

---

## **“Elephant in the Room”: Legal Regulation for Advertisement of Initial Coin Offering Projects**

---

V.K. Shaydullina <sup>1</sup>

**Abstract:**

*This article presents the results of the research of whitepapers for around 22 Initial Coin Offering (ICO) projects and comparative legal analysis of the legislation of 40-member countries of International Anti-Monopoly Network regulating the requirements imposed on advertisement offers for investment into such projects.*

*The topicality of the research is determined by anti-monopoly regulators not identifying the status of whitepapers, while this document contains the elements of advertisement, and ICO projects and their advertisement campaign monitoring not being carried out at the initial stages of ICO.*

*The analysis of requirements for advertising ICO projects and legal status of whitepapers has not been conducted until now. Meanwhile, 99% of current ICOs are fraud for which the participants of the project incur no liability.*

*The research of legal issues related to advertising ICO projects and control over complying of such projects with advertisement requirement carried out by legal government authorities will allow for protection of the weakest party in such business relations, the investor.*

**Keywords:** Initial coin offering, advertisement requirements, projects, startups, cryptocurrency, whitepaper.

**JEL code:** O23, M37, E44, E63, K24.

---

<sup>1</sup>Department of Legal Regulation of Economic Operations of The Federal State-Funded Educational Institution of Higher Education "Financial University under the Government of the Russian Federation", [vk.shaydullina@gmail.com](mailto:vk.shaydullina@gmail.com)

## 1. Introduction

Innovational digital economics based on the usage of crypto-currencies is rapidly gaining momentum, and this cannot be halted even by the difficult situation in the world financial arena and by the crisis phenomena in certain countries. In the current year, the total market capitalization of the top seven crypto-currencies increased an eight-and-something-fold and amounted to about \$100 bln (Greenstein, 2017). Today there are over eight hundred crypto-currencies in the world. Among them, there is a “top nine” the overall capitalization of which exceeds \$1 bln (ForkLog, 2017). The creation of crypto-currencies caused the formation of a new form of startups receiving investments – “Initial coin offering” (ICO). ICO is a method of raising investments in the form of selling to investors a fixed amount of new crypto-currency units received by single or accelerated emission via blockchain technologies.

The ICO market volume sees a rapid growth. Specialized ICO funds have already started to appear, and traditional venture players gladly invest into projects fulfilled on the basis of blockchain technologies. For instance, only in the second quarter of 2017, they invested about \$232 mln into this area (Metelitsa, 2017).

In the nearest future, main centers of crypto-economy will be formed in the world to concentrate the biggest share of this market’s operations and funds there. Today the growth speed of the field is already amazing. Every country tries to find and apply the most efficient model of regulation of crypto-currency transactions including ICO.

However, legal regulation of this area is currently far from perfect in the world. The existence of legal gaps causes ICO fraud cases. According to the information of the internet resource Coinspot, 99% of ICO is a speculation (Coinspot, 2017). Numerous fraudulent schemes coupled with the rapidly growing interest of investors to the ICO market makes us think about the necessity of developing more efficient options for ICO projects fulfillment.

Experts competent in this field say that creation of reliable mechanisms for protection of investors’ rights and interests should be considered one of the most important conditions of ICO development. However, most researches and discussions look into defining the legal status of crypto-currency (Brachmann, 2017; Albekov *et al.*, 2017; Saksonova and Kuzmina-Merlino, 2017; Vovchenko *et al.*, 2017), complying with financial and bank legislation (Scott, 2017) and personal data protection (Dascalescu, 2017). However, the legal analysts currently fail to notice the so-called “elephant in the room” – the necessity to improve the advertisement legislation.

## 2. Methodology of the Research

The research currently includes the following steps:

- 1) analysis of research and development papers dedicated to defining the legal status of advertisement investment messages for ICO and crypto-currency;
- 2) analysis of whitepapers for the biggest ICO projects in order to identify the characteristics of a whitepaper;
- 3) formation of a sample from 40 member countries of the International Anti-Monopoly Network based on the analysis of the popularity of ICO as a method of raising investment for startups;
- 4) analysis of legislation on advertisement of these countries and defining main advertisement requirements. The hypothesis for this research is a statement that whitepapers for ICO projects are an advertisement and are subject to the advertisement requirements of the legislation of the country on the territory of which this document is placed.

