

ICOs and Digital Assets: A New and Optional Legal Regime in France

IN SHORT

The Situation: ICOs and digital assets have become a new phenomenon that has impacted many aspects of our modern economies and created an alternative way of financing for start-ups or SMEs.

The Result: These assets and transactions may lead clients or investors to face new financial risks that cross borders.

Looking Ahead: The French Parliament has adopted a law providing for an optional regime covering the primary and secondary markets relating to digital assets offerings and trading, leaving players with the option to benefit from a label for their activities.

On May 23, 2019, the Pacte Law relating to the growth and transformation of companies was enacted under n°2019-486. The French government, through its Ministry of Finance, along with the French Treasury and the *Autorité des marchés financiers* ("AMF"), was willing to provide a legal framework for new activities relating to tokens and digital assets, which have significantly grown in France. While an ordinance dated December 8, 2017, has provided for a statutory regime for unlisted securities to be registered and transferred using a distributed ledger technology, French authorities were also aiming to regulate both the offering of tokens (excluding security tokens) and certain services on digital assets (including tokens). This new initiative follows [Italy, which enacted in early February 2019 a set of rules](#) establishing an overarching legal foundation for the validity and enforceability of distributed ledger technologies and smart contracts.

The Pacte Law sets up two new regimes relating to the issue of tokens and services on digital assets that are essentially optional, therefore leaving to issuers or providers the decision to be registered/licensed or not with the AMF (with one exception). Such registration triggers obligation of compliance with a certain number of rules provided in the French monetary and financial code and implementing regulation. However, only issuers that have obtained approval for their documentation, or service providers of digital assets that have been licensed, may solicit potential clients or investors and could do so in accordance with the solicitation rules applicable to banking or financial services.

WANT TO KNOW MORE?
Read the full version.

THREE KEY TAKEAWAYS

1. France now has a legal framework favoring the issue or trading of tokens or other digital assets that is essentially optional (except for custody and trading of digital assets against fiat currency, which are subject to mandatory registration).
2. Further rules are to be taken in the coming weeks



Philippe Goutay
Paris



Linda A. Hesse
Paris

(through decree or within the general regulation of the AMF), but it is expected that these will be proportionate to enable an effective development of these activities.

3. Attention must be paid to marketing and advertising, which may be limited to registered or licensed providers if amounting to public solicitation.

YOU MIGHT BE INTERESTED IN: [Go To All Recommendations >>](#)



[NYDFS Rejects
Cryptocurrency
Exchange License
Applications,
Citing Compliance
Program Flaws](#)



[Jones Day
Presents: The
Blockchain Series](#)



[CFTC Clears
Decks for "No
Deal" Brexit](#)

SUBSCRIBE

SUBSCRIBE TO RSS



Jones Day is a global law firm with more than 2,500 lawyers on five continents. One Firm WorldwideSM

Disclaimer: Jones Day's publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.

© 2019 Jones Day. All rights reserved. 51 Louisiana Avenue, N.W., Washington D.C. 20001-2113