Public Consultation on the

"Initial Coin Offerings: Issues Paper (Jan 2019)"

The Treasury, Australia

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This is a response to the Public Consultation on the “Initial Coin Offerings: Issues Paper (Jan 2019)”.

KEY QUESTION

1.1. What is the clearest way to define ICOs and different categories of tokens?

Response to Q1.1: ICO is a novel form of crowd funding which typically involved cryptocurrencies. It is worthwhile to consider security token offerings (STO) as different from ICO.

Known categories of tokens include: Utility, Security, Stablecoin, Payment. As an academic, I generalised them to simply Utility vs Security, where stablecoin and payment tokens are two forms of utility tokens.

KEY QUESTIONS

2.1 What is the effect and importance of secondary trading in the ICO market?

2.2 What will be the key drivers of the ICO market going forward?

Response to Q2.1: The basis of a utility token is that it is meant to be used in a DLT ecosystem. To me, the existence of a crypto exchange is both a blessing and a curse. Blessings as it allows an alternative exit strategy for token buyers. Curse because of the high token volatility as well as a phenomenon known as token dumping, esp. from the ICO stakeholders that holds a significant proportion of the tokens and do not have any vesting/lockup period.

Response to Q2.2: The prolonged downward pressure Bitcoin and altcoins have several side effects. Bad projects are frequently being called out by the community is as a whole is a lot savvier now (compared to 18 months ago). Good to great projects continue to raise funds through ICO.

KEY QUESTIONS

3.1 How can ICOs contribute to innovation that is socially and economically valuable?

Response to Q3.1: Many blockchain projects are highly technical in nature. Any sufficiently advanced project would eventually include novel inventions and sufficiently novel to be patentable. Patented blockchain inventions by ICO companies would enable further commercialisation opportunities. There are at least 100 blockchain (Figure 3.1a) related patents within IP Australia.

Australian Government
IP Australia

AusPat

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	Application number	Title	Applicant(s)	Inventor(s)	Filing date	Application status	
1	2019900586	Energized Identity Powered Blockchain	Commonwealth Scientific and Industrial Research Organisation	Not Given	2019-02-21	FILED	☐
2	2019900403	Improved computer architecture and software supporting simpler and more secure blockchains together with methods and systems for developing efficient blockchain based business solutions.	Higgins, Christopher Lyndon MR	Higgins, Christopher Lyndon; Beaugeard, Nicholas David	2019-02-08	FILED	☐
3	2019900366	Improved computer architecture and software supporting simpler and more secure blockchains together with methods and systems for developing efficient blockchain based business solutions.	Higgins, Christopher Lyndon MR	Higgins, Christopher Lyndon; Beaugeard, Nicholas David	2019-02-06	FILED	☐
4	2019900322	Improved computer architecture and software supporting simpler and more secure blockchains together with methods and systems for developing efficient blockchain based business solutions	Higgins, Christopher Lyndon MR	Higgins, Christopher Lyndon; Beaugeard, Nicholas David	2019-02-03	FILED	☐

Figure 3.1b Blockchain patents found within IP Australia

Globally, as at 30 Jan 2019, there over 2,000 patents around the globe and Figure 3.1b is a patent landscape of these patents.

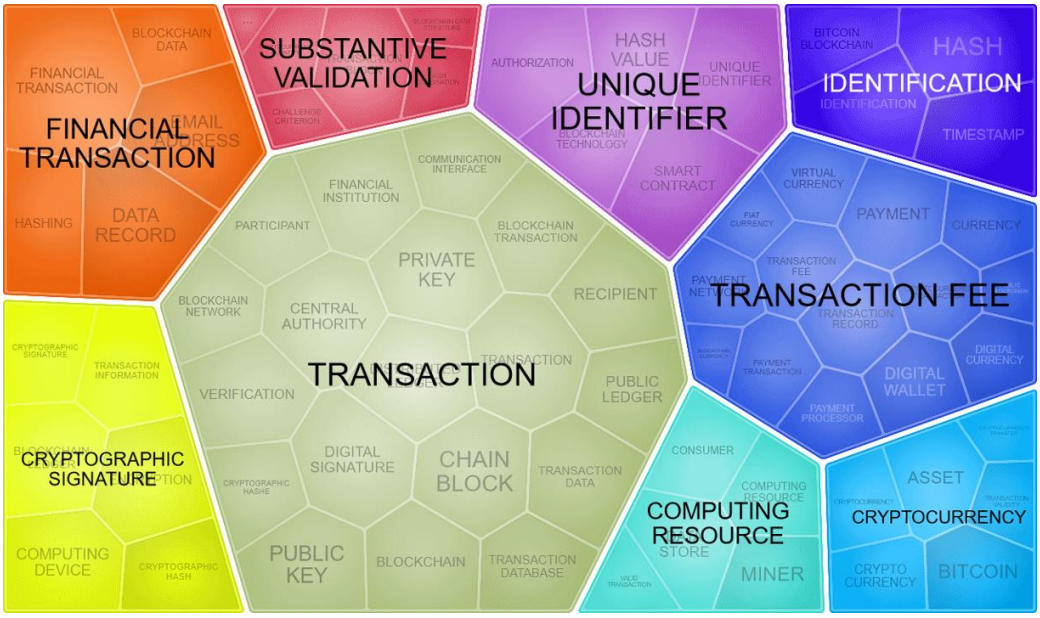

Figure 3.1b Global Patent Landscape

KEY QUESTIONS

3.2 What do ICOs offer that existing funding mechanisms do not?

3.3 Are there other opportunities for consumers, industry or the economy that ICOs offer?

3.4 How important are ICOs to Australia's capability to being a global leader in FinTech?

3.5 Are there other risks associated with ICOs to raise with policymakers and regulators?

Response to Q3.2: Primarily cryptocurrencies vs fiat. In addition, ICOs allow not just increased in one's funds for projects, but also a large no. of users (both token buyers, bounty hunters, airdroppers, observers) over a relatively short period of time.

