



The Legal 500 & The In-House Lawyer  
Comparative Legal Guide  
Ireland: Blockchain

This country-specific Q&A provides an overview of the legal framework and key issues surrounding blockchain law in Ireland.

This Q&A is part of the global guide to Blockchain.

For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/blockchain/>



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- 1. Please provide a high-level overview of the blockchain market in your jurisdiction. In what business or public sectors are you seeing blockchain or other distributed ledger technologies being**

**adopted? What are the key applications of these technologies in your jurisdiction, and what is the state of development of the market?**

Given its long established track record as a global technology hub, Ireland is now positioning itself as a blockchain development centre of excellence with companies across many industries leveraging blockchain technology. For example, Ireland already hosts many companies involved in blockchain, including Accenture, Arc-Net, Coinbase, ConsenSys, Deloitte Labs, Fidelity Labs, Circle and Infosys.

Blockchain is being adopted in both the finance and fintech industries and it is also being used by public bodies, in supply chain and as part of technology infrastructure. There are various examples of home-grown Irish businesses that are leveraging blockchain to deliver innovative products and services, including major technology companies based in Ireland (such as Microsoft, Amazon, and IBM) are also developing tools and applications which will allow their customers to create and manage scalable blockchain networks using open source technologies.

**2. Have there been any notable success stories or failures of applications of these technologies in your jurisdiction?**

As mentioned in **question 1**, there are several notable applications of blockchain technology in Ireland which are being used to drive efficiency and transparency including:

- **Moyee Coffee:** Moyee is working with KrypC and FairChain ambassadors '*to build a movement around blockchain traceable coffee*'. Moyee offers customers access to a shared ledger that tracks each stage of its production process providing full visibility of the supply chain to the parties providing an unprecedented level of transparency around origin and quality; and
- **Ornua:** In September 2016, Ornua, Ireland's largest exporter of Irish dairy products, was involved in the first ever blockchain based trade finance transaction in the world.

On a wider scale, a [discussion paper](#) on Virtual Currencies and Blockchain Technology (the **Discussion Paper**), published in March 2018 by the Department of Finance (the **DOF**), noted that 6.3% of the total venture capital invested in Ireland between 2012 and 2016 was channelled to Irish based blockchain businesses representing the highest percentage of any northern European country.

**3. Please outline the principal legislation and the regulators most relevant to the use of blockchain technologies in your jurisdiction. In particular, is there any blockchain-specific legislation or are there any blockchain-specific regulatory frameworks in your jurisdiction, either now or envisaged in the short or mid-term?**

In Ireland, there is no blockchain specific legislation or blockchain specific regulatory framework, nor are there any specific proposals envisaged in the short or mid-term (subject to our comments at **question 8** below in relation to the forthcoming changes to the Irish AML regime required under the 5th Anti-Money Laundering Directive (**5AMLD**)). However, depending on the particular use case and activities being carried out by a particular blockchain business, some or all the following Irish laws and regulations are likely to be

relevant:

- European Union (Markets in Financial Instruments) Regulations 2017 (the **MiFID II Regulations**);
- European Union (Payment Services) Regulations 2018 (the **Payment Services Regulations**);
- Prospectus (Directive 2003/71/EC) Regulations 2005, as amended (the **Prospectus Regulations**);
- European Union (Market Abuse) Regulations 2016 (**MAR**);
- Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (**CJA 2010**), as amended;
- European Communities (Electronic Money) Regulations 2011 (**E-Money Regulations**);
- European Union (Alternative Investment Fund Managers) Regulations 2013, as amended (**AIFMD**);
- Consumer protection laws including the Central Bank of Ireland's (**CBI**) Consumer Protection Code; and
- Irish e-commerce and Irish privacy law.

For the most part, the Irish laws referred to above are derived from corresponding EU-level directives and regulations.

Similarly, there is no blockchain specific regulatory authority in Ireland. However, depending again on the particular use case and the activities being carried out by the particular blockchain business, it may fall under the supervisory authority of a number of Irish regulators. For example, a blockchain business providing regulated financial services would be subject to regulation by the CBI.

