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# The Security Token RegRadar Report

- a comparative regulatory analysis of nine countries



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# Foreword

While the market of security tokens is strongly emerging and dynamic, the regulatory landscape is still rather complex. It is in fact a fascinating but incredibly confusing field.

In many ways, digitalization is bringing us closer together, is helping us to dissolve borders and creating a truly global marketplace and economy. Even if there are manifold applications of blockchain throughout our economy, security token offerings are among the first applications where the potential of blockchain fully meets a highly regulated area. Security tokens offer an enormous potential to simplify and automate the issuance and handling of digital shares, and – by that – unlocking a much larger pool of capital and investors to small and medium sized enterprises. Tokenization opens up the world of capital markets, transforming it from the privilege of the few into an opportunity of the many. However, if you want to solicit investors from different countries, the issuing company needs to fulfil the “double compliance” requirement. This means an STO needs to comply with the securities laws of both the issuing jurisdiction as well as the investors’ jurisdictions. Offering security tokens to worldwide investors therefore still comes along with high legal costs and potentially low legal certainty.

For investors in security tokens legal certainty on all levels is of great importance, not only with regards to the financial market regulation, but also regarding aspects such as the legal definition of tokens or security tokens, civil law aspects, custody and bankruptcy regulation and so on. In other words: We believe that the potential of security tokens can only be unleashed if all parties can experience a high level of legal certainty in all aspects of STO issuing and investment.

The Government of Liechtenstein has early on recognized the potential of blockchain-technology in general, and of security tokens in particular. The Act on Tokens and TT-Service Provider, which has entered into force in 2020, aims at providing a high level of legal certainty to all participants – users, investors and service providers. Many other countries have also recognized the potential of security tokens and have provided new laws or adoptions to provide legal certainty.

A high level of cross-border legal certainty for companies and investors will support economic growth and foster prosperity in all countries. For this reason, the Office for Financial Market Innovation (SFI) of Liechtenstein partnered with The Tokenizer to create this **“Security Token RegRadar Report”** in order to create a knowledge sharing platform for governments, enterprises and investors about the current status of STO-ecosystems in the different jurisdictions.

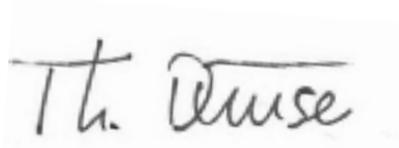
The SFI is responsible for the innovation framework of the financial center of Liechtenstein and supports the Ministry of Finance in developing the legal framework. It is the SFI mission to be in direct contact with innovative enterprises in order to understand their challenges and support their development. Based on the SFI’s know-how about regula-

tion and practice concerning STOs, they supported The Tokenizer in the development of a methodology for evaluating the relevant aspects of issuing and investing in security tokens. From the outset on it has been the government's intention to allow for neutral and unbiased findings. This is why the SFI has not been involved in the subsequent gathering, analyzing and interpreting of the data and the conclusions made. The content-related evaluation of the report has been conducted strictly without any influence by the SFI.

The SFI hopes that this report can support an even more efficient and harmonic functioning of cross-border investing. As always, a harmony is made up of different voices sounding different notes and each and every one of those needs to be heard and brought together.

**We would like to sincerely thank all of the lawyers participating in this report. We asked them to complete a rather extensive and complex questionnaire and participate in a qualitative interview as well, and they accepted this as a pro bono activity. For this valuable help we want to thank:**

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# Executive summary

This initial Security Token RegRadar Report presents the results of a comparative analysis of the current regulatory environment of security tokens and the emerging security token industry across the following countries:

- › Austria
- › Canada
- › Germany
- › Hong Kong
- › Liechtenstein
- › Malta
- › Singapore
- › Switzerland
- › UK

Other countries could have been included - and other countries will be included in future RegRadar reports - but these nine countries were chosen because they are all generally considered to be among the frontrunners within the blockchain and token economy.

The overall purpose of this report is to understand the current regulatory status - options and limitations - of security tokens and security token offerings (STOs) in these countries. And to get a sense of how friendly, knowledgeable and visionary the governments and the authorities of the countries actually are when it comes to security tokens and STOs.

## **Six main areas of interest**

The structure of this report follows the structure of the underlying questionnaire sent to the legal experts from the nine countries. It is divided into six main sections or areas, starting with the most basic questions about 'the countries' legal and political environment' regarding security tokens - and crypto and blockchain in general.

Section two is about 'the STO preparation process', which again is divided into A: 'Available information', B: 'Foundation of a company', and C: 'Compliance and regulatory procedure'. Section three covers 'the security token issuance process' divided into A: 'The creation of tokens', and B: 'The public sale'. Section four is about investing covered by A: 'Preparation of investments' and B: 'Prevention of fraud and technical failures'. Finally, section five and six cover the topics 'custody' and 'trading'.

## Key findings

Across all of the six sections, we have identified the following seven key findings at different levels:

- › Although the industry of security tokens is still relatively immature and the Security Token Offering (STO) concept still untested in most jurisdictions worldwide, there are already several progressive countries in which security tokens and STOs are accepted as a given fact and legally covered by national law.

This goes for all of the nine countries participating in this report. They all legally accept security tokens. They all allow for STOs to be conducted in their jurisdictions. And in all nine countries, it is even possible to run an STO without producing a full prospectus provided that the STO aims at raising less than a certain amount in total.

- › A majority of the countries amend existing laws and legal frameworks to include security tokens. So far, only a few of the countries participating in this report have decided to write new laws or create dedicated regulatory frameworks to legally encompass blockchain-based security tokens and/or crypto tokens in general.

Most of the European countries represented refer to security tokens as financial instruments regulated by the EU directive MiFID II.

- › The respondents from all nine countries state that both the governments and the regulatory authorities have a relatively high degree of understanding of security tokens and the STO concept. On a scale of 1 to 5 (where 1 = 'Not knowledgeable at all on the topic', 5 = 'Very knowledgeable'), the average score for governments in terms of knowledge is 3.9. For authorities, the average score on knowledge is 4.4.
- › None of the analysed countries has a hostile attitude towards security tokens. However, even among this group of assumed crypto progressive countries, the degree of friendliness towards crypto in general and the security token industry, in particular, differs relatively much. The most progressive countries have a sincere interest in and desire to be far-sighted and in front of the development, while the least progressive countries, more than anything, are interested in controlling what is going on in the crypto space and make sure that the new developments within the token economy industry do not represent a threat to the status quo and the reputation of the country - Malta is probably the best example of this.

On a scale from 1 to 5 (where 1 = 'Unfriendly', 5 = 'Very friendly'), the average score for governments in terms of friendliness towards security tokens is 3.7. And for regulatory authorities, the average score on friendliness is 3.9.

- › When it comes to the more practical side of things in terms of finding relevant information and support, setting up a company, opening a bank account, conducting an STO, getting a prospectus approved by the local FSA (Financial Supervisory Authority) and so on, all of this is possible in all of the participating countries. Nevertheless, the level of easiness, convenience, and costs differ significantly even within this group of apparent frontrunners. For instance:

- › While the governments of Austria, Singapore, Germany, Liechtenstein, Hong Kong and Canada offer a range of supporting services for companies, such services should not be expected in countries like Malta, UK or Switzerland.
- › While the authorities in Austria, Singapore, Malta, Liechtenstein, Hong Kong and Canada are ready for advisory support and personal meetings with companies to discuss the process of an STO, such services should not be expected in Germany and the UK.
- › While a foreign company can open a bank account within 8 hours in Austria and 14 days in Liechtenstein, the same task takes three months in Malta and probably longer in Hong Kong, if possible at all.
- › The possibilities for opening an STO for participation relatively easily also to investors from countries outside the country where the STO is carried out vary significantly among the countries in the study. Token issuers in European countries that are members of the EEA have the great advantage in this context that, provided that their national competent authority has approved their prospectus, they can quite easily passport prospectuses to all 31 EEA countries, thus inviting investors from all over EEA to participate. For countries outside the EEA, issuers must, for each new country, examine the regulatory situation and enter into dialogue with the national FSAs.
- › However, the number of STOs is still low in most countries, and it is clearly still early days in the security token industry, even in the most progressive countries. Nevertheless, it is, in fact, possible to find supporting jurisdictions around the world for companies who want to be an active part of the emerging security token industry or want to conduct an STO. ■

# Introduction

The currently most significant obstacle for companies worldwide to leverage the potential of security tokens is the lack of an overview of the global regulatory landscape across countries and jurisdictions.

This is primarily due to the fact that tokenization and the industry of security tokens are still in their infancy. Most authorities and governments around the world have just recently started to dip their toes in the new waters of tokenization, and the lack of standards makes it demanding for everybody in the space - from lawyers to token issuers, from exchanges to investors - to keep up to date with regulatory changes.

But why is it essential to keep up with those changes? For two reasons: First, the market of security tokens is genuinely global, it has a global DNA, and for the market to flourish, it is crucial to find a stable and efficient cross-border, cross-jurisdiction modus operandi. Second, the security token market is fundamentally different from most other types of crypto/token markets - like the market of cryptocurrencies or ICOs - because the security token industry deals with real financial instruments, and in this market trying to stay outside of the scope of regulation, as we witnessed in the heydays of ICOs, is simply not an option. You have to follow the rules; you need to be compliant; otherwise, the consequences could be damaging.

If, for instance, a company issues a token, conducts an STO and wants to sell the issued security tokens internationally, in several jurisdictions, the company is obliged to ensure not only that the tokens are issued legally but also that investors located outside the country of issuance are allowed to buy the tokens. This is called the 'double compliance requirement'.

Whether or not the issuer of the tokens possesses any regulatory knowledge doesn't make the slightest difference in legal obligations. If the issuers do not have the overview needed, they are obliged to get it. However, since it's currently nowhere to be found, issuers have a challenging and expensive task ahead of them if they want to - safely and compliantly - enter into the promising space of security tokens.

## **Goals of The RegRadar Report**

This initial RegRadar Report takes some of the first and important steps towards a foundation from which such a more complete global overview can be established. It does this through a comparative analysis of nine countries from three different continents that all have a reputation of being among the most innovative and friendly in terms of blockchain and the future token economy.

Based on a combination of quantitative data and qualitative interviews, the goals of the report are to:

- › get a better understanding of the current regulatory status of these countries within the area of security tokens - are security tokens on the radar, and how?
- › get insights into the options and limitations in the countries for companies that want to conduct an STO or establish a business within security tokens - what is actually legally possible?
- › collect some practical information about how to practically get started in different countries if, for instance, a company wants to conduct an STO. Is the relevant information available? Is the government actively supporting companies? What are the costs?
- › shed some light on the overall attitude of the countries within this area - are the financial authorities and the governments friendly towards security tokens, are they knowledgeable, and do they have a vision? And how does it show?

To cover all of these topics, we produced and sent out a comprehensive questionnaire consisting of 98 questions to leading legal experts specialised in blockchain and token economy from all nine countries. And to supplement the questionnaire, we conducted follow-up qualitative interviews with all nine legal experts after they completed the questionnaire.

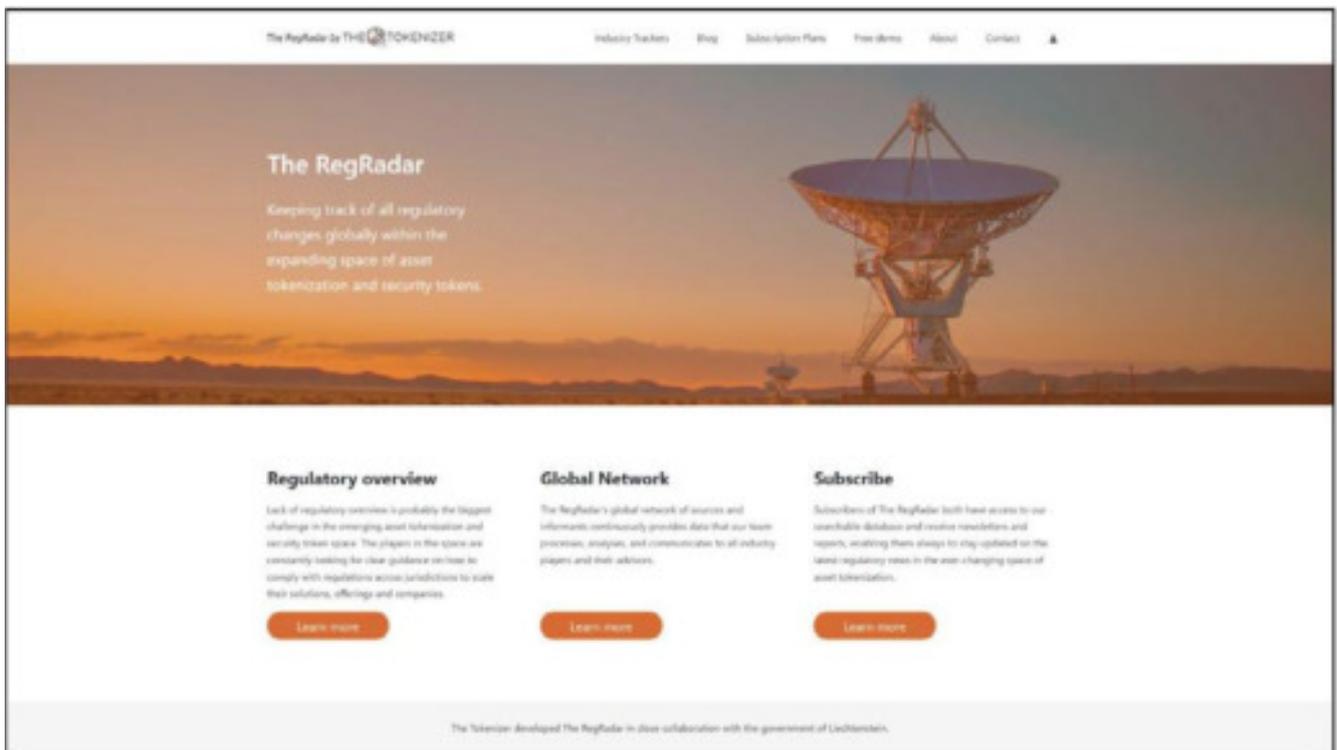
### **Further development of The RegRadar**

At the beginning of 2019, when [The Tokenizer](#) was launched, one of the first ideas for a service to be included as part of the platform was a global regulatory radar for the emerging security token industry - The RegRadar. The idea arose from a worldwide need for a tool that would enable the industry players to obtain clarity and an overview of the constantly changing regulatory landscape across countries and jurisdiction within the industry.

However, regardless of the market need, the team of The Tokenizer did not have the resources to pursue and realise the idea until they got in contact with the Liechtenstein government, and it turned out that Liechtenstein's Stabstelle Finanzplatzinnovation (SFI) was planning to conduct a comparative regulatory analysis across a number of countries - this report! - and collaboration between SFI and The Tokenizer immediately made sense as a starting point for the development of The Reg Radar.

Following this initial report, The Tokenizer team has started building up a global network of sources and informants for The RegRadar, which will provide an ongoing flow of data that will be processed, analysed, and communicated to industry players and their advisors.

Subscribers of The RegRadar will have access to The RegRadar's searchable database and will receive newsletters and reports, enabling them always to stay updated on the latest regulatory news in the ever-changing space of tokenization. The Tokenizer expects to release a beta version of The RegRadar platform in July 2021.



