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Insights

INSIGHT: San Marino Blockchain Legislation

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San Marino is introducing legislation offering tax advantages to attract investors and business, with the aim of becoming a blockchain hub. Stefano Loconte, Managing Partner of Loconte & Partners, looks at the provisions of the proposed new law.

The Republic of San Marino is aiming to position itself as a hub for innovators in blockchain global technology and is introducing legislative measures intended to be characterized by simplicity, clarity, flexibility, convenience and transparency to attract investors.

San Marino Innovation—a state-owned private law company—began an ambitious transformation project by publishing [Delegated Decree nr. 37](#) (the Decree) on February 27, 2019, relating to specific legislation on blockchain technology for companies.

The Decree is the result of a study of the tax and legal provisions in force in the markets in which this technology has been developed previously (the U.S., Singapore, Switzerland, Liechtenstein, France and Luxembourg) conducted by the technical team appointed by the Scientific Committee of San Marino Innovation, an institute for innovation in the Republic.

The synergy of the team's different skills is intended to enable the drafting of legislation in line with the highest standards but also free from excessive bureaucratic formalities, to allow investors, including foreign investors, to operate in a clear legal context.

Simplicity

In view of the global spread of distributed ledger technology and the raising of funds through token offering (virtual coins which can represent any type of asset) San Marino followed international experience by adopting the approach of qualifying such assets in relation to the rights incorporated in them (payment, investment and utility tokens).

After providing a global token definition, the Decree focuses on the legislation for utility and security tokens which represent—based on the above instruments—shares, financial instruments and issuer debt securities, and are therefore subject to financial market legislation.

Contrary to the situation in Singapore, France, Switzerland and Liechtenstein, it has been decided, at least for the present, to leave aside payment token legislation, since this is considered to represent a residual part of the relevant market.

Clarity

There are common rules for the initial token offer (ITO) legislation relating to both categories of token, as well as additional and stronger precautions for security token offers.

The issue of utility tokens requires the blockchain entity to prepare and deliver an accurate whitepaper and summary to San Marino Innovation at least 20 days before the offer: in the case of a security token issue, the blockchain entity must also comply with further strict rules in preparing an information prospectus in line with the laws of the Republic of San Marino on corporations, banking, financial and insurance services, as well as the [European Directive](#).

The legislation not only addresses companies and institutions resident in San Marino and other EU countries, but also those residing in a non-EU country considered appropriate by the legislation in force in the state, which, after obtaining recognition from San Marino Innovation, will be able to register and start operations.

Unlike the U.S. system, before proceeding to registration of the ITO, authorization of the entity is required.

Upon a specific issuer request, the legislation may also be applied to the issue of tokens in foreign countries.

Flexibility

The possibility of creating a trust in addition, or alternatively of going ahead with the incorporation of a company under the laws of San Marino, is considered an innovation for blockchain entities.

The creation of the trust represents an optimal vehicle, not only allowing the token unitary management related to the issue, but also the centralized and unitary management of the relationships between investors and the issuer. Unlike a company vehicle, this allows the issuing company to deal with a single entity.

The creation of the trust will also strengthen user protection, since managing the token issue and the relationship with users will have to take place separately from the issuer's activity. The trust permits precise wealth management, which guarantees the transparency that these activities require.

The San Marino trust model is notable for the clarity and simplicity of the legislation which brings it closer to the Anglo-Saxon model, as well as for the creation of a high court for trusts and fiduciary relationships in ordinary jurisdictions, which is qualified to handle all cases and disputes concerning legal relationships arising from custody or trusts.

Convenience

In terms of taxation and accounting, the San Marino legislation aims to offer advantages compared to other countries that so far have registered the highest number of blockchain operators.

As an incentive, tax exemption for general income tax purposes has been created for income realized through token transactions regulated by the Decree. The decision to apply significant tax incentives, in terms of total tax exemption, has also been adopted by other countries, particularly for cryptocurrencies, but not for the types of tokens regulated by the Decree.

In order to provide investors with accurate knowledge of the tax system which will apply to them, with no possibility of doubt as to its interpretation, the Decree uses an assimilation mechanism to foreign currencies, for tax and accounting purposes only. Specifically, while utility tokens have been assimilated with foreign currencies, for tax and accounting purposes only, investment tokens have been treated as shares or issuer debt securities, depending on the instrument. This approach places San Marino at a considerable advantage over other jurisdictions in this respect.

Transparency

Strict controls have been established in terms of the quality of the capital which will be introduced, with adequate anti-money laundering controls in place.

The Decree not only ensures that operations are “subjected to constant verification to fight against money laundering,” but as a further precaution, has imposed the execution of adequate checks, in a “strong” form, using methods already contemplated by San Marino’s legislation for high risk money laundering situations.

The Decree has allowed access to the system only and exclusively to subjects which are submitted to the same checks as provided in the San Marino legislation in their own jurisdictions.

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