
- Risk disclosure.
- Information on issuer and business.
- Technical description of the token issued.
- Detailed technical specifications of the token and system, including technological challenge and solution.
- Description of the offering.
- Detailed technical description of the token offering, including way of acquisition, payment and other material terms.
- In case of a pre-sale of tokens, the basic information on such pre-sale including the material terms and discounts.
- Information on the legal nature of the offering, including applicable law to the tokens and the offering as well as applicable selling restrictions.
- Use of proceeds.
- Detailed statement on the use of proceeds, if possible linked to the agreed milestones or how proceeds will be released, as well as on the escrow principles applied.
- Mechanism to refund the proceeds in case of business failure or if the target amount is not reached.



POST TRANSACTION SERVICES

Following completion of the ICO/STO, the ICO/STO issuer shall adhere to the post ICO/STO communication principles as announced during the ICO/STO process. Further, we suggest that ICO/STO issuers update investors quarterly on business developments within 30 days after close of the calendar quarter and publish annual financial statements within 180 days after the close of the financial year.

REGULATORY COMPLIANCE AND EXCHANGE COMMISSION AUTHORITIES REQUIREMENTS (SEC, FINMA, FCA, CNMV, ...)

- Private & Public Token Placement Due Diligence.
- Tokenomics' structuring.
- Legal advisory from preliminary fact-finding initiated by the Regulator to Sanction plaintiff against the Token Issuer in violation of the Security Exchange Act (SEC, FINMA, FCA, CNMV, ...).
- Claim Security Litigation.

“Lawyer and expert financial consultant on Fintech, Blockchain, DLT, Cryptocurrencies, Security Token Offerings (SCOs), Initial Coin Offerings (ICOs) / Token Generating Events (TGEs), Crypto Transactions Escrow, Commercial Law, specialising particularly in the financial structuring of projects on regulated matters, as well as in advice on Compliance, Governance, Anti-Money Laundering & Know Your Customer regulation”



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Business from a forward-thinking perspective

Successful ideas often lie outside our angle of vision. Our observatory on technological evolution and changes in trends enables us to contribute innovation, simplicity and efficiency to your business model.

Experience and knowledge

Our experience and knowledge accumulated over 25 years of business gives us a better understanding of your concerns and of the reality of your business, and enables us to offer answers that provide for better informed decisions.

Value proposition

Complexity has become part of our day-to-day operations. Work methodologies, built with a 360° perspective, are designed to provide business solutions that can adapt to changes in the environment.

International support

Business opportunities often stretch beyond our borders. As representatives of JHI in Spain, we have an international platform of experts, which is formed by a network of 160 firms in over 70 countries, and a presence in the world's main capitals and jurisdictions.

ADVISORY | LEGAL | FISCAL | RISK & RESTRUCTURING | M&A

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