*Screenshot from the front page of The RegRadar, which is expected to be launched in a beta version in September 2021.*

### **Limitations and possible points of criticism**

An obvious point of criticism against this report is the limited number of countries and respondents. In a world of 195 independent nations, a selection of nine countries can hardly tell the global truth of anything. And furthermore, by only asking one law firm from each country, it is hard to know if their answers and statements are representative for the given countries - and they may even have a commercial interest in answering in a certain way.

However, this initial RegRadar Report is the first important step towards the full-fledged RegRadar, and for three primary reasons, we believe that this report in itself, despite the limited population of nine countries, is both relevant and valuable:

- › The nine participating countries have been carefully selected based on their reputation of being innovative first movers in the blockchain and crypto space.
- › Likewise, the law firms and the single lawyers representing the countries in The RegRadar report have been selected because they are known for being genuine experts in the regulatory realm of blockchain, crypto and security tokens.
- › In this very first edition of The RegRadar, our primary goal is to show what some of the front-running countries have already done on the regulatory front - and hopefully inspire other countries to learn and follow suit. As said earlier, our claim is not that this initial report can provide the demanded global regulatory overview - but it's certainly an important stepping stone for building the future dynamic version of The RegRadar, which will, in fact, become a real radar scanning all relevant jurisdictions on an ongoing basis. ■

# The legal and political environment

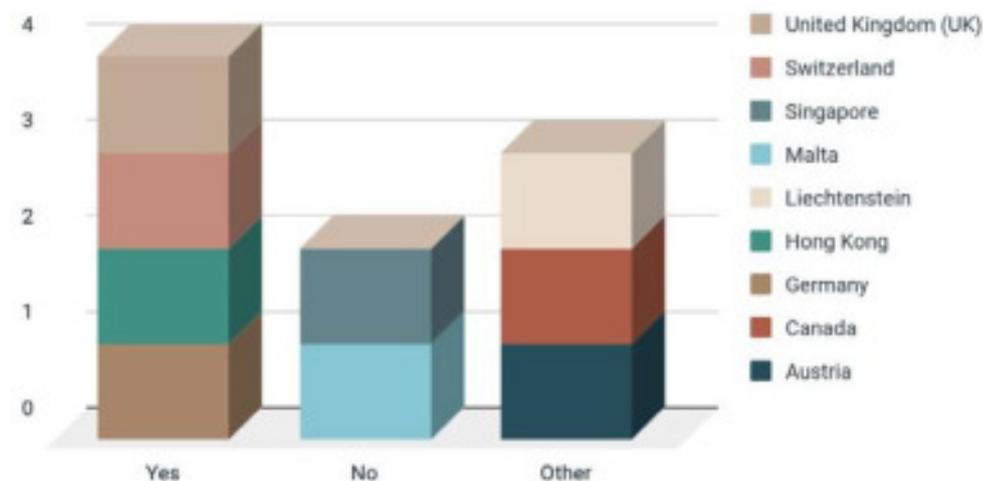
This section of the questionnaire was divided into two parts: The legal environment and the political environment. The two sections dealt with security tokens from two different points of view: What is legally possible and required today in the countries regarding security tokens? And what are the country's intentions, ambitions and vision for the longer term respecting security tokens and, not least, developing a security token industry in the countries?

## A. The legal and regulatory basics

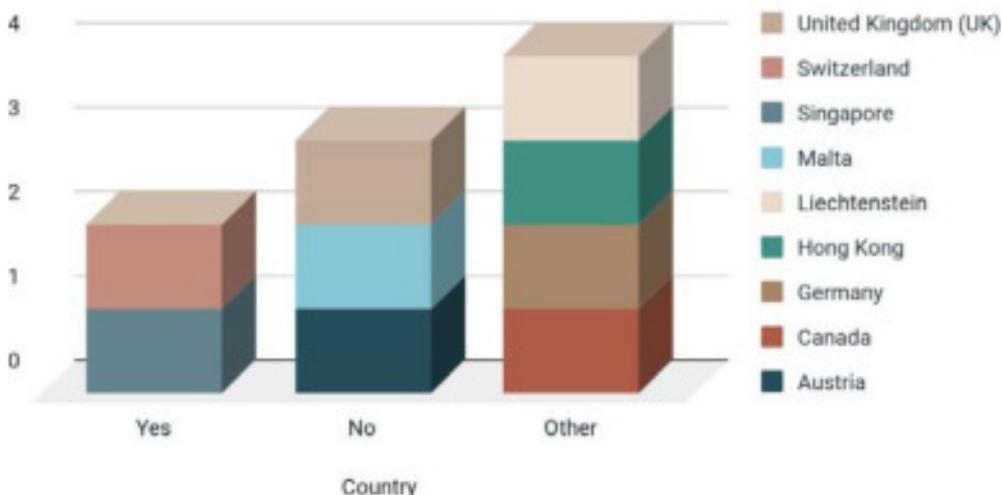
### Definition and framework

The two very first questions in the questionnaire - "Have the authorities in your country formulated a definition of security tokens?" and "Does your country have a specific regulatory framework for security tokens?" - which are actually yes/no questions, gave rise to several comments from the respondents, and it is worth taking a closer look at what the answers cover.

#### 1. Have the authorities in your country formulated a definition of security tokens?



## 2. Does your country have a specific regulatory framework for security tokens?



### Germany

The German respondent answered 'Yes' to question , and if we go to BaFin, Federal Financial Supervisory Authority, we will find this categorisation of security tokens as financial instruments:

*"Security tokens (also known as equity tokens, investment tokens or asset tokens): holders of this sort of token have membership rights or contractual claims on assets that are comparable with those of a shareholder or bondholder (e.g. claims to dividend-style payments, voting rights, repayment claims, interest payments). Security tokens generally constitute securities within the meaning of the Prospectus Regulation, the WpPG and the Securities Trading Act (Wertpapierhandelsgesetz – WpHG), and they are also financial instruments under the KWG."*

### Hong Kong

The Hong Kong respondent answered 'Yes' as well to question one, and if we check with the Hong Kong Securities and Futures Commission (SFC), we will indeed find an announcement under the headline "Statement on Security Token Offerings", dated March 28, 2019, in which security tokens are clearly categorised as securities:

*"STOs typically refer to specific offerings which are structured to have features of traditional securities offerings and involve Security Tokens which are digital representations of ownership of assets (e.g., gold or real estate) or economic rights (e.g., a share of profits or revenue) utilising blockchain technology. Security Tokens are normally offered to professional investors only."*

In Hong Kong, Security Tokens are likely to be 'securities' 1 under the Securities and Futures Ordinance (SFO) and so subject to the securities laws of Hong Kong."<sup>2</sup>

### Switzerland

The third affirmative answer to question one came from Switzerland. The Swiss Financial Market Supervisory Authority FINMA categorised 'asset tokens' as securities already in its ICO Guidelines in February 2018:

*"Asset tokens: Asset tokens represent assets such as a debt or equity claim on the issuer. Asset tokens promise, for example, a share in future company earnings or future capital flows. In terms of their economic function, therefore, these tokens are analogous to equities, bonds or derivatives. Tokens which enable physical assets to be traded on the blockchain also fall into this category."*<sup>3</sup>

1. *This translation is furnished for information purposes ... - BaFin [https://www.bafin.de/dl/wa/merkblatt\\_ICOs\\_en](https://www.bafin.de/dl/wa/merkblatt_ICOs_en)*

2. <https://www.sfc.hk/en/News-and-announcements/Policy-statements-and-announcements/Statement-on-Security-Token-Offerings>

3. *FINMA's ICO Guidelines p. 3. <https://www.finma.ch/en/news/2018/02/20180216-mm-ico-wegleitung/>*

## UK

The fourth 'Yes' to question one came from the UK. The respondent explained the FCA's approach to security tokens when they started to look closer into the matter during 2019:

*"The regulator here, the FCA, starts thinking it needs to do something about crypto assets in general, and it needs to decide what the regulation is. So [...] in early 2019, the basic position that they come up with is that, in common with a lot of the other bigger European jurisdictions, they say, "Look, we will just treat security tokens as if they were the security they purport to be. So if you've got a token that is equity-like, we'll treat it as a share. If you've got a token that is bond-like, we will treat it as a debt security," and it follows from that. All the UK regulation around those securities, advising on them, managing them, arranging deals in them, apply. So whilst, as of the last ten days<sup>4</sup>, it's wrong to say that that is the MiFID regime, it is the MiFID regime because it's not really diverged yet, and it's not going to diverge in a major way anytime soon. So that's basically where we are in terms of regulation."<sup>5</sup>*

In FCA's definition of crypto assets from January 2019, they operated with two main categories, Regulated Tokens (security tokens and E-money tokens) and Unregulated Tokens (utility tokens and cryptocurrencies), and FCA's definition of security tokens is:

*"Security tokens: These are tokens that amount to a 'Specified Investment' under the Regulated Activities Order (RAO), excluding e-money. These may provide rights such as ownership, repayment of a specific sum of money, or entitlement to a share in future profits. They may also be transferable securities or other financial instruments under the EU's Markets in Financial Instruments Directive II (MiFID II). These tokens are likely to be inside the FCA's regulatory perimeter."<sup>6</sup>*

### The 'Other' answers - Austria, Liechtenstein and Canada

Considering the fact that our selection of countries is supposed to represent a group of the most innovative countries in the world within security tokens, it might seem surprising that only four (44%) of the respondents answer with a clear 'Yes'. However, when looking closer into both the 'Yes' and the 'Other' answers, it turns out that the differences between the answers are relatively small in this particular case. The four respondents answering 'yes' confirm that the regulatory authorities in their countries have all made statements regarding their view on defining and categorising security tokens. And basically, as we have seen above, all of the statements specify that security tokens are understood as securities and regulated essentially in the same way as traditional securities.

In the group of the 'Other' answers, they all incline towards a 'yes, but with an explanation'.

The **Austrian** respondent explains that *"Usually, the definition of 'transferable security' based on MiFID II is used for describing security tokens."*

This answer resonates with most of the 'Yes' answers. It just shows that MiFID II by several countries is considered an adequate regulatory framework for both blockchain-based securities in the form of tokens and for the traditional shapes of securities for which MiFID II was created.

<sup>4</sup>. This interview was conducted around ten days after Brexit came into force.

<sup>5</sup>. Interview conducted by The Tokenizer for this report.

<sup>6</sup>. <https://www.fca.org.uk/firms/cryptoassets>

The same line of thought is present in the 2020 EU regulation MiCA - Markets in Crypto Assets - that regulates a wide range of tokens but rules out security tokens on the grounds that they are already covered by MiFID II.

The **Liechtenstein** respondent answered question one in the following way: *“There is no legal definition specifically for security token but for tokens in general. Security Tokens are therefore securities issued by means of distributed ledger technology.”* The answer is interesting because even though it states that Liechtenstein in its 2020 Blockchain Act has no ‘definition specifically for security tokens’, it shows Liechtenstein’s alternative approach on the token economy and how to define tokens. Furthermore, as part of the Blockchain Act, the Liechtenstein government developed The Token Container Model, which is a model enabled to include all kinds of tokens. As we will see later, this model tends to set Liechtenstein apart from most other countries in our study.

The Liechtenstein respondent explained in the follow-up interview:

*“The token acts as a container and transfers the right using blockchain technology or, as we call it, ‘Trusted Technologies’. In other words, this allows you to define a right and then let a token represent that right. With the transfer of the token, the represented right is also transferred. There are some limitations based on mandatory laws, but it is a very flexible approach to allow tokenization of a variety of assets.”*

The final definition of a token as written in the Liechtenstein Blockchain Act turned out to be the following:

*“A token is a piece of information on a TT system<sup>7</sup>, which:*

- › can represent claims or rights of memberships against a person, rights to property, or other absolute or relative rights; and*
- › is assigned to one or more TT Identifiers (aka public keys).<sup>8</sup>”*

The last country in the ‘Other’ category is **Canada** which basically follows the US definitions and use a test very similar to The Howey Test<sup>9</sup> to impose whether a given token should be considered a security and regulated as such:

*“Canadian securities regulators have not formulated a specific definition for ‘security tokens’. Rather, each token will be assessed based on its characteristics as to whether it constitutes a ‘security’ or ‘derivative’ applying standard securities law definitions (prescribed in securities legislation and related jurisprudence) for these terms. In performing this assessment, authorities assess not only the technical characteristics of the token but the economic realities of the token and any offering as a whole. Similar to the United States, we note that, in Canada, the term ‘security’ includes any product that may constitute an ‘investment contract.’”*

Only the respondents from **Singapore** and **Malta** answered ‘No’ to question one.

### Legality and types of security tokens

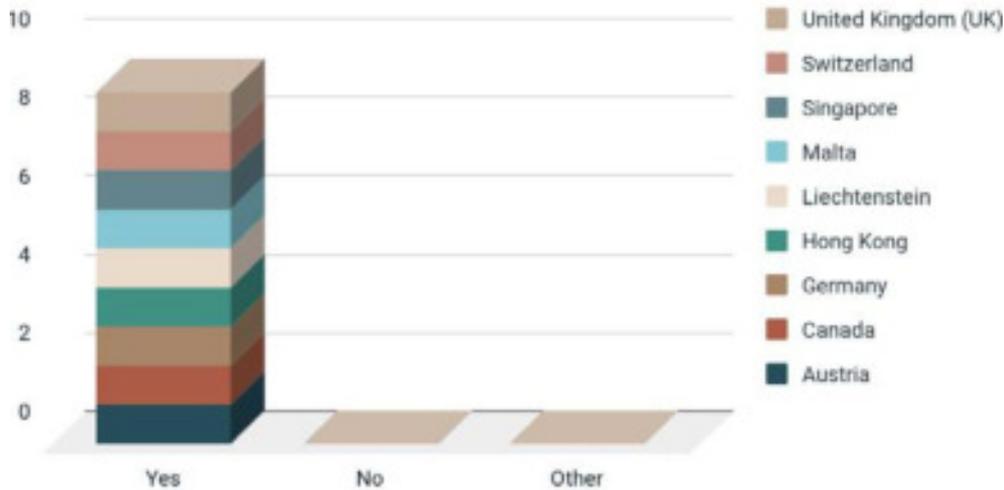
The following questions in the questionnaire deal with the fundamental legality of security tokens and security token offerings (STO’s) in the countries. In both cases, 100% of the respondents confirm that both security tokens and STOs are allowed.