Similarly, a blockchain business may be subject to the authority of the Competition and Consumer Protection Commission (**CCPC**) if it provides services to Irish consumers, or to the authority of the Data

Protection Commission (**DPC**), if it is involved in processing or controlling personal data relating to Irish citizens.

4. **What is the current attitude of the government and of regulators to the use of blockchain technology in your jurisdiction?**

The Irish Government has generally welcomed and sought to foster the development and use of blockchain technology in Ireland. For example, in its International Financial Services Strategy 2025 (**IFS 2025**), published in December 2018, the Irish Government outlined a number of blockchain specific proposals (including the launch of various government advisory committees and blockchain education and training programs) aimed at positioning Ireland as an EU centre of excellence for blockchain technology.

However, from a regulatory standpoint, Irish authorities have been somewhat cautious in relation to the risks associated with certain aspects of blockchain technology. For example, in December 2017 the CBI issued an alert in relation to Initial Coin Offerings (**ICOs**) that echoed similar warnings previously published by the European Securities and Markets Authority (**ESMA**) and the European Banking Authority (**EBA**) and in February 2018 the CBI issued a consumer warning on risks of buying or investing in virtual currencies and cryptocurrencies. Similarly, the CCPC has warned consumers to '*be very careful of potential scams when it comes to cryptocurrencies*'.

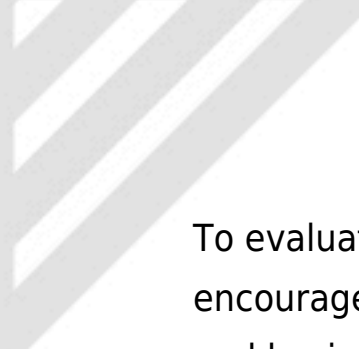
5. **Are there any governmental or regulatory initiatives designed to facilitate or encourage the development and use of blockchain technology (for example, a regulatory sandbox)?**

There is currently no regulatory sandbox in operation in Ireland nor are there any plans to establish one. There is, however, a fintech innovation hub (the **Innovation Hub**) which has been operated by the CBI since April 2018. The Innovation Hub engages with fintech firms involved in developing and deploying various innovative technologies, including blockchain. It also provides a direct and dedicated point of contact in the CBI for firms engaged in fintech innovation, allowing them to ask questions and engage with the CBI outside of existing formal regulator/firm engagement processes.

The Government and several Irish-based companies have also combined to establish Blockchain Ireland, an initiative led by IDA Ireland's Blockchain Expert Group, aimed at helping to promote and share information on blockchain in Ireland

6. **Have there been any recent governmental or regulatory reviews or consultations concerning blockchain technology in your jurisdiction and, if so, what are the key takeaways from these?**

The Discussion Paper, discussed in **question 2**, is the most prominent governmental publication on blockchain. The key takeaway from the Discussion Paper is that the DOF is of the opinion that the risks and opportunities of blockchain cannot be comprehensively addressed by one policy measure or State agency.



To evaluate these issues and to develop policy measures that encourage innovation while addressing risks to consumers, investors and businesses, the DOF believes that the Irish government must engage the expertise of multiple State agencies such as the DOF, the Revenue Commissioner (**Revenue**), the DPC and the Department of Business, Enterprise and Innovation.

**7. Has any official guidance concerning the use of blockchain technology been published in your jurisdiction?**

In addition to the Discussion Paper, several government departments and agencies have published guidance related to the use of blockchain and cryptocurrencies in Ireland, including the CBI and the CCPC (as noted in **question 4**) and Revenue.