Response to Q3.3: Opportunities for the consumers: Potential new products.
Opportunities for industry: Licensing of technology from the ICO companies.
Opportunities for the economy: Increased spending and increase employment.

Response to Q3.4: I believe ICOs to Australia's capability to being a global leader in FinTech is very important due to the sizable opportunities and innovation involving blockchain. Funds are necessary for the creation of good IPs.

Response to Q3.5: Yes, there are raised involved in ICOs. Primarily, ICO exit scams and the ICO money grabbers. There are several high profile ICO exit scams such as Denaro, Bitconnect, Centra, among others. There are also other types of ICO/Crypto related scammers such as the imposters, fake YouTube influencers, among others. Many of their modus operandi are documented in this Crypto/ICO Hall of Shame crowd resource: https://padlet.com/dryeap/icoScammers

KEY QUESTIONS

4.1 Is there ICO activity that may be outside the current regulatory framework for financial products and services that should be brought inside?

4.2 Do current regulatory frameworks enable ICOs and the creation of a legitimate ICO market? If not, why and how could the regulatory framework be changed to support the ICO market?

4.3 What, if any, adjustments to the existing regulatory frameworks would better address the risks posed by ICOs?

4.4 What role could a code of conduct play in building confidence in the ICO industry? Should any such code of conduct be subject to regulator approval?

4.5 Are there other measures that could be taken to promote a well-functioning ICO market in Australia?

Response to Q4.1: If an ICO involved elements that are deemed to be a security such as the inclusion of dividends or profit-sharing, then it should be deemed to falls within the relevant Securities Acts.

Response to Q4.2: Yes.

Response to Q4.3: No comment.

Response to Q4.4: In Singapore, the Singapore Cryptocurrency and Blockchain Industry Association (ACCESS for short) is working with the Monetary Authority of Singapore (MAS) and a few other entities in the creation of a Code of Practice for Crypto entities and the first phase covers AML and CFT. ACCESS is also very actively engaging the Inland Revenue Authority of Singapore (IRAS) with cryptocurrencies related matters.
If there is a similar Cryptocurrency association(s) in Australia, they may also wish to actively engage The Treasury and other AU stakeholders to create similar code of practice for AU-based crypto entities.

Response to Q4.5: There exist a lot of misinformation and disinformation in the industry in relation to cryptocurrencies and as such legit education is relating to cryptocurrencies and Blockchain would be helpful to the AU authorities and industry.

KEY QUESTIONS

5.1 Does the current tax treatment pose any impediments for issuers in undertaking capital raising activities through ICOs? If so, how?

5.2 Is the tax treatment of tokens appropriate for token holders?

5.3 Is there a need for changes to be made to the current tax treatment? If yes, what is the justification for these changes?

Comments on Appendix/Attachment A: The "CRYPTOCURRENCY INVESTMENT" example in Appendix/Attachment A looks flawed to me. The example framed an ICO to be an investment. However, ICO is NOT an investment. Terry is a token buyer is NOT an investor – Terry is simply a buying some utility tokens for future use in the ecosystem. Naturally, with the possible existence of having this token listed in a crypto exchange (which is optional, rather than mandatory), one side effect to this is that Terry can exit from his purchase in the secondary market in the form of a crypto exchange instead of using it in the start-up blockchain ecosystem.

For clarity purposes, the example titled "TOKENS ISSUED FROM AN ICO ECONOMICALLY EQUIVALENT TO AN EQUITY INTEREST" should be called a Security Token Offering (STO), rather than ICO.

Reference 1: It may also be noteworthy that as recent as Oct 2018, the Monetary Authority of Singapore does not consider cryptocurrency as currency or money (fiat) and instead considers cryptocurrency as digital tokens – refer to this Bloomberg video interview with the MD of MAS, https://www.bloomberg.com/news/articles/2018-10-10/singapore-aids-crypto-firms-seeking-banks-while-staying-vigilant

Reference 2: In February 2018, Singapore Deputy Prime Minister deems cryptocurrencies to be an experiment, refer to this press release from the MAS website, http://www.mas.gov.sg/News-and-Publications/Parliamentary-Replies/2018/Reply-to-Parliamentary-Question-on-banning-the-trading-of-bitcoin-currency-or-cryptocurrency.aspx

Response to Q5.1 to Q5.3: Based on Reference 1 and Reference 2, it does not make sense to impose tax for transactions relating to cryptocurrencies until the cryptocurrencies are converted to the fiat currencies.

If The Treasury really wants to or need to impose tax relating to cryptocurrency transactions, then the tax should be in that particular cryptocurrency, rather than imposing a tax based on the fiat currency.

In conclusion, cryptocurrencies and ICOs are interesting evolution in the fintech space and too many regulations may result in the stiffening of this innovation. The consequence of the latter is where companies move to a less restrictive country to conduct its ICO and innovation which may hurt the consumers more due lesser self-regulation requirements and non-existent Code of Practice in other parts of the world.

Conclusion

I thank The Treasury for conducting this timely public consultation into matters relating to Initial Coin Offerings and is willing to provide further clarifications to my submission where necessary.