7. *“TT systems are defined as transaction systems, which ensure secure transmission and retention of tokens by use of trusted technologies. These technologies ensure the integrity of tokens, association of tokens with their TT identifier (e.g. public key) and the user’s disposal of tokens on TT systems.”*  
<https://thomas-naegele.medium.com/liechtensteins-tokens-and-tt-service-providers-law-b23574d595f9>

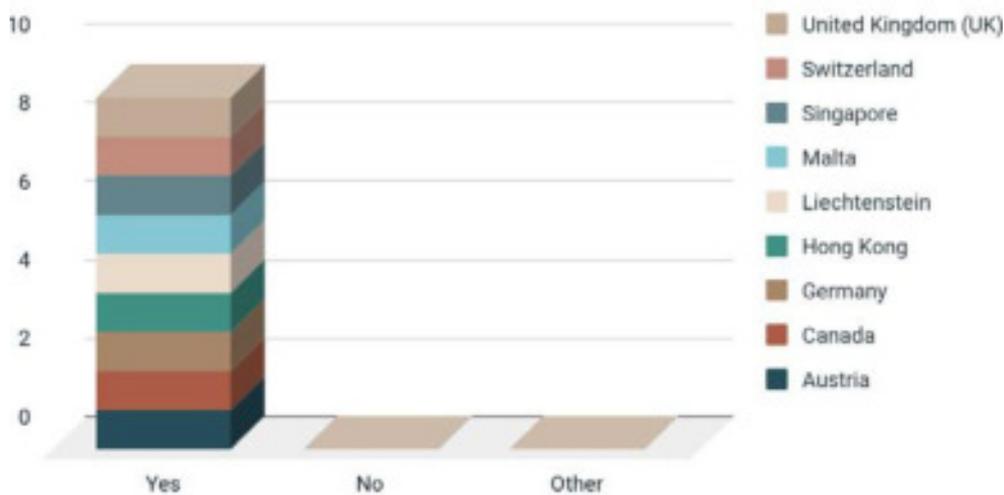
8. <https://www.liechtensteinusa.org/article/liechtensteins-parliament-approves-block-chain-act-unanimously>

9. <https://www.investopedia.com/terms/h/howey-test.asp>

### 3. Are security tokens legally allowed in your country?



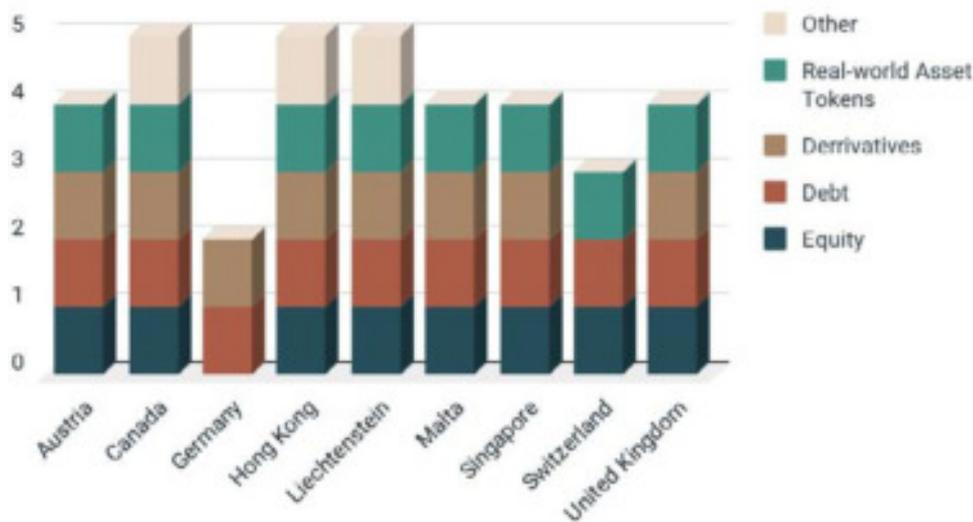
### 5. Are Security Tokens Offerings (STOs) legally allowed in your country?



As a follow-up to these questions, we asked what kind of security tokens could legally be included in a Security Token Offering (STO) conducted in the countries. We provided the following options, which are the most common categories of security tokens: equity, debt, derivatives, real-world asset tokens (like real estate, commodities and collectables).

All nine countries except Germany and Switzerland allow for an STO to include all of the mentioned types of securities. In Germany, equity and real-world asset tokens are excluded, and in Switzerland, derivatives are currently not an option, according to the respondent.

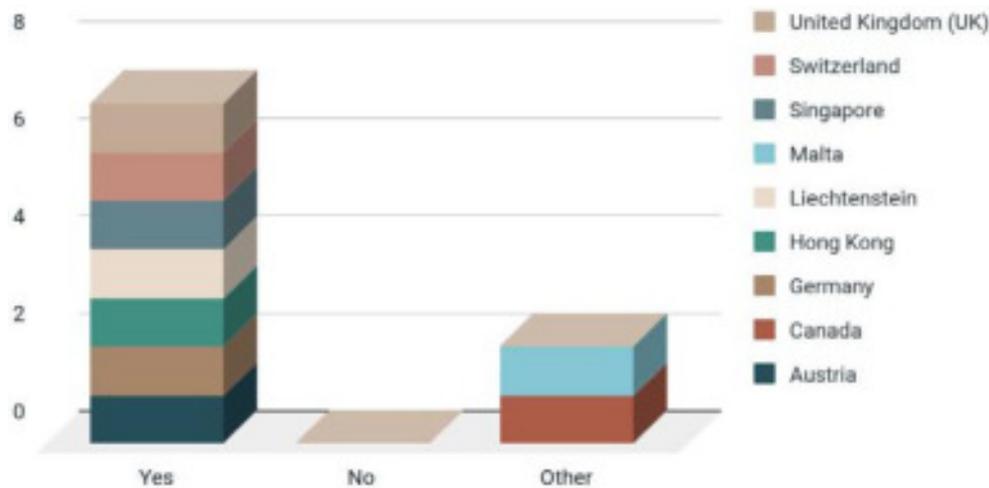
7. If security tokens and STOs are allowed, what types of securities are allowed for STOs?



**Prospectus rules**

For companies that want to conduct an STO, one crucial question is if and when a prospectus is required. Of course, the simple reason for that is that making a prospectus and having it approved by the relevant authorities implies a significant effort in terms of time and economic costs.

9. Is it possible in your country to conduct an STO without producing a full prospectus?



Seven of the respondents answered a straight 'Yes' to the question: *"Is it possible in your country to conduct an STO without producing a full prospectus provided that the STO aims at raising less than a certain amount in total?"*

The remaining two respondents also confirmed that an STO without a full prospectus is possible in their countries, but they added some interesting explanatory comments. The Canadian respondent added to the answer:



*"It is possible to issue tokens that would be legally characterized as 'securities' without a prospectus, so long as a prospectus exemption is available, and other legal requirements are adhered to. Prospectus exemptions can include the accredited investor exemption, offering memorandum exemption and others. A party should consult Canadian legal counsel!"*

The respondent from the EU country Malta added to the answer:

*"Possible as long as they can benefit from exemptions (as set out in the EU Prospectus Framework)"*

### **The implications of the new EU Prospectus Regulation**

Since this analysis includes more EU countries, it is relevant to look at the EU prospectus rules briefly. For EU countries, the new 2017 prospectus regulation<sup>10</sup> impacts issuers of all kinds of securities, whether they are issued in relation to an IPO and STOs or private placements.

The new EU Prospectus Regulation (EU)2017/1129 "on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC."<sup>11</sup> The Prospectus Regulation came into force on 20 July 2017 and applied to all EU countries from 21 July 2019. And since this was a regulation and not a directive - like the one it repealed - it had to be implemented directly into national law, meaning that the countries did not have an option of national interpretation of the law, which is the case with EU directives.

The main goal of the new regulation was at the same time to secure investor protection and to increase market efficiency and ease access to capital in Europe, especially for SMEs, by harmonising rules across all countries in the EU.

In October 2020, ESMA (European Securities and Markets Authority) published a list of "National thresholds below which the obligation to publish a prospectus does not apply"<sup>12</sup> covering all EU countries. In the foreword of the list, ESMA writes:

*"Article 1(3) of the Prospectus Regulation establishes that the regulation does not apply to an offer of securities to the public with a total consideration in the Union of less than 1 million EUR calculated over a period of 12 months. This implies that the obligation to publish a prospectus does not apply to offers below this threshold. According to Article 3(2) of the Prospectus Regulation, Member States may decide to exempt offers of securities to the public from the obligation to publish a prospectus provided that 1) such offers are not subject to notification in accordance with Article 25 of the Prospectus Regulation, and 2) the total consideration of each such offer in the Union is less than a monetary amount calculated over a period of 12 months which shall not exceed 8 million EUR."<sup>13</sup>*

10. [https://ec.europa.eu/info/law/prospectus-regulation-eu-2017-1129\\_en](https://ec.europa.eu/info/law/prospectus-regulation-eu-2017-1129_en)

11. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017R1129&rid=4>

12. [https://www.esma.europa.eu/sites/default/files/library/esma31-62-1193\\_prospectus\\_thresholds.pdf](https://www.esma.europa.eu/sites/default/files/library/esma31-62-1193_prospectus_thresholds.pdf)

13. [https://www.esma.europa.eu/sites/default/files/library/esma31-62-1193\\_prospectus\\_thresholds.pdf](https://www.esma.europa.eu/sites/default/files/library/esma31-62-1193_prospectus_thresholds.pdf)

Below we have copied from the ESMA list the five countries participating in our analysis:

Member State	Threshold below which a prospectus is not required	National rules applicable to offers below the threshold	Relevant links
Austria	5 million EUR	For offers between 250,000 EUR and 2 million EUR, the issuer must publish an information document according to the Alternative Financing Act. For offers between 2 and 5 million EUR, the issuer must publish a simplified, national prospectus according to the Capital Markets Act.	<a href="#">Legislation</a> <a href="#">Explanation</a> of thresholds
Germany	8 million EUR: This threshold applies to offers issued by credit institutions and by issuers whose shares are admitted to trading on a regulated market (so-called privileged issuers) without further conditions. For offers other than by privileged issuers, this threshold may be used on the condition that securities are only provided in conjunction with investment advice or investment brokerage by an investment firm that is obliged to verify that the securities that can be acquired by a non qualified investor do not exceed the following amounts: 1) 1,000 EUR, or 2) Up to 25,000 EUR, depending on the financial situation or monthly net income of the non qualified investor. These conditions only apply if the offer is above 1 million EUR. The conditions do not apply in case of a rights issue addressed to shareholders.	For offers other than by privileged issuers making use of the 8 million EUR exemption, the issuer must produce a 3 page securities information sheet which must be approved by BaFin and published. This requirement only applies if the offer is above 100,000 EUR.	<a href="#">Legislation</a>
Liechtenstein [notice, that Liechtenstein is an EEA member, not an EU member]	8 million EUR	No rules established	<a href="#">Legislation</a>

Malta	5 million EUR	For offers below 5 million EUR, an issuer may seek admission to trading on the Prospects MTF, operated by the Malta Stock Exchange. In this case, the issuer must prepare an Admission Document for review and approval by the Malta Stock Exchange.	Prospects MTF rules (see Chapter 4)
UK	8 million EUR	In the UK, financial promotions are restricted. Briefly, the communication of an invitation or inducement to engage in investment activity (a 'financial promotion'), when made in the course of business, is prohibited unless it is approved or communicated by an authorised person, or able to benefit from a statutory exemption. If an unauthorised person communicates any financial promotion, it will need to be approved by an authorised firm, unless an exemption is available. A number of exemptions exist (including for issuers producing prospectuses under the Prospectus Regulation). If communicated or approved by an authorised person, as well as being subject to the MiFID disclosure provisions (where applicable), a financial promotion in the UK will also be subject to the financial promotion rules set out in the FCA's Handbook. The key requirement is for all promotions to be 'fair, clear and not misleading'. In addition, more detailed rules will apply. For example, if the promotion is communicated to a retail client (or relates to MiFID business), the promotion needs to be accurate, sufficient for the recipient, give a fair and prominent indication of any relevant risks and not disguise, diminish or obscure important items, statements or warnings.	Legislation FCA's Handbook

In our analysis, question number ten - "What is the maximum amount that an STO can raise in your country without a prospectus?" - is basically the same as answered in the list above. The answers of the participating countries from outside Europe are:

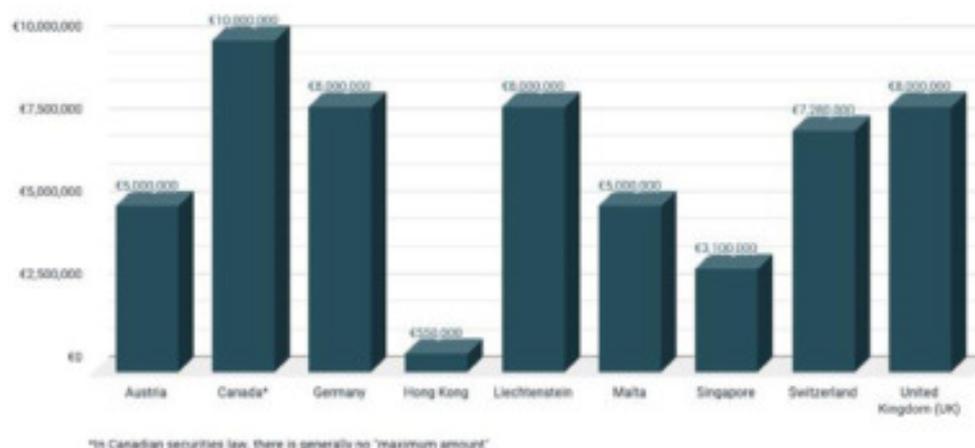
*Canada: "In Canadian securities law, there is generally no 'maximum amount' that an issuer can raise by issuing securities (whether they are tokens or not) in the 'exempt market' (i.e., in reliance upon a prospectus exemption). However, depending on the prospectus exemption relied upon and investor category, there may be limits on who can invest and how much can be invested in a given time frame. A party should consult Canadian legal counsel."*

*Hong Kong: "HK\$ 5,000,000"*

*Singapore: "S\$5 million in 12 months"*

*Switzerland: "CHF 8 Mio in total, or (alternatively) more than 100k per investor/unit."*

## 10. What is the maximum amount that an STO can raise in your country without a prospectus?



In general, the scope of application of the EU Prospectus Regulation does not apply to a total issue volume of less than EUR 1 million in 12 months. This means that the obligation to publish a prospectus for offers below this threshold does not apply from the outset. If the total issue volume is less than EUR 1 million in 12 months, no prospectus has to be approved and published, and therefore no passporting can be claimed unless a voluntary prospectus is prepared. Irrespective of this, however, some national states have enacted national legal provisions even for offers of less than EUR 1 million in 12 months, which contain certain publication obligations.

Pursuant to Article 3 (2) of the Prospectus Regulation, Member States may further decide to exempt public offers of securities from the obligation to publish a prospectus, provided that 1) such offers are not subject to the notification obligation under Article 25 of the Prospectus Regulation and 2) the total issue volume of each such offer in the Union is below an amount which - calculated over a period of 12 months - does not exceed EUR 8 million.

Liechtenstein, for instance, has made use of this opening clause and has gone all the way to the top, which is why a prospectus requirement only applies in Liechtenstein if the total issue volume exceeds EUR 8 million in 12 months. Furthermore, Liechtenstein has not established any national legal regulations as to what is to apply below EUR 8 million in 12 months.

However, this is of little help in practice, as Liechtenstein is usually not the only target market of the public offer. In contrast to Liechtenstein, other nations have implemented the opening clause differently and issued national regulations. So, it is always necessary to also look at and check with the other jurisdictions in which the security tokens are to be offered.

### Coverage of a full prospectus versus a limited or no prospectus

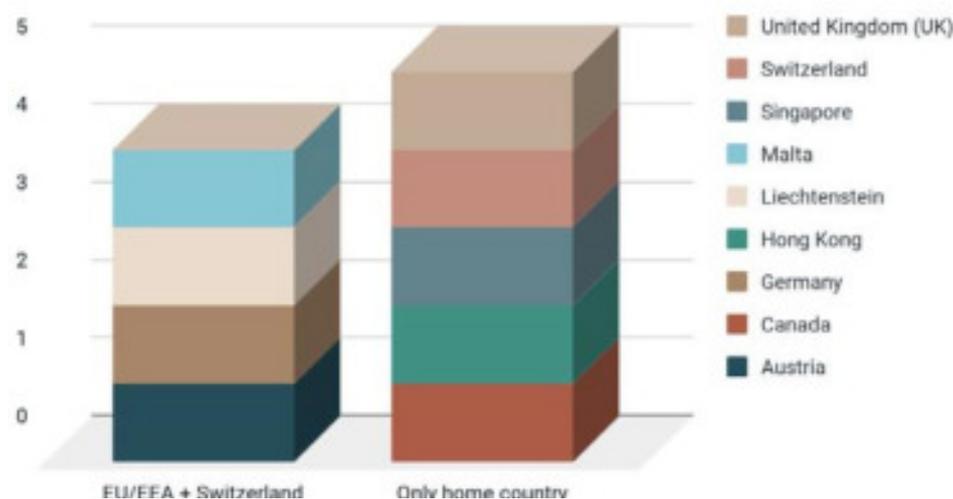
In principle, one of the main advantages of security tokens is the ability to sell and purchase blockchain-based security tokens globally. When conducting an STO, most companies would presumably want to welcome investors from anywhere in the world. And when investing in security tokens, investors most likely want the freedom to buy any token they like regardless of the country of issuance.