This research involves using specific terminology based on international studies and the analysis of legislation of the International Anti-Monopoly Network member countries:

- *Crypto-currency*: a type of digital currency based on cryptographic methods.
- *Initial Coin Offering (ICO)*: a method of raising investments in the form of selling to investors a fixed amount of new crypto-currency units received via single or accelerated emission.
- *Token*: a unit received via single or accelerated emission by a project raising investment in crypto-currency.
- *ICO project*: a project raising investment via ICO.
- *Whitepaper*: a document containing the description of the ICO project and its team, characteristics of offered tokens, the offer for investors etc.

### **3. Results and discussion**

According to the data of the American Marketing Association (AMA), advertisement is “placing announcements or other convincing messages in any media by commercial and non-commercial organizations, state institutions and persons which are willing to inform and/or persuade the participants of a certain target market in relation to their products, services, or ideas” (AMA, 2016). Advertisement is recognized as an efficient instrument for creating brands and increasing the value of a business.

The analysis of foreign legislation has shown that the term “advertisement” is interpreted rather broadly. Basically, it is any information about people, products, writings, or services. The main hallmark of advertisement, from the legal point of view, is the aim of its distribution which is “to attract attention to the object of advertisement, form or support interest thereto and to promote it on the market” (Fischer and Himme, 2017).

The legal definition of a whitepaper is not currently present in the legislation of the countries under examination. Therefore, the definition of characteristics of a whitepaper seems possible only through the analysis of a sample of data from the documents of the biggest projects fulfilled in 2014-2017 (Whitepapers of the following projects have been analyzed: Filecoin, Tezos, Bancor, Status, EOS, Brave, Aragon, TokenCard, KickICO, Blackmoon Crypto, SONM, Russian Mining Center, MobileGo, The DAO, TenX, Polybius, AEternity, openANX, Ethereum, Waves platform, Cofound.it, Gnosis). As a result of this analysis, the following characteristics of a whitepaper have been identified: presence of the description of ICO project scope; technical description of the project available; description of the project members' experience; project business model detailed description; "roadmap" of the project's development; description of the token and its benefits; indication of the number of emitted tokens and its value; offer to buy tokens, calculation of the future value of the token in order to determine the investor's revenue.

Whitepapers of the examined projects are placed on the official websites of the projects, on specialized blockchain platforms, forums, advertisements websites; they are emailed to potential investors. Considering the definition of the term "advertisement" in the legislation of the examined countries, it may be concluded that whitepapers have traits of advertisement.

In Australian legislation, the requirements to advertising financial services, including offers to invest into ICO projects, are set out in the Regulatory guide 234 "Advertising financial products and services (including credit): Good practice guidance" (ASIC, 2012). Particularly clauses 234.33 stipulate that advertisement of financial products and services promising an "unreasonable" increase of income disproportionate to investments is forbidden. At the same time, Article 45 of Australian Competition and Consumer Act (WIPO, 2010) specifies the organizer's promise of high income as one of the characteristics of a financial pyramid.

This standard is also present in the Ethiopian Advertisement Proclamation No. 759/2012 (Yohannes, 2012). It is widely thought that the main characteristic of a financial pyramid is the promise of high income and concerns only the purchase of tokens in the form of securities. However, the legislation of a number of countries views it differently. Particularly, according to Article 24 of New Zealand's Fair Trading Act (New Zealand Legislation, 2017), it is not allowed to carry out sales schemes in the form a financial pyramid which also consists in the sale of certificates, coupons etc., that cannot be re-sold, yet promise high income. Such provision is present in Chapter 7 of Bulgarian Competition Protection Law (Information about Bulgaria, 2015), in Japanese Consumer Law (Comparative Consumer Law, 2010), in Switzerland's Federal Law on Unfair Competition (WIPO, 1986). Thus, it is doubtful that "trade" tokens are not subject to requirements of the anti-monopoly legislation of a number of countries.