**8. What is the current approach in your jurisdiction to the treatment of cryptocurrencies for the purposes of financial regulation, anti-money laundering and taxation? In particular, are cryptocurrencies characterised as a currency?**

For the purposes of this chapter, by '*cryptocurrencies*' we mean cryptotokens which operate purely as payment instruments, such as Bitcoin, Ether, Litecoin and their equivalents. We are not referring to other forms of cryptoassets, such as security tokens, utility tokens or tokenized assets, which are discussed elsewhere in the chapter. '*Cryptocurrencies*' in this sense are frequently referred to as '*virtual currencies*' by the CBI.

## Financial Regulatory Regime

There is currently no specific regulatory regime in Ireland that deals with pure cryptocurrencies. However, the following provisions of general Irish financial regulation merit consideration:

### *MiFID II Regulations*

The MiFID II Regulations derive from and transpose an EU directive, MiFID II, and are the cornerstone of Irish financial markets regulation. The MiFID II Regulations set out requirements relating to '*financial instruments*' (which includes '*transferable securities*') – the key requirement being that most intermediaries and advisors involved in this space in Ireland are subject to prior authorisation by the CBI. The definition of '*financial instruments*' under the MiFID II Regulations directly transposes the definition under MiFID II and explicitly excludes '*instruments of payments*'. Therefore, while certain forms of cryptoassets may fall within the scope of the MiFID II Regulations and/or the Prospectus Regulations, activities relating to pure cryptocurrencies would appear to be out of scope.

### *E-Money Regulations*

The E-Money Regulations transpose the E-Money Directive without any significant additional national measures. '*[E]lectronic money*' is defined as '*electronically (including magnetically) stored monetary value as represented by a **claim on the electronic money issuer**, which (a) is issued on receipt of funds for the purpose of making payment transactions, (b) is accepted by a person other than the electronic money issuer, and (c) is not excluded [from the scope of*



the E-Money Regulations].'

Most forms of cryptoassets (including pure cryptocurrencies) do not represent a claim on the issuer and so will fall outside the scope of the E-Money Regulations. This would appear to be in line with the views of the CBI which has emphasised that that cryptocurrencies are '*unregulated*'.

However, an exception to this may apply in relation to the category of cryptocurrencies known as '*stablecoins*' - particularly, where these are pegged to, and are directly exchangeable on demand for, fiat currencies. While the CBI has not commented on this, the EBA has indicated that these type of cryptocurrencies **may** satisfy the claim on the issuer criterion. This means that where they also meet the other criteria for '*electronic money*', they can fall within the scope of the E-Money Directive. As the E-Money Regulations transpose the E-Money Directive with little variation, it is likely that the CBI will reach a similar view.

Where a particular cryptocurrency qualifies as '*electronic money*', the E-Money Regulations would require that the issuer be authorised as an e-money institution. In order to be authorised as an e-money institution in Ireland, the issuer would need to apply for authorisation from the CBI, comply with on-going financial regulatory requirements and would be subject to Irish anti-money laundering (**AML**) requirements.

## Anti-Money Laundering

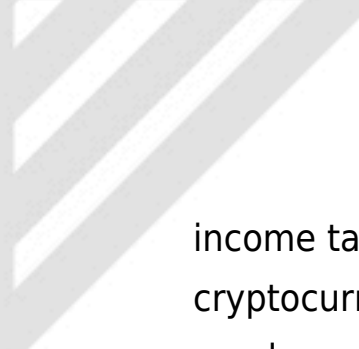
Cryptocurrency transactions do not currently per se fall within the scope of the Irish AML regime. With that said, certain market participants may fall within scope – for example, because their wider service offering involves regulated financial services related activities (for example, where they offer traditional banking or payment services as part of their wider offering) or because the cryptocurrency qualifies as '*electronic money*'.

This is set to change for certain market players under the forthcoming Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2019 (the **2019 Bill**). The 2019 Bill, once enacted, will formally transpose 5AMLD into Irish law. 5AMLD requires member states to impose registration and AML requirements on fiat-to-virtual cryptocurrency exchanges and custodian wallet providers operating in Europe. Under the current draft of the 2019 Bill, fiat-to-virtual cryptocurrency exchanges and custodian wallet providers are expressly included as '*designated persons*' under the CJA 2010. Designated persons for the purposes of the CJA 2010 must apply customer due diligence, report suspicious transactions and have specific procedures in place to prevent money laundering and terrorist financing.