In practice, this is not possible today due to regulatory constraints and differences between jurisdictions across the world. However, making the extra effort of producing a prospectus as part of an STO in some cases pays off in terms of opening up the regulatory doors to more countries than the country in which the security token is issued.

In question 11, we asked: “Based on a full prospectus, how many investor jurisdictions will an STO complying with regulations in your country likely give access to?”

The answers to this question were divided into just two groups depending on whether the respondent represented an EU / EEA country or not. About half of the respondents representing countries outside the EU/EEA answered ‘Only your country’, which means that providing a prospectus as part of an STO doesn’t automatically open any doors to any countries but the one in which the STO is conducted. However, this doesn’t mean that other countries’ regulatory authorities would not approve the prospectus and allow the issued tokens to be traded within its jurisdiction. Still, it means that there are no guarantees and that the issuer would have to apply for approval at the FSAs in each country manually.

**11. Based on a full prospectus, how many investor jurisdictions will an STO likely give access to?**



Compared to the group of non-EU/EEA countries, the EU/EEA countries have a significant advantage. As part of creating a European Single Market, the EU has implemented a passporting regime that allows companies authorised in any country within the EU/EEA to operate and offer their services in any other EU/EEA country. But the option of passporting includes not only services but prospectuses as well. The Prospectus Regulation ((EU) 2017/1129) explains the reasoning behind the passporting regime in this way:

*“Disclosure of information in cases of offers of securities to the public or admission of securities to trading on a regulated market is vital to protect investors by removing asymmetries of information between them and issuers. Harmonising such disclosure allows for the establishment of a cross-border passport mechanism which facilitates the effective functioning of the internal market in a wide variety of securities.”<sup>14</sup>*

14. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1129&from=EN.L168/12>

The UK is a particular case in this context because Brexit ends the UK's option of utilising passporting - including passporting of a prospectus. ESMA writes: *"Since the Prospectus Regulation will no longer apply to or in the UK, the UK will no longer be covered by the passporting mechanism set out in Article 25 of the Prospectus Regulation (PR)."*<sup>15</sup>

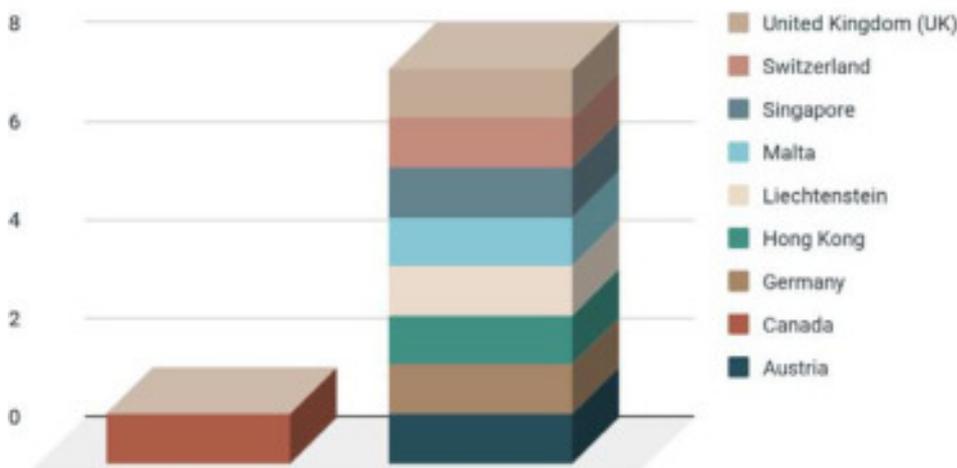
This is why the UK respondent had to answer 'Only your country' to question 11 of our questionnaire.

Question 12 asks: "Based on a limited prospectus, how many investor jurisdictions will an STO complying with regulations in your country likely give access to?"<sup>16</sup> 100% of the respondents answer 'Only your country', which clearly indicates that even though an STO may be conducted in a particular country without a prospectus, it is unlikely that the issuer will be allowed to include investors from any other countries without an approved prospectus. And this goes for EU/EEA countries as well as for countries from different parts of the world.

### Holding period

Question 13 asks: "Is there a 'holding period' in your country after the purchase of a security token?" 88.9% of the respondents answer 'No', and only Canada goes against this with a 'Yes'. However, like Canadian law, the US Securities Act - rule 144 - requires a holding period for securities, including security tokens.

### 13. Is there a 'holding period' in your country after the purchase of a security token?



Perhaps it is worth noting that in some cases, it might make sense for an STO to add a holding period on its tokens even if this is not a regulatory requirement in the jurisdiction in which the tokens are issued. For the secondary market of security tokens, it is still early days, and some STOs might want to buy themselves some extra time while the market matures. Other STOs perhaps wish to utilize the first six or twelve months after the STO closing to deliver on their promises before opening for the trading of the tokens.

### Are retail investors allowed to participate in an STO?

Increased democratisation of the investment market is a noble and important reason for focusing on security tokens. Today, many of the most attractive securities are not sold in public offerings but offered as private placements in close circles of institutional investors, family offices and (U)HNWIs.<sup>17</sup> The tickets for these offerings are typically very high, and investors need to be accredited, which immediately excludes most retail inve-

15. [https://www.esma.europa.eu/sites/default/files/library/esma31-62-1258\\_prospectus\\_regulation\\_qas.pdf](https://www.esma.europa.eu/sites/default/files/library/esma31-62-1258_prospectus_regulation_qas.pdf) - p.67

16. The question includes this annotation: "Limited prospectus' as used in this questionnaire is any set of information material required in connection with the conduction of an STO which is significantly less comprehensive than the prospectus required for an IPO!"

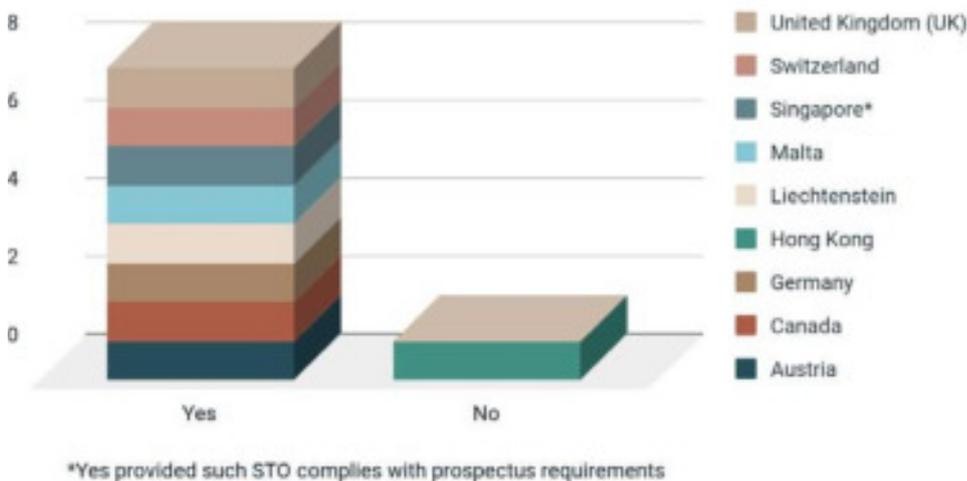
17. (Ultra-)High-Net-Worth Individual

stors - even if they got the offer of participating. However, by tokenizing assets, using fractionalisation and conducting the offering as an STO instead of a private placement or an IPO, it is possible to significantly decrease the ticket size and open the offering to non-accredited retail investors.

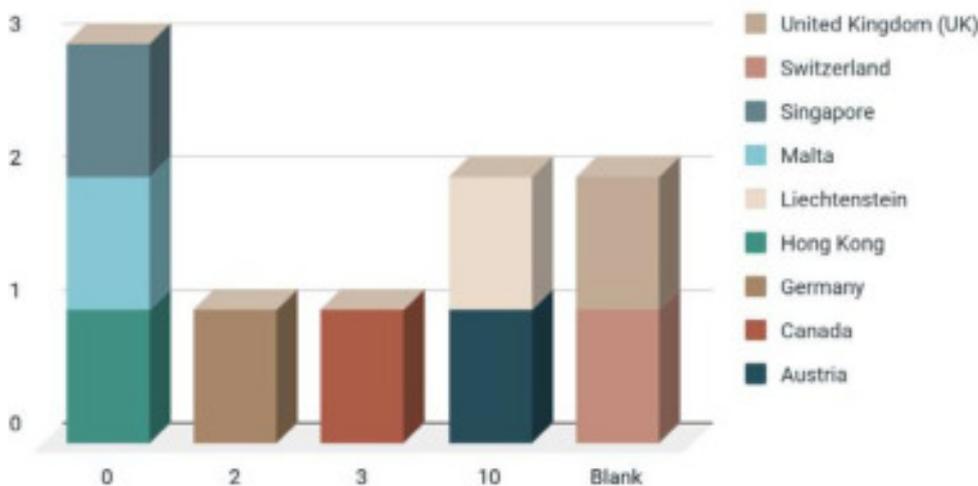
At least this is the goal, but we wanted to find out if this is, in fact, possible in practice in different jurisdictions. Hence, question 14 of the questionnaire asked: "Is it possible to participate in an STO in your country without being an accredited/qualified/experienced investor?"

The very positive feedback was that 88,9% of the respondents answered 'Yes', and only the Hong Kong respondent answered 'No'. Also, the Singapore respondent added a comment saying that it was possible but "provided such STO complies with prospectus requirements," which is, of course, a relevant comment for all of the jurisdictions.

**14. Is it possible to participate in an STO in your country without being an accredited/qualified/experienced investor?**



**15. How many - if any - STOs with the participation of noncredited investors have been conducted so far?**



Regarding the number of STOs with non-accredited investors' participation in the countries, the numbers are certainly not very impressive. Only two respondents - representing Austria and Liechtenstein - answered that ten or more STOs had been conducted

in their countries; the rest answered 3, 2 or zero. Three respondents answered zero, and two respondents did not answer the question because of lack of information. What this shows is - once again - the immaturity of the security token industry. Although an STO with the participation of non-accredited investors is possible in 8 out of 9 of the countries, the waters have still not yet been tested, even in some of the most innovative countries.

### **B. To what extent are the countries friendly and knowledgeable?**

An essential prerequisite for any country to be recognized as innovative and progressive within a particular field is knowledge, commitment and focus, and, ideally, an environment that welcomes creative thinking and risk-taking entrepreneurs.

That is why it is relevant to ask whether a country, its government and its regulatory authorities are friendly and ready/knowledgeable and have a vision for the particular field in question. These aspects are covered by questions 17 & 18 and 21 & 22 of the questionnaire.

#### **Friendliness, readiness and vision**

*Using rather 'soft' terms such as friendliness, readiness and vision in this context calls for a short explanation:*

#### **Friendliness - how positive a view do the country have on security tokens/the security token industry?**

*To what extent is the country considered friendly towards companies and projects involved in the security token industry; and towards citizens and foreign investors who want to invest in and/or trade different kinds of security tokens.*

- › *We wanted to be able to judge on several parameters how friendly towards the security token industry a particular country is.*
- › *We wanted to compare the participating countries and list the countries based on their level of security token friendliness.*

#### **Readiness - what has the country done already, and how prepared is the country? Are the authorities and the government capable of supporting companies and investors within security tokens?**

*To what extent is the country already prepared and able to act token-friendly in practice? Is the legal foundation in place and tested; is the country encouraging domestic companies and investors to explore the potential of the token economy, and is the country attracting foreign companies and investors within security tokens?*

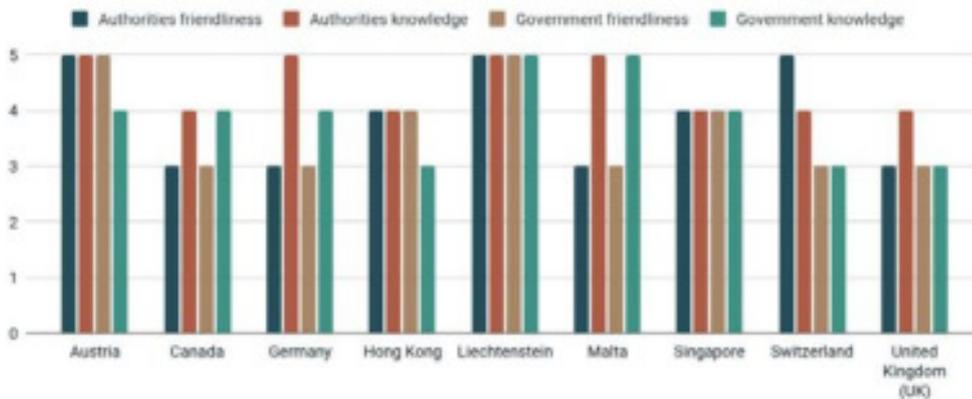
#### **Vision - how visionary is the country on behalf of the security token industry?**

*Does the country have a vision for supporting the development of the industry in the future - and is the vision carefully supported by strategic goals and concrete tactical initiatives?*

All of the respondents state that both the governments and the regulatory authorities - FSAs - in their countries have a relatively high level of knowledge and understanding of security tokens and the security token industry. On a scale of 1 to 5, the average score for governments in terms of knowledge is 3.9. For authorities, the average score on knowledge is 4.4.

On the same scale from 1 to 5, the average score for governments in terms of friendliness towards security tokens is 3.7. And for regulatory authorities, the average score on friendliness is 3.9.

### Comparison on friendliness and knowledge



If we look at the total score of both governments and regulatory authorities for each country we end up with a scoreboard showing the following points:

Liechtenstein:	20
Austria:	19
Singapore:	16
Malta:	16
Hong Kong:	15
Germany:	15
Switzerland:	15
Canada:	14
UK:	13

We cannot stress enough that this is a limited study and that these results should be taken with a pinch of salt. And since a total score of 12 would equal a middle position of the 1-5 scale where 1 = 'unfriendly' respectively 'not knowledgeable at all on the topic' and 5 = 'very friendly' respectively 'very knowledgeable', the results primary goes to show that all of the selected nine countries - as expected - have a total score above the middle.

However, it is essential to note that the relation between the answers of the two questions regarding 'friendliness, and 'knowledge' in a couple of cases tend to tell a somewhat more complex story.

This point becomes most apparent when looking at a country like Malta. According to the scoreboard, knowledge about security tokens and the security token industry is at the top (score = 5) for both the regulatory authorities and the government. And you might tend to think that with a high level of knowledge comes a corresponding level of friendliness, as seen in countries like Austria, Liechtenstein, Singapore and Hong Kong. However, this is not always the case, and in Malta, even though both the regulatory authorities and the government are 'very knowledgeable', both parties score a modest '3' on friendliness.