The legislation of some countries recognizes standards in accordance with which a general ban is imposed on the advertisement that is misleading. In particular, according to Paragraph 5 of Germany's Unfair Competition Act (Bundesgesetzblatt, 2015), it is stipulated that misleading advertisement shall imply such advertisement which creates a false impression about offered products and services for the parties of a civil transaction. The message about an extremely high income from investments can be essentially interpreted as a violation of this provision since it creates an impression of fast and guaranteed income for the purchaser of tokens. Such ban is also established in Egypt's Law No. 67 on the Consumer Protection (WIPO, 2006), in England's Guidance "Consumer Protection from Unfair Trading Regulations - businesses: OFT979" (GOV.UK, 2009), in the New Guinea's Commercial Advertisement (Protection of the Public) Act (WIPO, 1976) and in the New Guinea's Banks and Financial Institutions Act (2000), in the Albania's Law No. 9902 (WIPO, 2008a), in the Competition Act of Canada (Justice Laws Website, 1985) and local Canadian laws (for example, Ontario Consumer Protection Act) (Ontario, 2014), British Columbia Business Practices and Consumer Protection Act (2004), in the Consumer Code of France (WIPO, 2015) and Commerce Code of France (n./d.).

In Fiji's legislation, according to Article 77 of Commerce Commission Decree (The Fijian Government, 2010), there is a ban on advertisement which indicates guarantees of receiving any kind of benefit (including guarantees of receiving revenue, high income, increase of tokens value) that are not provided in reality. Such standard is also stipulated in Article 33 of the Law No. 1281-IVQ of the Republic of Azerbaijan (Database legislation of the CIS countries, 2015), Article 22 of the Law of the Republic of Belarus No. 225-3 (The National Legal Internet Portal of the Republic of Belarus, 2007), Article 16 of the Law on Advertising of the Republic of Armenia (National Assembly of the Republic of Armenia, 1996), Article 17 of the Law of the Kyrgyz Republic No. 155 (Centralized database of legal information Ministry of Justice of the Kyrgyz Republic, 1998), Article 24 of the Law of Ukraine (Pravoved, 1997).

The legislation of a number of countries, on the contrary, grants right to ICO projects to publish a prognosis or promise of certain income in their advertisement. According to Exhibit E of Brazilian Advertising Self-Regulation Code (n./d.), it is allowed to publish a prognosis of future results in the form of an index or percentage but the ad must indicate the grounds for this assessment, and the material results must include taxation.

It is also necessary to mention that a number of countries establish a ban on advertisement of securities without emission registration. If the token contains characteristics of a security, the aforementioned requirement applies to advertising such tokens. In this case the possibility of pre-ICO (preliminary token sale stage) is questioned. The ban on token security ads is also established by laws of several ex-USSR member countries. In a number of countries, there are no laws regulating advertisement. Because of this, basic requirements to advertisement messages are

established by commercial law. For example, the Law No. 26.422/2008 on Commerce of Argentina (WIPO, 2008b) stipulates that advertisement must reflect “fair and truthful expectations” of any consumer from receiving certain products (work, services). Such standard is also present in the Consumer Protection Act of India (1986).

Investing in ICO projects is a quite new field that started its development in 2013. Consequently, potential investors had little experience and knowledge in the field under examination. Legislative bodies of a number of countries established standards regarding the ban on evil-spirited exploitation of a person’s trust or their lack of experience or knowledge.

Despite the fact that complying with the legislation on advertisement is an obvious object of control, it is only Italy that currently establishes special limitations on advertisement in the sphere of ICO project promotion. Italian anti-monopoly service has recently taken restrictive measures against an ICO emitter because of their disproportionate marketing messages which promised high revenue to their ICO investors, including the published whitepapers.

#### **4. Conclusions**

Thus, the following conclusions can be drawn from the research presented above:

1. The analysis of whitepapers of the biggest ICO projects has shown that despite the legal uncertainty of this document’s status, whitepaper can be considered advertisement. However, in order to fill the legal vacuum, the International Anti-Monopoly Network needs to determine the status of this document on an international level.
2. The analysis of the international legislation on advertisement has shown that the most typical bans in the sphere of ICO projects advertisement (including placing whitepapers) are:

- a ban on financial products and services promising an “unreasonable” increase in revenue disproportionate to investments;
- a ban on advertisement of products and services having characteristics of a financial pyramid;
- a ban on advertisement which is misleading in terms of promises of an extremely high income from deposits and investments;
- a ban on advertisement which indicates the presence of guarantees of receiving any kind of benefits;
- a ban on advertisement which indicates the presence of guarantees of receiving any kind of benefits (including guarantees of receiving revenue, high income) that are not actually provided;
- a ban on advertisement with prognoses of income;

- a ban on evil-spirited exploitation of a person's trust or their lack of experience or knowledge.