## Taxation

There are no Irish tax provisions which apply specifically to transactions involving cryptocurrency.

Guidelines from Revenue (the **Guidelines**) state that the ordinary



income tax, corporation tax and capital gains tax rules apply to cryptocurrency activities. The Guidelines confirm that, where an employee receives remuneration paid in a cryptocurrency, the value for computing Irish employment taxes is the Euro amount attaching to the cryptocurrency at the time it is paid to the employee. Irish payroll tax returns and taxes withheld at source should be reported in Euro and remitted to Irish Revenue in Euro respectively.

In respect of VAT, Revenue's view is that Bitcoin and other similar cryptocurrencies are regarded for VAT purposes as '*negotiable instruments*' and exempt from VAT. The mining of cryptocurrencies is considered to be outside the scope of VAT, on the basis that the activity does not constitute an economic activity for VAT purposes.

At the time of writing, no specific legislation has been introduced to bring cryptocurrency transactions within the scope of stamp duty. However, if an instrument is created to transfer cryptocurrency, this document could potentially trigger an Irish stamp duty charge.

### Is cryptocurrency regarded as currency under Irish law?

The CBI has noted that, in general, cryptocurrency is more like a very high-risk, speculative asset than a standard currency. It has emphasised that there are various limitations associated with cryptocurrencies, in particular, relating to their volatility, that make it difficult for them to properly function as currencies.

This is in line with the approach taken in the current draft of the 2019 Bill, which defines '*virtual currencies*' as a '*digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and **does not possess a legal status of currency or money**, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically*'.

However, as outlined above, there are a number of regulatory grey areas in this context and each situation would need to be analysed on its facts. In particular, the category of cryptocurrencies known as "*stablecoins*" - which specifically aim to minimise the volatility issues that are associated with general cryptocurrencies and which are in many cases pegged to (or one could argue "*attached*" to) a legally established currency - is particularly relevant in this context. Where a stablecoin is structured such that it is pegged to a fiat currency and it successfully avoids the volatility issues generally associated with cryptocurrencies, it is possible that the CBI could take the view that it is a form of currency.

9. **Are there any prohibitions on the use or trading of cryptocurrencies in your jurisdiction?**

There are no specific prohibitions in Ireland on the use or trading of pure cryptocurrencies. Their use and trading is subject to generally applicable laws, including Irish criminal laws. So, for example, if

cryptocurrency is received as a result of activities which are prohibited under Irish law, the Irish courts have confirmed that it may be seized by the Irish Criminal Assets Bureau as the proceeds of crime (*Criminal Assets Bureau v Mannion* [2018] IEHC 729).

10. **To what extent have initial coin offerings taken place in your jurisdiction and what has been the attitude of relevant authorities to ICOs?**

Relatively few ICOs have been carried out in Ireland and Irish authorities have generally been cautious when it comes to ICOs. The Director of Policy and Risk of the CBI indicated that the CBI supports ESMA's position that 'depending on how they are structured, ICOs may fall outside the regulatory space', but cautioned that firms which are '*involved in ICOs must consider whether their activities fall within the perimeter of regulated activities*'.

11. **If they are permissible in your jurisdiction, what are the key requirements that an entity would need to comply with when launching an ICO?**

Unlike some other European jurisdictions, Ireland has not taken steps to introduce a specific regulatory regime to deal with ICOs, nor are there any proposals to introduce such a regime in the short term.

The applicable requirements will depend on the nature of the tokens being issued and the structure of the ICO and each ICO would need to be considered on a case by case basis.