## The Malta case

To understand this discrepancy in the Malta case, we have to turn to the qualitative interview with the Malta representative, Mr Leonard Bonello. He explains that if we go back in time until 2017 and 2018, Malta was clearly a regulatory frontrunner within the crypto space. Already in 2018, the Maltese MFSA had a legislative act called The Virtual Financial Assets Act passed through the Maltese parliament, which according to Mr Bonello, was very close to what the EU in 2020 was proposing as MiCA.<sup>18</sup>

Mr Bonello further explains that as early as 2018, the Malta Stock Exchange was looking into the possibility of establishing a security token exchange in collaboration with Binance and OKEX. At the time, they got as far as to submit applications to the Maltese MFSA. Mr Bonello says:

*"In 2018, we were quite ahead of the curve [...] But when it comes to security tokens, all of a sudden, you can't ignore traditional financial services, and the main concern was the prospectus regulation body of laws. The MFSA had several consultation exercises, but it started to drag its feet because it wasn't comfortable taking initiatives if perhaps the EU, a couple of months down the road, would take initiatives in a completely different direction."*

Mr Bonello points out another external factor influencing Malta's appetite for anything related to crypto and the token economy. Currently, Malta is being monitored and assessed by MONEYVAL - The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - and since Malta already has a strong involvement in gaming and shipping, which are both considered high risk-industries by MONEYVAL, the Maltese government is somewhat reluctant to once again wholeheartedly engage in crypto as well which is another industry regarded as high risk by MONEYVAL. Mr Bonello explains:

*"On a political level, the tune started to change: 'Does Malta really want to be in so many industries which MONEYVAL considers to be high risk? So, all of a sudden, the impetus to be a first-mover started to slow down a bit, and we said: 'Perhaps we don't need to be a first-mover in the STO market, but we can let others take the lead, and we'll follow very quickly after.'" On his own and his law firms behalf, Mr Bonello concludes:*

*"I consider it to be a pity because I would rather have been adventurous in STOs than be adventurous in cryptocurrencies, but sometimes you get overtaken by events."*

## Knowledgeable but neutral

Another example of a country with a high level of knowledge but a somewhat more reluctant attitude towards security tokens is Germany. According to our scorecard, The Federal Financial Supervisory Authority of Germany, BaFin, scores 5 in knowledge, but only 3 in friendliness, and the German government scores 4 in knowledge and 3 in friendliness.

Lawyer Dr Nina-Luisa Siedler explains that as early as 2014, BaFin stated that Bitcoin was regarded as units of account, and therefore as financial instruments. In 2018 BaFin first mentioned security tokens, and after a discussion of whether to use the American Howey Test or stick with the European MiFID directive, the choice fell on MiFID.

<sup>18</sup> Mr Leonard Bonello: "In fact, we are currently assisting the Maltese regulators in carrying out an analysis of the recalibration of the framework for Malta to align itself with MiCA. And I would say as a country, we are already 90% there. So whereas other countries will be starting from zero, for us it will be a fine-tuning exercise."

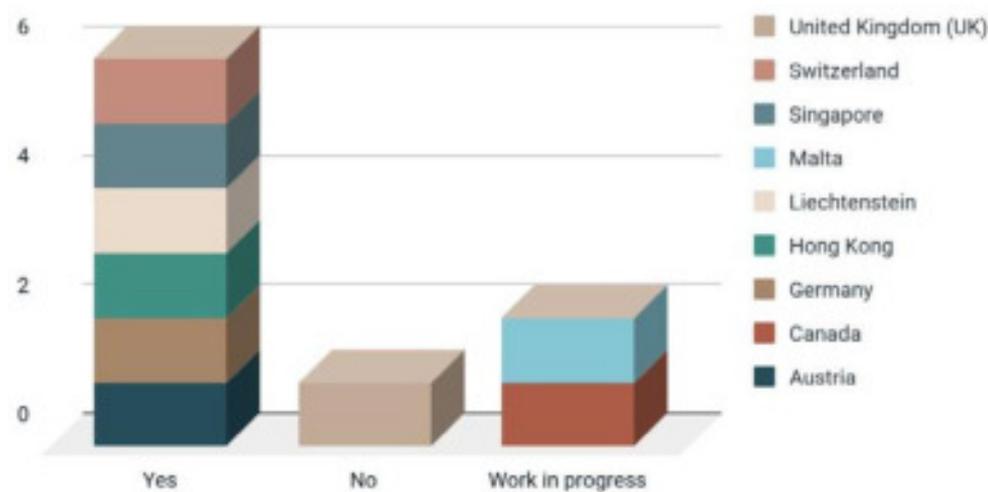
According to Dr Nina-Luisa Siedler, the stance of both BaFin and the German government is neutral when it comes to security tokens. There is no doubt that security tokens are securities captured by MiFID, and they are treated as such. But the Germans are neither supportive towards security tokens nor against them as long as the law is observed.

### C. The legal and political vision

Question No 20 in the questionnaire asks: “Would you say that the government of your country has a clear vision for the future role of security tokens and STOs in your country?”

Six out of nine answered ‘Yes’, and two answered “The creation of the vision is currently work in progress.” This clearly indicates that this is indeed a group of front-running countries. The only respondent answering ‘No’ was - to our surprise - Mr Andy Peterkin representing the UK. In the follow-up interview, we asked Mr Peterkin to elaborate on his answer.

#### 20. Would you say that the government of your country has a clear vision for the future role of security tokens and STOs in your country?



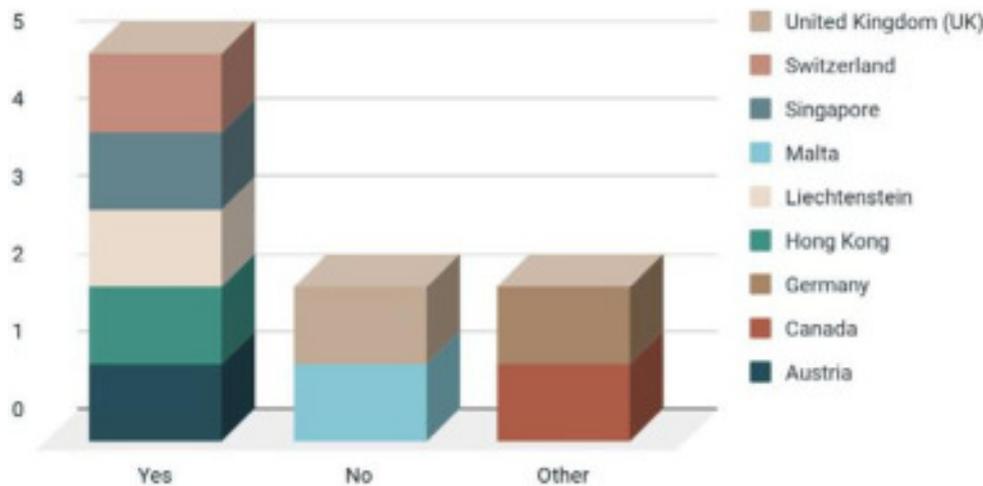
The Tokenizer: From your answers in the questionnaire, it seems as if you consider the FCA and the government as knowledgeable but not particularly friendly or interested, and not particularly visionary. That is a bit of a surprise since we used to look at the FCA in the UK as a front runner in the fintech space in general?

Andy Peterkin: *“Yes, absolutely. I think you’re absolutely right there, and I think it’s because of the nature of the UK as a financial services centre. A lot of what we’ve got here is heavy infrastructure if you like. So it’s enormous insurance companies processing millions of insurance contracts every day; it’s huge, huge information flows in and out of investment management. And when it comes to fintech, I get the impression that that is what the FCA, from a strategic perspective, is looking to encourage. So it’s looking really to foster infrastructure improvements.*

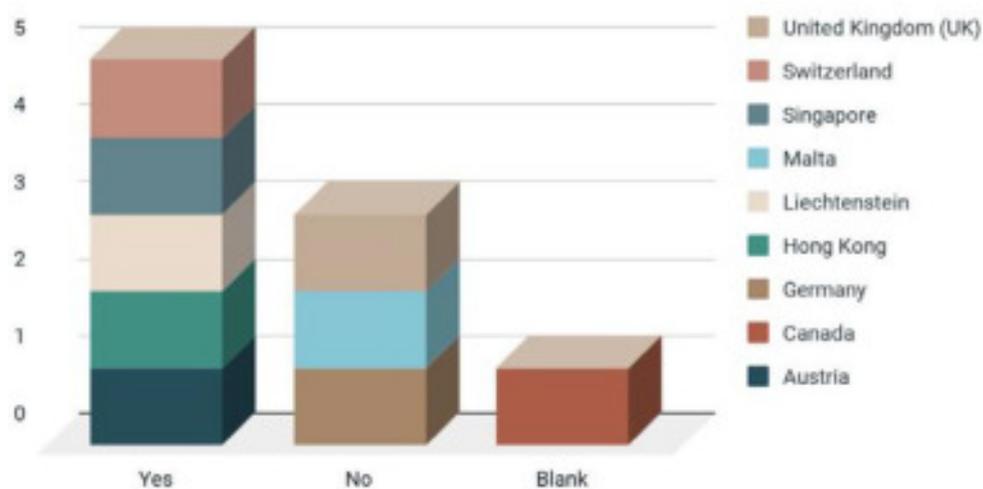
*I wouldn’t want anyone to get the idea that they’re anti tokenization, or anti the token industry, or anything like that, I think it’s just down their list of priorities. They’re more interested in fintech infrastructure, they focus on other things, but they’re not hostile, so long as you comply with the regulation.”*

In question 23, Andy Peterkin is followed by the Malta respondent Leonardo Bonello. To the question of whether the governments are encouraging the further development of the security token industry, they both answer: *"No, it's not part of their focus."*

**23. Is the government in your country encouraging the further development of the security token industry?**



**25. Do you think that the security token industry in your country is developing at a fast pace?**



The last question - no 25 - to complete this section asks about the speed of the development of the emerging industry in the countries. 62.5% of the respondents think that their country is developing at a fast pace, 37.5% believe the development in their countries is too slow. Obviously, these things always depend on the perspective. If you step back and look at what has happened in only twelve years since Satoshi Nakamoto published the Bitcoin/blockchain whitepaper, it is truly amazing. But on the other hand, if you focus on how small steps many jurisdictions worldwide have taken towards the token economy in these twelve years, it quickly fosters a feeling of impatience. However, the answers to question 25 confirm that this group of countries are very much in front, but it probably also reflects that the respondents have high ambitions on their countries behalf and tend to be impatient. ■

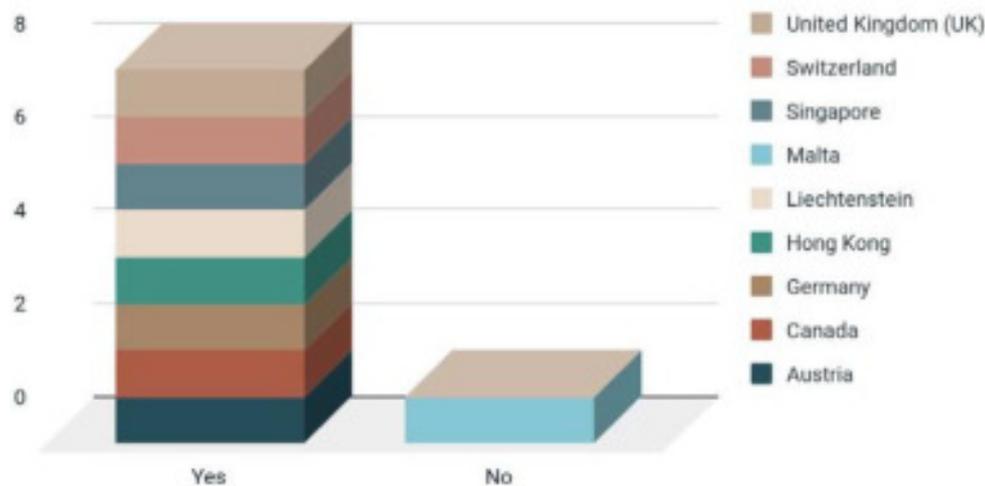
# The STO preparation process

This section will focus on the degree of complexity that companies can expect to meet if they want to conduct an STO in one of the countries in question. This is critical because in an emerging and still immature industry with no settled procedures and no fixed standards for doing things - like conducting an STO - companies are highly dependent on the information and the help they can get from either public or private (or ideally both) parties.

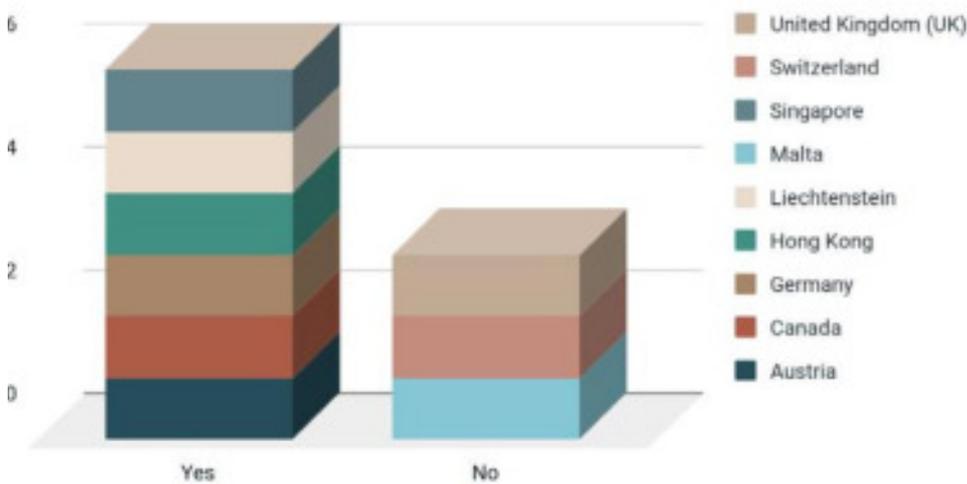
## A. Available information

Basic information and support of different kinds are crucial for start-up companies and companies who want to start an operation in a new country. Questions 26 to 32 revolve around this topic of information and support to STOs and companies within the security token industry.

### 26. Is the relevant public information available for people who want to establish a company in the country?



**28. Is there any relevant support from the local government in your country to companies?**



With Malta as the only exception, relevant public information is available in all of the participating countries for people within the security token industry who want to establish a company. If we ask not only for basic information but for other kinds of support as well offered by the public authorities, the group of 'Yes' answers drop to 66.7%, which is, however, still a substantial majority. The remaining 33.3% consists of Malta, UK and Switzerland.