The International Anti-Monopoly Network must develop guidelines on monitoring international ICO projects and collaboration among countries concerning the said issue.

3. It is necessary for anti-monopoly services of different countries to develop rules of monitoring ICO projects in terms of complying with the requirements established by legislation on advertisement and financial markets. Furthermore, it is necessary for state authorities to develop their view on the legal status of whitepapers as this document currently has characteristics of advertisements.

## References:

- Albekov, U.A., Vovchenko, N., Andreeva, G., Vladimirovna, O. and Sichev, R.A. 2017. Block Chain and Financial Controlling in the System of Technological Provision of Large Corporations. *European Research Studies Journal*, 20(3B), 3-12.
- AMA. 2016. Dictionary. Available at: <https://www.ama.org/resources/Pages/Dictionary.aspx>.
- ASIC. 2012. RG 234 Advertising financial products and services (including credit): Good practice guidance. Available at: <http://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-234-advertising-financial-products-and-services-including-credit-good-practice-guidance/>.
- Banks and Financial Institutions Act 2000. 2000. Available at: <https://www.lexadin.nl/wlg/legis/nofr/oeur/arch/png/bfia.pdf>.
- Brachmann, S. 2017. Uncertain legal status of financial transactions in marijuana industry lead to bitcoin, cryptocurrency development. Available at: <http://www.ipwatchdog.com/2017/09/02/financial-transactions-marijuana-bitcoin-cryptocurrency-development/id=87190>.
- Brazilian Advertising Self-Regulation. (n./d.). Available at: [www.conar.org.br/pdf/brazilian-advertising-self.pdf](http://www.conar.org.br/pdf/brazilian-advertising-self.pdf).
- British Columbia Business Practices and Consumer Protection Act. 2004. Available at: [http://www.bclaws.ca/Recon/document/ID/freeside/04002\\_00](http://www.bclaws.ca/Recon/document/ID/freeside/04002_00).
- Bundesgesetzblatt. 2015. Zweites Gesetz zur Änderung des Gesetzes gegen den unlauteren Wettbewerb. Available at: [https://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F%5B%40attr\\_id%3D%27bgbl115s2158.pdf%27%5D](https://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F%5B%40attr_id%3D%27bgbl115s2158.pdf%27%5D).
- Centralized database of legal information Ministry of Justice of the Kyrgyz Republic. 1998. Law of the Kyrgyz Republic of December 24, 1998 No. 155 "On Advertising". Available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/162/210?cl=en-ru>.
- Coinspot. 2017. 99% ICO is a scam. Available at: <https://coinspot.io/analysis/99-ico-afera/>.
- Commerce Code of France. (n./d.). Available at: [https://www.legifrance.gouv.fr/web/index.../code\\_commerce\\_part\\_L\\_EN\\_20130701](https://www.legifrance.gouv.fr/web/index.../code_commerce_part_L_EN_20130701)
- Comparative Consumer Law. 2010. Japanese Consumer Law. Available at: <https://tmuramot.wordpress.com/confusion-of-the-concept-between-fiduciary-duty-and-suitability-rule/>.