A key question to consider in relation to any ICO carried out in Ireland will be whether the ICO involves the issuance of '*transferable securities*' or some other form of 'financial instrument' for the purposes of the MiFID II Regulations. The CBI has issued no guidance to date on what type of tokens might qualify as '*transferable securities*' for Irish regulatory purposes. However, broadly speaking, the closer a token is to a traditional share or other form of security (for example, where it carries voting or quasi-voting rights, where there are contractual rights to profit-sharing, revenues or other payments, where it will be tradeable on crypto exchange, etc), the more likely it is to be regarded as a transferable security for the purposes of the MiFID II Regulations. If a token qualifies as a transferable security and the token issuance involves an '*offer to the public*', then the launch of the ICO may be subject to Irish prospectus requirements (with some exceptions).

As mentioned at **question 8**, if the tokens qualify as '*electronic money*', the token issuer would (subject to limited exceptions) need to obtain authorisation as an e-money institution under the E-Money Regulations prior to issuing its tokens.

12. **Is cryptocurrency trading common in your jurisdiction? And what**

## **is the attitude of mainstream financial institutions to cryptocurrency trading in your jurisdiction?**

A study conducted by the Irish Times in 2018 suggests that approximately 120,000 people in Ireland own cryptocurrency, a 300% increase on the previous four years. This study also suggests that, at some stage in recent years, more than 180,000 people have traded or used Bitcoin.

Irish financial institutions have stated that they have not imposed restriction on the purchase of cryptocurrencies, like some financial institutions in the UK, but it has been reported by crypto and blockchain companies in Ireland that they have had difficulty opening bank accounts due to concerns regarding the sourcing of funds.

### **13. Are there any relevant regulatory restrictions or initiatives concerning tokens and virtual assets other than cryptocurrencies (e.g. trading of tangible property represented by cryptographic tokens)?**

There is currently no specific legislation or regulation in Ireland in relation to categories of tokens or virtual assets other than cryptocurrencies.

In the absence of a specific regime, where a token represents a tangible, real-world asset, any trading of the token would need to

take into account the traditional legal rules applicable to the asset in question. For example, if a token represents an ownership interest in Irish real estate, the transfer of valid title would be subject to compliance with general rules applicable to the transfer of title in real estate.

Furthermore, if the token is structured in such a way that it qualifies as a '*financial instrument*' (see **question 8** above), trading or dealing with the token would be subject to the requirements set out in the MiFID II Regulations, MAR and also the Irish AML regime, to the extent that the activity is regulated. If the token is packaged as part of a regulated investment fund, the provisions of the AIFM Regulations may also need to be considered (for example, where the cryptoassets may qualify as units in collective investment undertakings). Subject to certain exceptions, it is not permitted to offer '*transferable securities*' to the public without first publishing a prospectus pursuant to the Prospectus Regulations.

14. **Are there any legal or regulatory issues concerning the transfer of title to or the granting of security over tokens and virtual assets?**

As per **question 13**, this would depend on the nature of the tokens in question. There are no specific rules that apply per se to the transfer of title or granting of security over tokens and virtual assets under Irish law. However, in the case of a tokenized asset (for example, a token that represents an ownership interest in Irish real



estate), the transfer of valid title or granting of security would be subject to compliance with general rules applicable to the real-world asset class. Equally, if the token qualifies as a '*financial instrument*', the requirements set out in the MiFID II Regulations, MAR and Irish AML requirements would need to be considered.

15. **To what extent are tokens and virtual assets in use in your jurisdiction? Please mention any key initiatives concerning the use of tokens and virtual assets in your jurisdiction.**

At the time of writing, the tokenization of traditional assets is not common practice in Ireland. However, there are a number of initiatives that are looking at this for particular categories of assets. For example, the Aviation Working Group (**AWG**), a not-for-profit group in the aviation finance and leasing industry, has specifically provided for the possibility that the Global Aircraft Trading System (**GATS**) platform, which is being developed in Ireland by Fexco to facilitate the trading and financing of aircraft equipment, may migrate to a private blockchain.