In question 29, we asked the respondents to name some examples of government support initiatives, which resulted in this diverse list of initiatives:

- › **Hong Kong:** *"Government bodies such as Invest HK and HK Trade Development Council to assist in a smooth business establishment. Fintech hotlines and liaison desks with Securities & Futures Commission and Monetary Authority. Significant financial support to startup projects in technology generally."*
- › **Canada:** *"Many Canadian securities regulators have established regulatory sandboxes (as well as a national Regulatory Sandbox by the Canadian Securities Administrators). These offices have been established to allow a novel business an opportunity to "dialogue" with regulators and seek exemptive relief, if required. Decisions and orders relating to previously issued exemptive relief orders (e.g., involving token sales) are also publicly available."*
- › **Singapore:** *"Generally, government support includes innovation grants and project funding support."*
- › **Liechtenstein:** *"Yes on multiple levels: the National Competent Authority FMA has a regulatory laboratory for innovative business models, and the government has a dedicated team for innovation of the financial centre with regular events like the SFI Blockchain & Innovation Circle ("BIC")."*
- › **Austria:** *"The Austrian Business Agency (ABA) acts as the first point of contact for companies outside of Austria who wish to conduct business from within Austria. The ABA is also knowledgeable regarding security token offerings."*

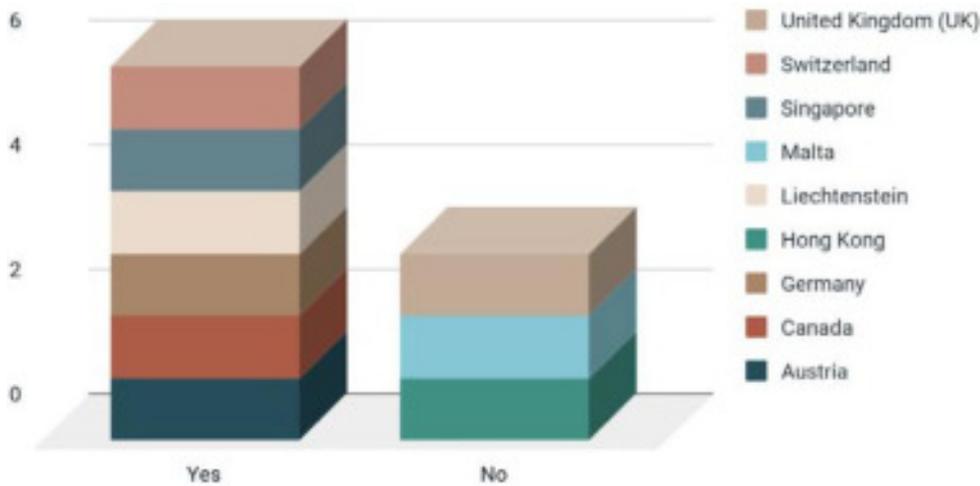
› **Germany:** *“German regulator BaFin is available for formal inquiries relating to regulatory requirements.”*

In an earlier question (16), we asked whether the countries’ authorities offer a regulatory sandbox facility for startups within the security token industry, and it turned out that 55.6% offer such a facility.

Because this group of countries are supposed to be among the most innovative globally within the token economy, a higher percentage might have been expected. However, some countries - like Germany - are just not in favour of sandboxes, and each country may have its own sound reason for not offering this particular facility.

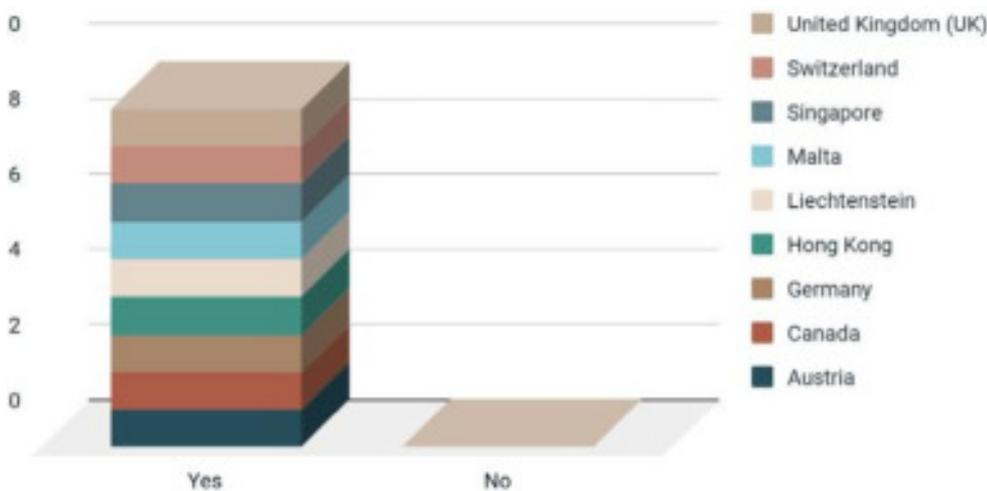
Perhaps more importantly, in question 32, we asked whether foreign companies that want to conduct an STO in the countries in question should expect any support. No less than 66.7% affirmed that support would be available in such cases.

**32. Does the public administration in your country offer any support to the foreign companies that want to conduct an STO?**



When it comes to the availability of private providers of information and support services, all the countries can deliver - which is no surprise.

**30. Do private companies in your country offer information for people within the security token industry who want to establish?**

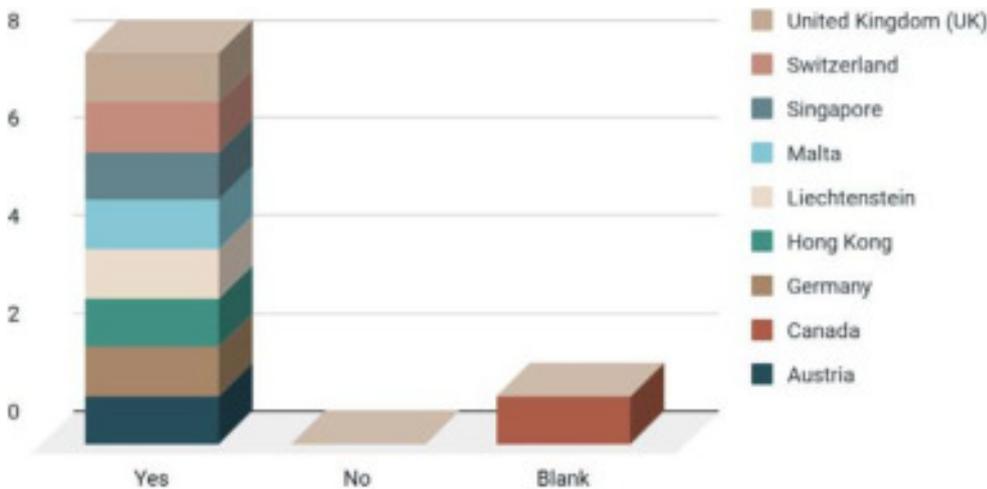


## B. Foundation of a company

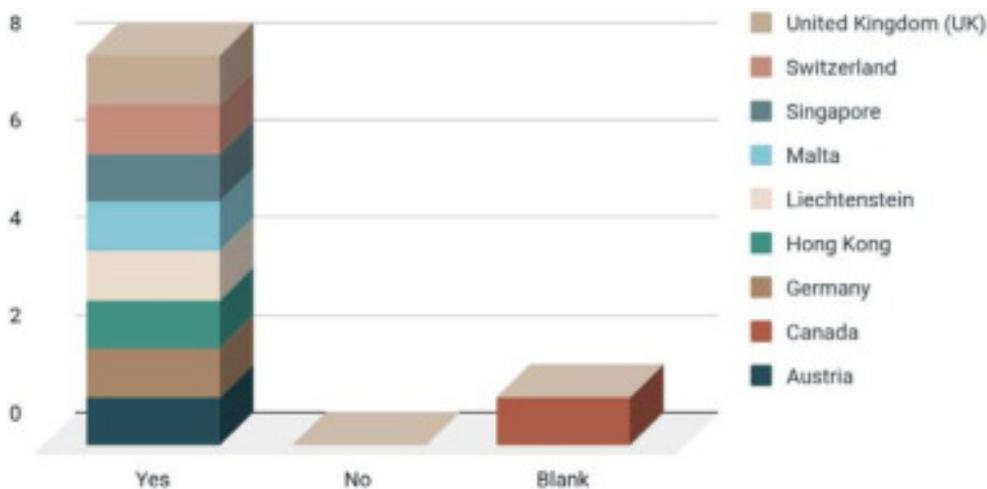
Question 40 to 52 focus on the process of establishing a new company operating within the security token industry. Since regulatory first-movers tend to attract foreign companies that want to utilize, for instance, a given country's positive attitude towards the token economy, some of the questions in the questionnaire focus specifically on the opportunities (or challenges) for foreign companies.

Question 40 asks whether it is possible to found a company by non-citizens and non-residents. Eight respondents answered the question, and all eight responded 'Yes'. The same goes for question 41, asking if it is possible to found a company without a physical presence.

### 40. Is it possible to found a company by foreign persons (non-citizen, non-residents)?

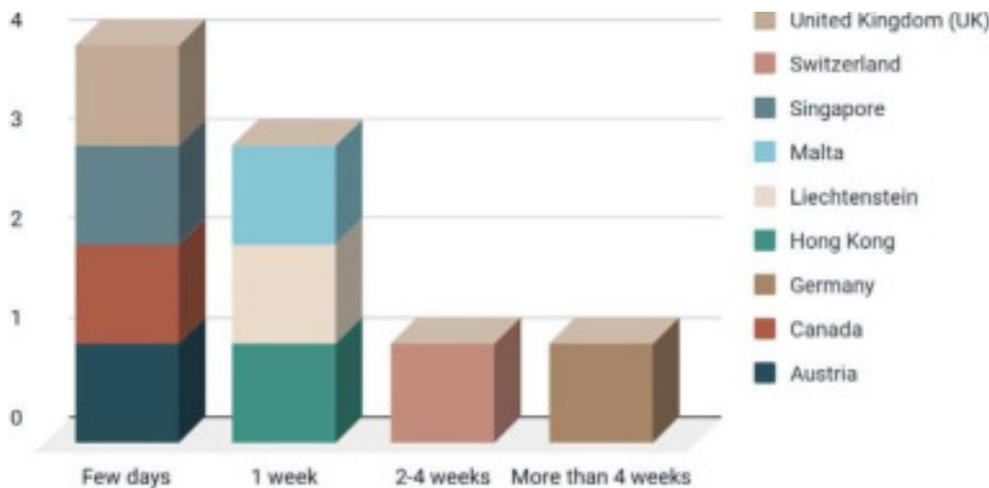


### 41. If 'Yes': Is it possible to found a company without a physical presence?

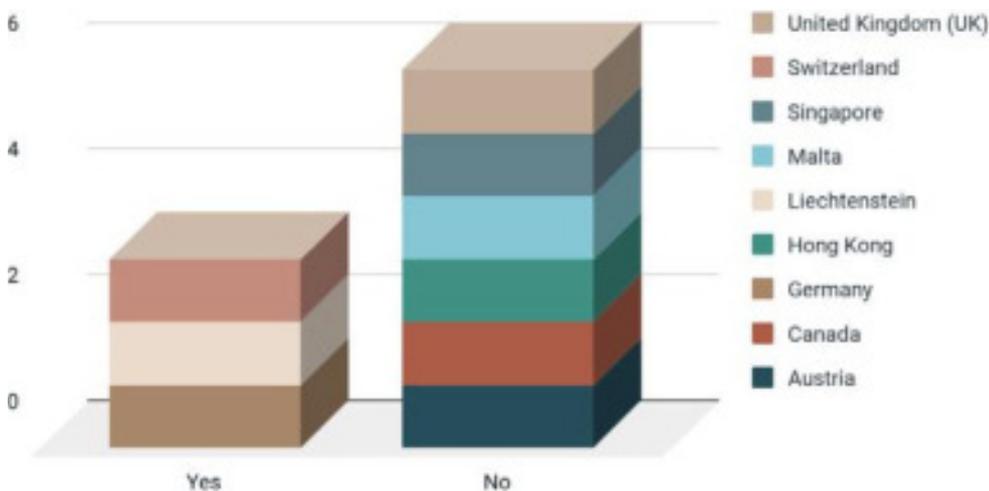


As the following three follow-up questions show, the time needed for the founding of a company in these countries is somewhat limited - from 12 hours to a week in most cases and up to a month or more on only one occasion, Germany. Also, in 66.7% of the countries, a company can be established without a lawyer/notary/public officer; and the total average costs of the foundation of a company are in no cases more than 5,000 - 10,000 EUR.

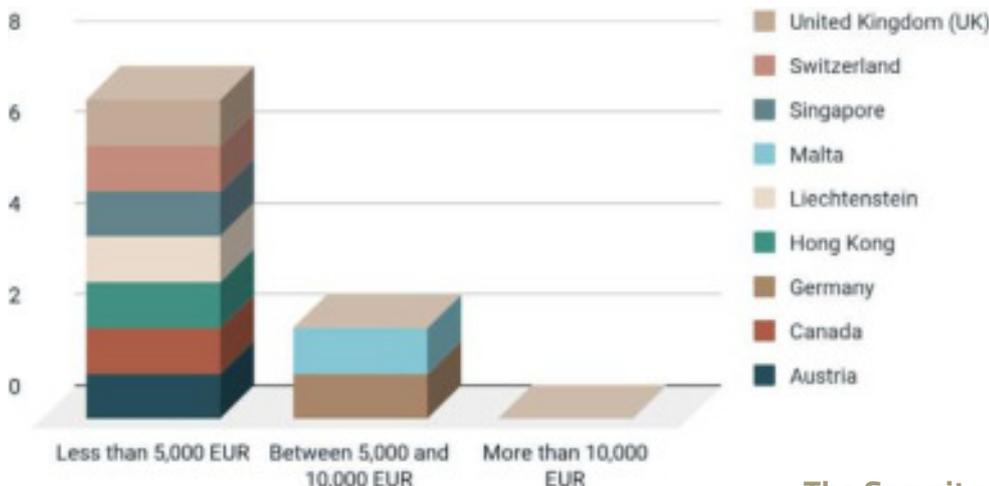
**49. On average, how much time is needed for the foundation of a company?**



**50. Is a lawyer/notary/public officer mandatory for the foundation process?**



**52. What is the average total cost of the foundation of a company in your country?**

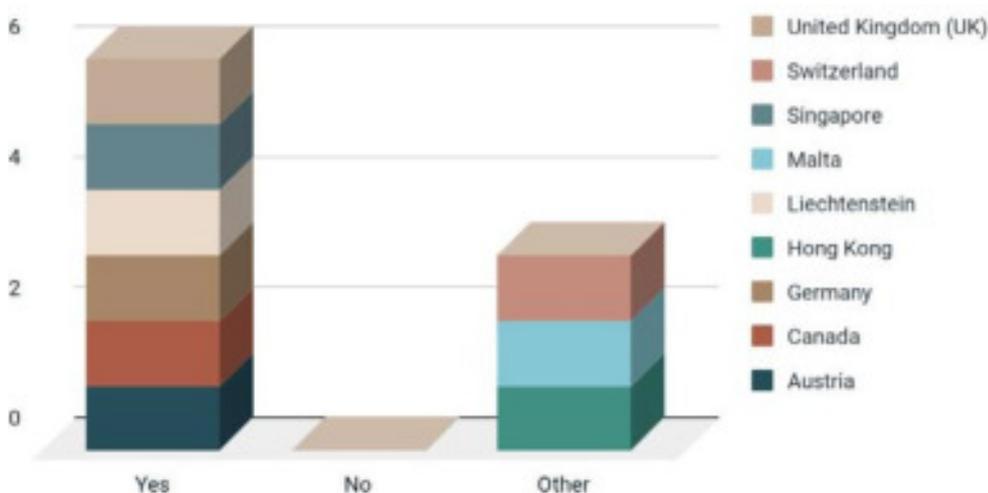


## Opening of a bank account

So far, the barriers for new companies - domestic or foreign - seem to be low, but a typical bump on the road concerns the bank account, which is mandatory for any company. For companies in general, to get a bank account can sometimes be a challenge, but it typically increases significantly if the company is operating within the token economy. In the questionnaire, we ask whether it is possible for a foreign company conducting an STO to open a bank account in the country. And even though none of the respondents answered with a 'No', and a majority of 55.6% answer with a straight 'Yes', 44.4% add comments which clearly indicate that even in the most progressive countries, many of the banks are still somewhat reluctant to take on crypto companies as customers. The comments are:

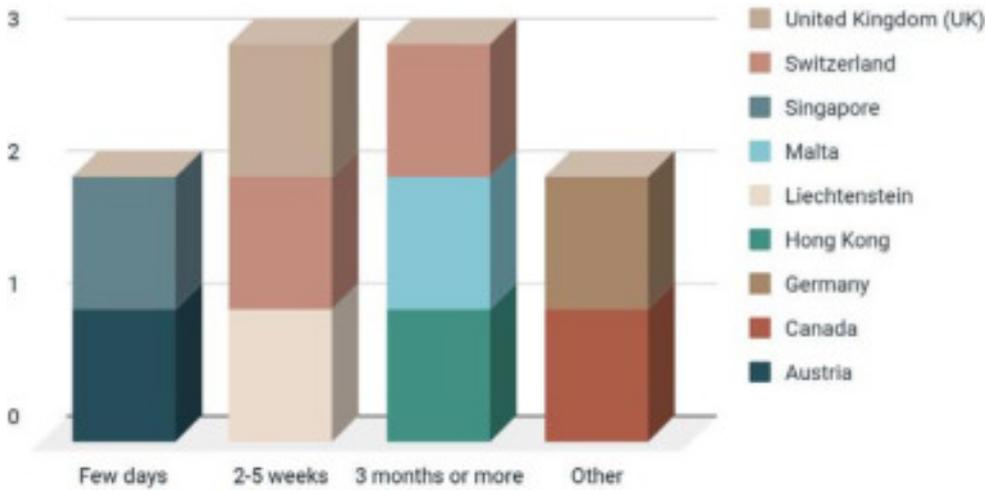
- › **Singapore:** *"Yes, subject to the banks' KYC check"*
- › **Hong Kong:** *"Theoretically, yes. In practice, potentially difficult."*
- › **Malta:** *"Depends on the risk appetite of the particular bank."*
- › **Switzerland:** *"Yes, assuming the foreign company sets up a Swiss subsidiary."*

47. It is possible for a foreign company conducting an STO in your country to open a bank account in the country?



The follow-up question regarding the amount of time needed to open a bank account results in an extreme variety of answers from 6-8 hours (Austria) up to three months or more (Hong Kong).