- Consumer Protection Act of India. 1986. Available at:  
[http://ncdr.nic.in/bare\\_acts/Consumer%20Protection%20Act-1986.html](http://ncdr.nic.in/bare_acts/Consumer%20Protection%20Act-1986.html).
- Dascalescu, A. 2017. Cryptocurrency Security: How to Safely Invest in Digital Currency. Available at: <https://heimdalsecurity.com/blog/cryptocurrency-security-how-to-safely-invest-in-digital-currency>.
- Database legislation of the CIS countries. 2015. The law of May 12, 2015 No. 1281-IVQ "On Advertising" of the Republic of Azerbaijan. Available at:  
[http://base.spinform.ru/show\\_doc.fwx?rgn=83040](http://base.spinform.ru/show_doc.fwx?rgn=83040).
- Fischer, M., Himme, A. 2017. The financial brand value chain: How brand investments contribute to the financial health of firms. *International Journal of Research in Marketing*, 34(1), 137-153.
- ForkLog. 2017. Capitalization of DASH and Ethereum Classic exceeded \$ 1 billion. URL: <https://forklog.com/kapitalizatsiya-dash-i-ethereum-classic-prevysila-1-mlrd/>.
- GOV.UK. 2009. Guidance „Consumer Protection from Unfair Trading Regulations - businesses: OFT979“. Available at:  
<https://www.gov.uk/government/publications/consumer-protection-from-unfair-trading-regulations-businesses>.
- Greenstein, S. 2017. The value of the Crypto-currency market has tripled in three days. Available at: <https://geektimes.ru/post/289903>.
- Information about Bulgaria. 2015. The Law on Protection of Competition of the Republic of Bulgaria. Available at: <https://bginfo.su/zakon-o-zashhite-prav-potrebitelej-v-respublike-bolgariya>.
- Justice Laws Website. 1985. Competition Act 1985 of Canada. Available at:  
<http://laws.justice.gc.ca/eng/acts/C-34/index.html>.
- Metelitsa, E. 2017. Modern token. What is ICO and whether investors should go to this market. Available at: <http://www.forbes.ru/finansy-i-investicii/349657-modern-token-chto-takoe-ico-i-stoit-li-investoram-idti-na-etot-rynok>.
- National Assembly of the Republic of Armenia. 1996 Available at. Law on Advertising dated 30.04.1996 of the Republic of Armenia. Available at:  
<http://www.parliament.am/legislation.php?sel=show&ID=1707&lang=eng>.
- New Zealand Legislation. 2017. Fair Trading Act 1986. Available at:  
<http://www.legislation.govt.nz/act/public/1986/0121/61.0/DLM96439.html>.
- Ontario. 2014. Your rights under the Consumer Protection Act. Available at:  
<https://www.ontario.ca/page/your-rights-under-consumer-protection-act>.
- Pravoved. 1997. Law "On Advertising" of Ukraine. Available at:  
<http://pravoved.in.ua/section-law/138-zuor.html>.
- Saksonova, S. and Kuzmina-Merlino, I. 2017. Fintech as Financial Innovation - The Possibilities and Problems of Implementation. *European Research Studies Journal*, 20(3A), 961-973.
- Scott, A. 2017. Legal experts: investors may view sec's statement as validating ICO's. URL: <http://bitcoinist.com/legal-investor-sec-statement-ico>.
- The Fijian Government. 2010. Trade Commission Decree 2010 Fiji. Available at:  
<http://www.fiji.gov.fj/getattachment/5120fb12-dc67-461c-abe8-674d793d99fc/Decree-No-49>.
- The National Legal Internet Portal of the Republic of Belarus. 2007. Law of the Republic of Belarus of May 10, 2007 No. 225-3 "On Advertising". Available at:  
<http://www.pravo.by/document/?guid=3871&p0=h10700225>.

- 
- Vovchenko, G.N., Tishchenko, N.E., Epifanova, V.T., Gontmacher, B.M. 2017. Electronic Currency: The Potential Risks to National Security and Methods to Minimize Them. *European Research Studies Journal*, 20(1), 36-48.
- WIPO. 1976. Commercial Advertisement (Protection of the Public) Act 1976. Available at: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=199858](http://www.wipo.int/wipolex/en/text.jsp?file_id=199858).
- WIPO. 1986. Federal Law of December 19, 1986, on Unfair Competition. Available at: <http://www.wipo.int/wipolex/en/details.jsp?id=660>.
- WIPO. 2006. Law No. 67 of 2006 on the Consumer Protection. Available at: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=191742](http://www.wipo.int/wipolex/en/text.jsp?file_id=191742).
- WIPO. 2008a. Law No. 9902, date 17.4.2008 "On consumer protection". Available at: <http://www.wipo.int/edocs/lexdocs/laws/en/al/al027en.pdf>.
- WIPO. 2008b. Ley 22.802, Lealtad Comercial, última actualización por Ley 26.422/2008. URL: [http://www.wipo.int/wipolex/ru/text.jsp?file\\_id=224922](http://www.wipo.int/wipolex/ru/text.jsp?file_id=224922).
- WIPO. 2010. Competition and Consumer Act 2010. Available at: <http://www.wipo.int/wipolex/ru/details.jsp?id=8187>.
- WIPO. 2015. Consumer Code of France. Available at: <http://www.wipo.int/wipolex/en/details.jsp?id=14672>.
- Yohannes, A. 2012. Advertisement Proclamation No. 759/2012. Available at: <https://chilot.me/2012/09/advertisement-proclamation-no-7592012>.