16. **How are smart contracts characterised within your legal framework? Are there any enforceability issues specific to the operation of smart contracts which do not arise in the case of traditional legal contracts?**


There is no guidance on the enforceability of smart contracts issued in Ireland and there has been no relevant case law meaning the

legal status of smart contracts remains unclear. However, if all of the legal formalities of a valid contract are present (i.e. offer, acceptance, consideration and an intention to create legal relations), there is no reason to suspect that a smart contract would not be enforceable under Irish law.

Irish law recognises the validity of electronic contracts and signatures through the Electronic Communications Act 2000 (**ECA**). This removes the argument that a signature will be held invalid purely because it is in electronic form. Smart contracts share the same key concern as electronic signatures - evidencing the authority of the parties to enter the contract. This, along with other issues, such as risks in relation to proving that contracts were entered without 'duress', will have to be considered before the use of smart contracts becomes more prevalent.

**17. To what extent are smart contracts in use in your jurisdiction? Please mention any key initiatives concerning the use of smart contracts in your jurisdiction.**

Smart contracts are not widely used in this jurisdiction as of yet. However, one such example is the we.trade platform that is using smart contracts to launch and administer agreements between banks and clients. The platform is a blockchain based initiative based in Dublin which has been developed by a consortium of nine major European banks. ConsenSys, a global blockchain company operating in Ireland, has also established a blockchain studio in



Dublin where developers are actively working on a range of smart contract projects on the Ethereum blockchain.

18. **Have there been any governmental or regulatory enforcement actions concerning blockchain in your jurisdiction?**

As per **question 9**, cryptocurrency worth €25,000, held by a man serving a prison sentence for drugs offences, was held to be the proceeds of crime by the Irish High Court. Other than this, we are not aware of any enforcement actions in Ireland specifically relating to blockchain activities or cryptoassets.

19. **Has there been any judicial consideration of blockchain concepts or smart contracting in your jurisdiction?**

None other than the criminal case mentioned in **questions 9 and 18**.

20. **Are there any other generally-applicable laws or regulations that may present issues for the use of blockchain technology (such as privacy and data protection law or insolvency law)?**

Blockchains are designed so that the information recorded on them is permanent and immutable. These concepts conflict with some of the core principles of the General Data Protection Regulation (**GDPR**) (which is directly applicable in Ireland). In particular,



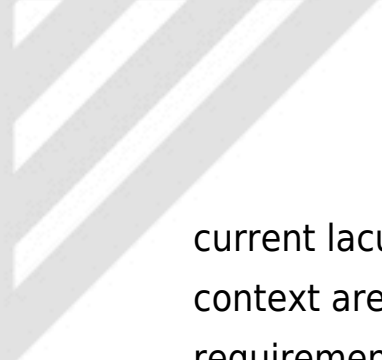
blockchain technology raises compliance concerns in relation to the requirement to keep personal data no longer than necessary and rights of data subjects such as the right to be forgotten and the right to rectify inaccurate personal data. These concerns are not specific to Ireland. Nevertheless, Irish companies need to be aware of their data privacy obligations in order to develop compliant blockchain based systems and technology. There is industry awareness of the need to develop, and indeed there has been movement towards developing, blockchain systems that are compatible with both the core principles of the GDPR and protecting data subject rights.

Other regulations that businesses using blockchain technology may need to consider include the:

- European Union (Measures for a High Common Level of Security of Network and Information Systems) Regulations 2018 (the **NIS Regulations**) which places security obligations on Operators of Essential Services and Digital Service Providers (as defined therein); and
- European Communities (Directive 2000/31/EC) Regulations 2003 (the **E-Commerce Regulations**) which places obligations on businesses providing online services when engaging with both consumers and other businesses.

21. **Are there any other key issues concerning blockchain technology in your jurisdiction that legal practitioners should be aware of?**

This area is one that is evolving quickly and receiving a lot of attention from international regulators and legislators. Unlike other small countries in the EU which have been quick to introduce blockchain-specific legislation at national level to address the



current lacunae under EU law, any major reforms in Ireland in this context are much more likely to be driven by and in line with its requirements under any future EU-level reform.