#### 48. On average, how much time is needed to open a bank account?

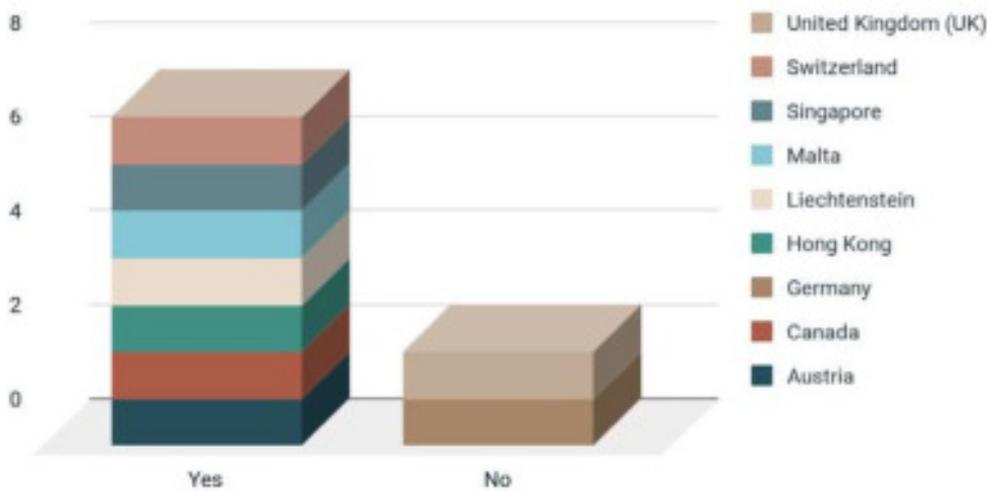


### C. Compliance and regulatory procedure

The next group of questions in the questionnaire revolves around the compliance and regulatory procedure for STOs in different countries.

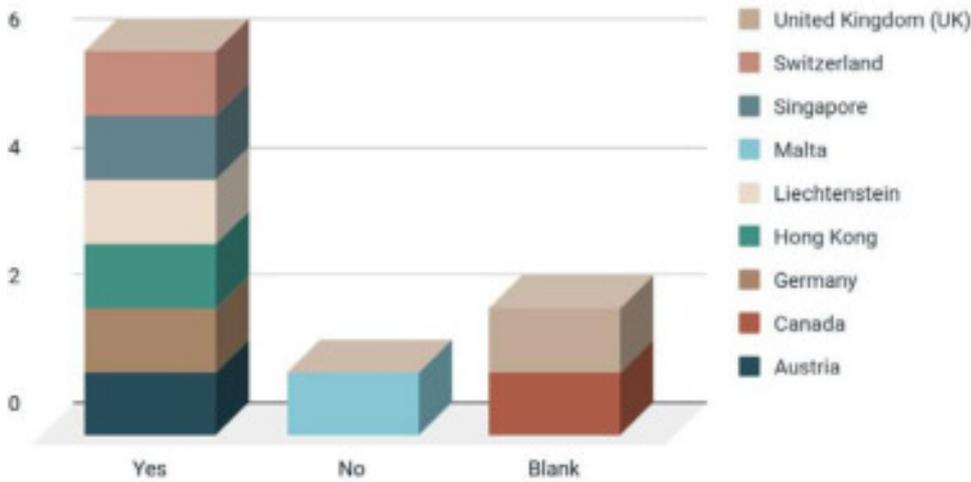
We have chosen to take a closer look at four of the questions, the first one (54) asking whether a notification/registration/licence is required for companies that want to conduct an STO. In 77.8% of the countries, this is needed; only Germany and the UK do not have such a requirement.

#### 54. Is there a general notification/registration/licence requirement for companies that want to conduct an STO?



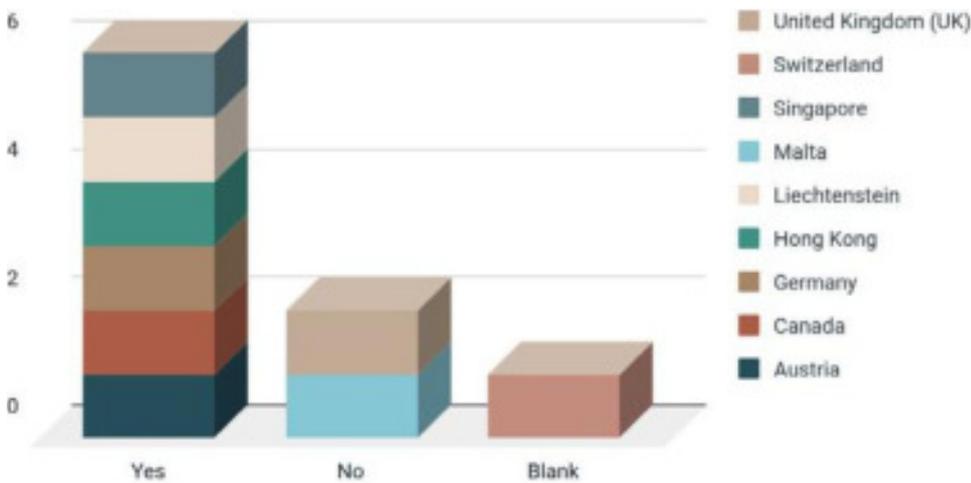
Seven respondents were asked if there is a distinction between 'own issuance' and 'issuance as a service', and six respondents answered 'Yes'.

55. If 'Yes': Is there a distinction between own issuance and issuance as a service?



Since time is always a critical factor, we asked for an estimate of the notification/ registration/licence process duration on average. Only five respondents were able to answer this question, and out of this group, we got a somewhat split result of two answering 'Less than one month', two answering 'More than three months', and one was in-between. However, if less than one month could be three weeks, and more than three months could be four months, this is one of the important differences that companies that want to conduct an STO need to consider. The fastest countries, according to the respondents, are Austria and Switzerland. And the slowest are Singapore and Hong Kong. ■

61. Are the authorities ready for advisory support and personal meetings to discuss the STO process?



# The security token issuance process

An essential prerequisite for a security token offering is for the company conducting the offering to put together a trusted team of partners capable of assisting with critical elements of the process. One of these elements is the actual creation of the tokens, and another is the preparation of the sale - as private placements or a public sale. We will take a closer look at these elements in the following.

## A. The creation of tokens

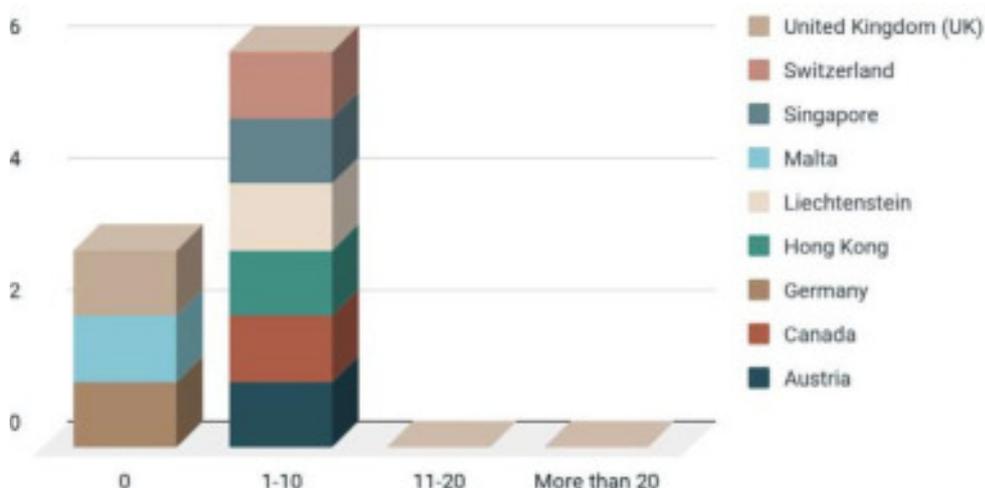
The number of issuance companies is increasing all over the world. Nevertheless, according to the respondents from Malta, Germany and the UK, their countries currently do not have any active security token issuance companies.

The rest of the countries, 66.7%, accommodate between 1 and 10 security token issuance providers. And in 77.8% of the countries, the issuance service providers are regulated or supervised.

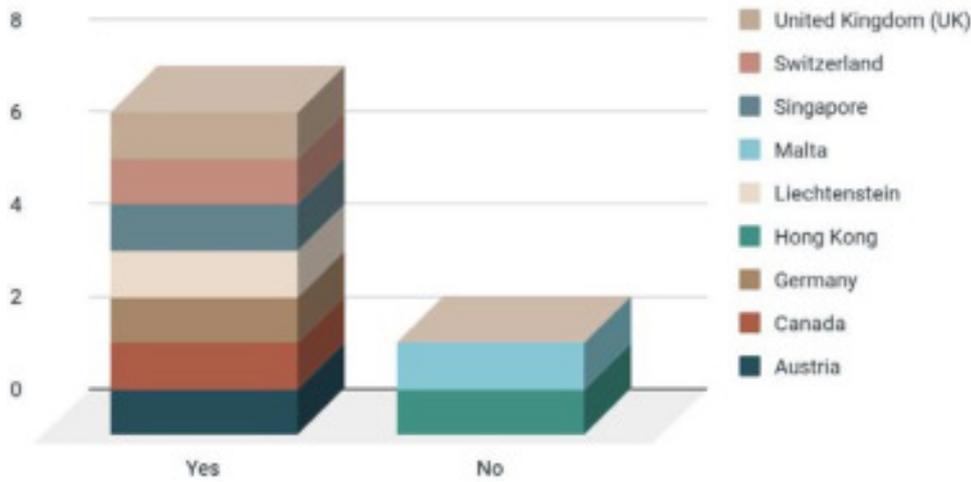
On the question of whether companies are required to register their security tokens in a public register (66), eight respondents answered and seven with a 'No'. The exception, in this case, is Austria.

Finally, we asked (67) about a possible issuance tax for STOs, and out of the eight answers, only the respondent from Switzerland returned with a 'Yes'.

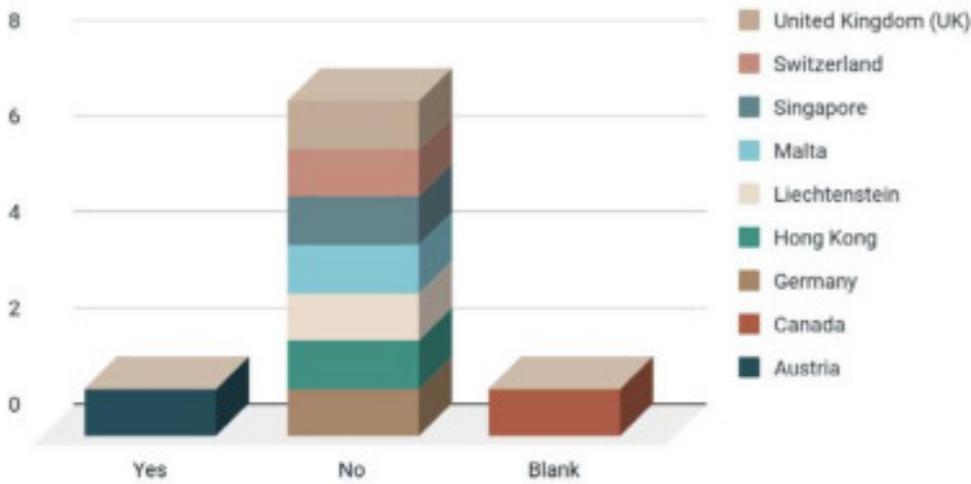
### 54. How many active security token issuance platforms would you say you have in your country currently?



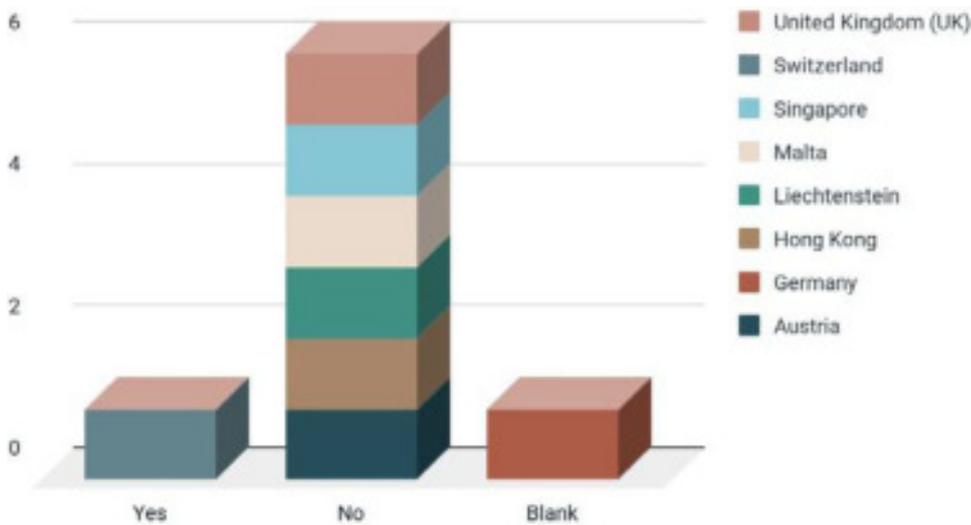
65. Are the issuance service providers in your country regulated or supervised?



66. Are companies required to register security tokens in a public register?



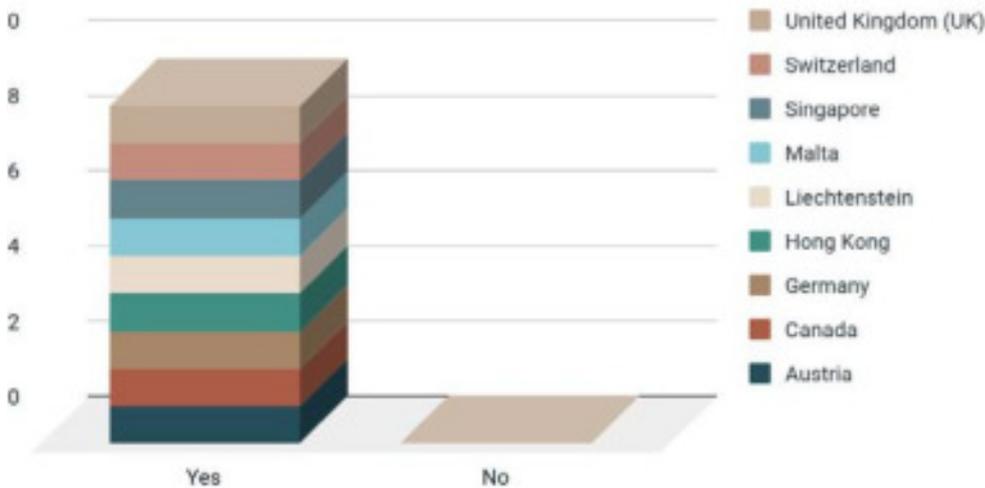
67. Is there an issuance tax for STOs in your country?



## B. The public sale

Private placements of security tokens are possible in all of the countries participating in this analysis. And as shown earlier, in all countries, except for Hong Kong, it is also possible to conduct an STO with a public token sale provided that investor information in the shape of a prospectus is produced and approved by the national FSA.

### 75. Are private placements of security tokens possible according to the regulatory regime in your country?

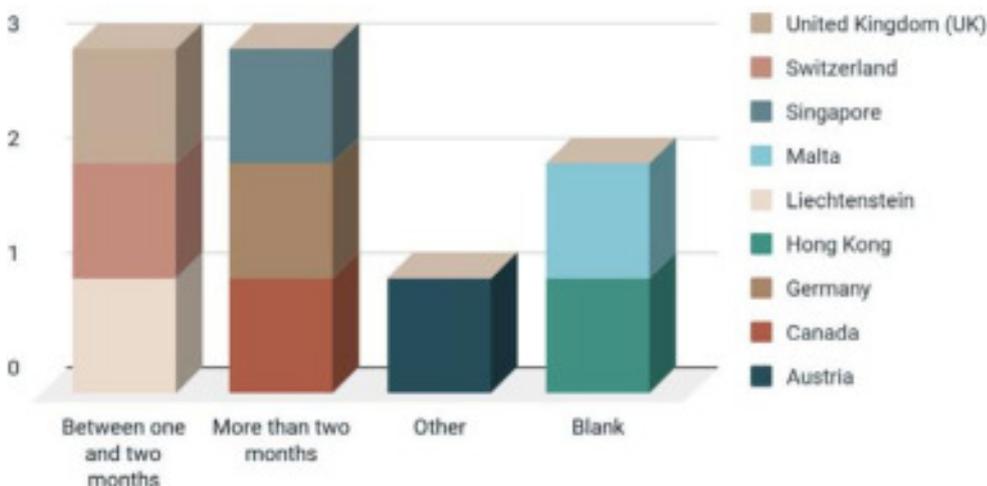


A company may choose to spend a significant amount of time and money producing a prospectus. However, it is still relevant to ask - as we did in question 78 and 79 - for an average duration and cost of preparing investor information/prospectus.

Seven respondents answered the question on duration. Three answered: Between one and two months; another three answered: More than two months. And finally, the Austrian respondent delivered this detailed answer:

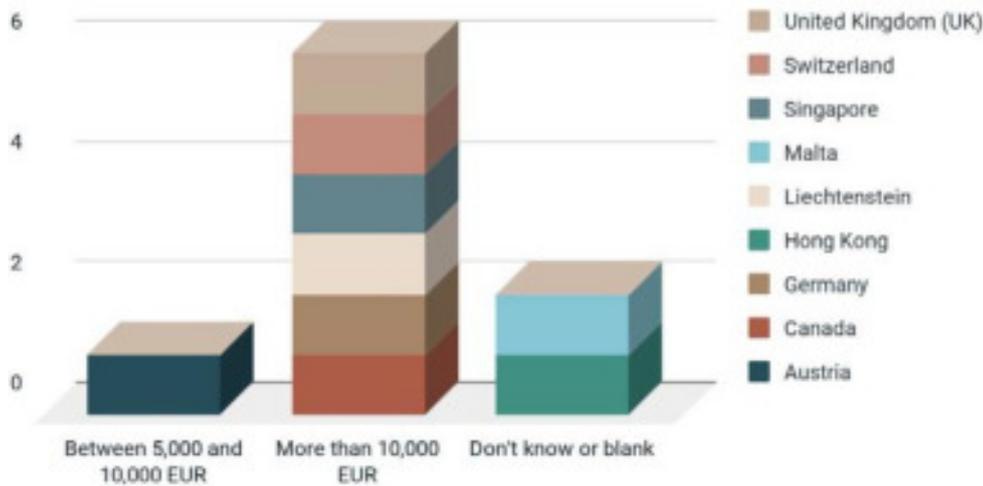
*"This depends on the amount intended to be raised; for less than EUR 250.000: Approx. one week; for less than EUR 5 Million: Approx. one month; above this threshold it takes approx. three months."*

### 78. What is the average duration to prepare investor's information?

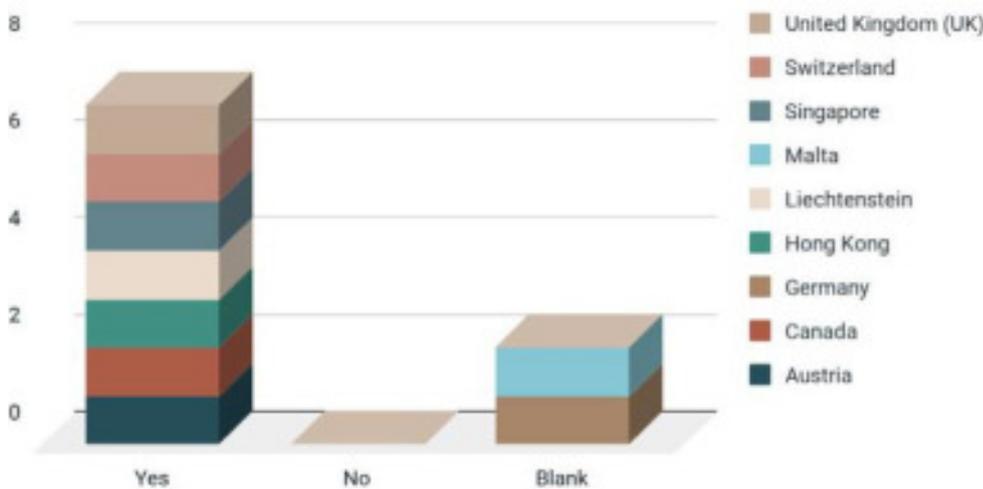


When it comes to the investor information/prospectus produced for an STO, 75% of the respondents (eight in total) estimated an average cost of more than 10,000 EUR.

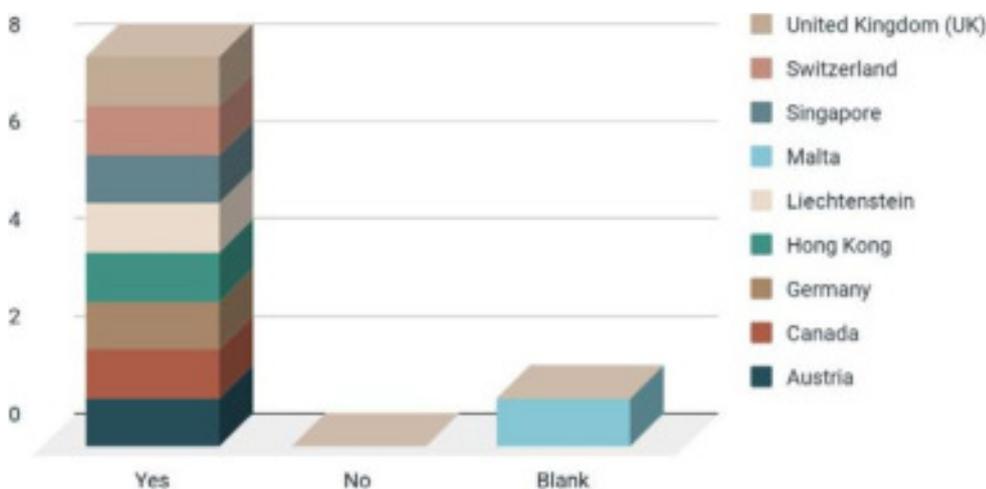
**79. What is the average cost of advisory for investor's information? (standard security token)**



**81. Is the public sale of tokens subject to due diligence regulation (AML/KYC/CFT)?**



**82. If yes: Are service providers (issuance platforms, custodians, exchanges) regulated or supervised?**





Finally, we asked whether a public token sale would be subject to AML/KYC/CFT in the respondent's countries, and seven out of seven (two respondents didn't answer the question) confirmed that this would be the case in their countries. Furthermore, all of them confirmed that service providers like issuance platforms, custodians and exchanges in their countries are regulated or supervised by the authorities. ■

# Investing

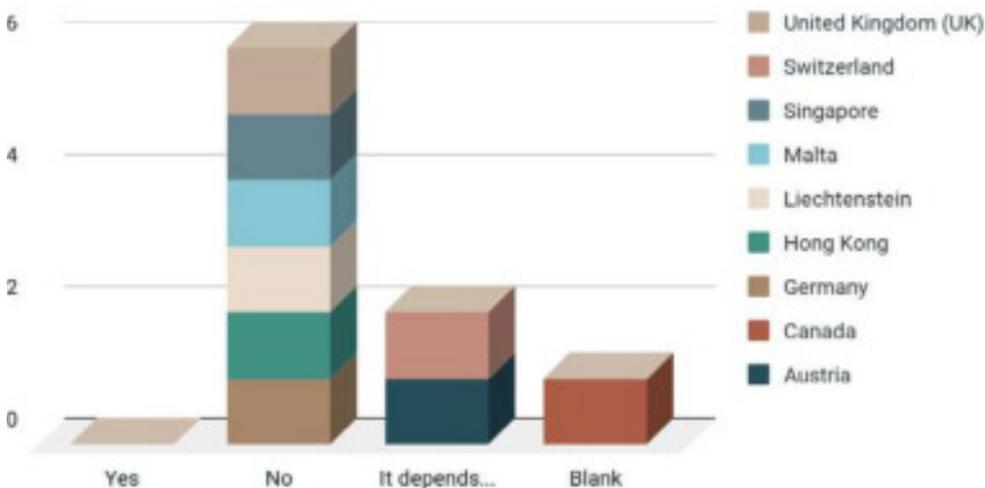
When conducting an STO a critical prerequisite for success is for the issuer to be able to onboard investors in an efficient manner without too many regulatory barriers and obstacles. Provided that an investor does not come from a blacklisted country, how much does it take in terms of information and time to get started? In the following small group of questions we are taking a closer look at these matters.

## A. Preparation of investments

First question (85) asks whether it is possible for a non-resident investor to directly invest in security tokens without onboarding - which means if or not the issuer has to gather vital information on the investor and conduct identity checks to comply with KYC regulations before allowing the investor to acquire the security tokens offered for sale in the STO.

Eight respondents answered this question, and six out of eight answered with a 'No'. Two answered that 'It depends on which kind of security token the investor wants to invest in.'

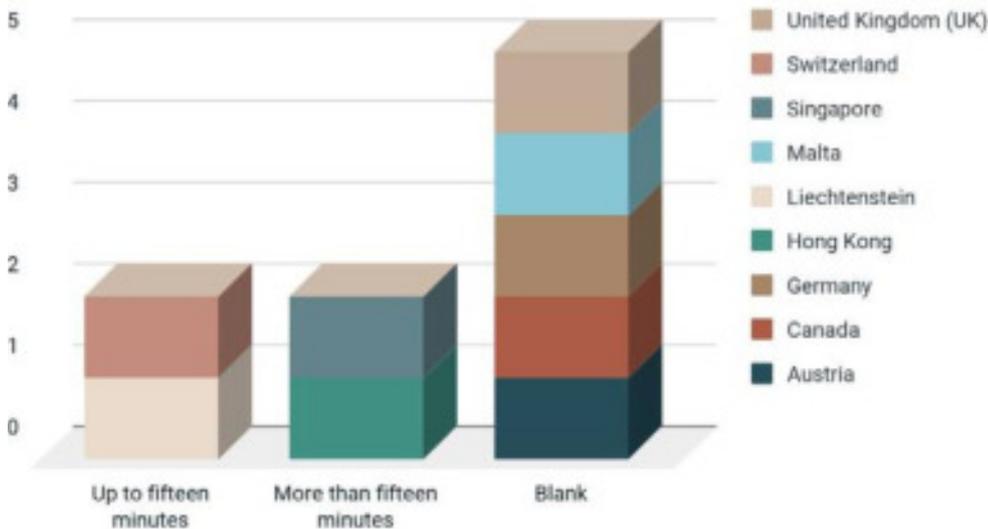
### 85. Is it possible for a non-resident investor to directly invest in security tokens without onboarding?



User convenience is essential when onboarding investors and time-consuming and potentially expensive onboarding processes could easily cause problems for STOs. As a follow-up question, we asked for the expected average duration of investor registrations, including KYC checks. Five out of nine respondents did not possess data that enabled them to answer this question.

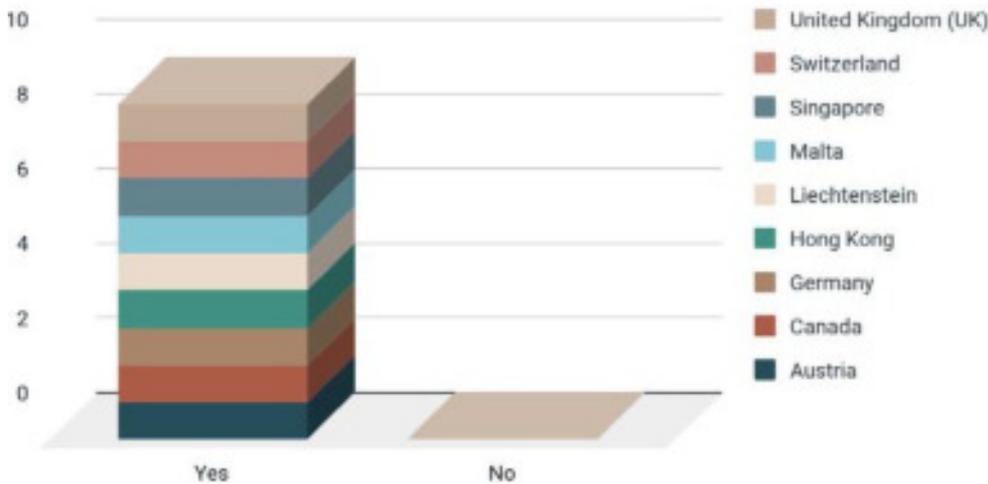
Out of the remaining four respondents, two answered 'Up to fifteen minutes,' and two answered 'More than fifteen minutes.' Unfortunately, this gives no clear picture of the current onboarding process situation, but it certainly indicates that investor onboarding might potentially be an important challenge that issuers need to address when planning for an STO.

**87. How much time is needed for registration?**

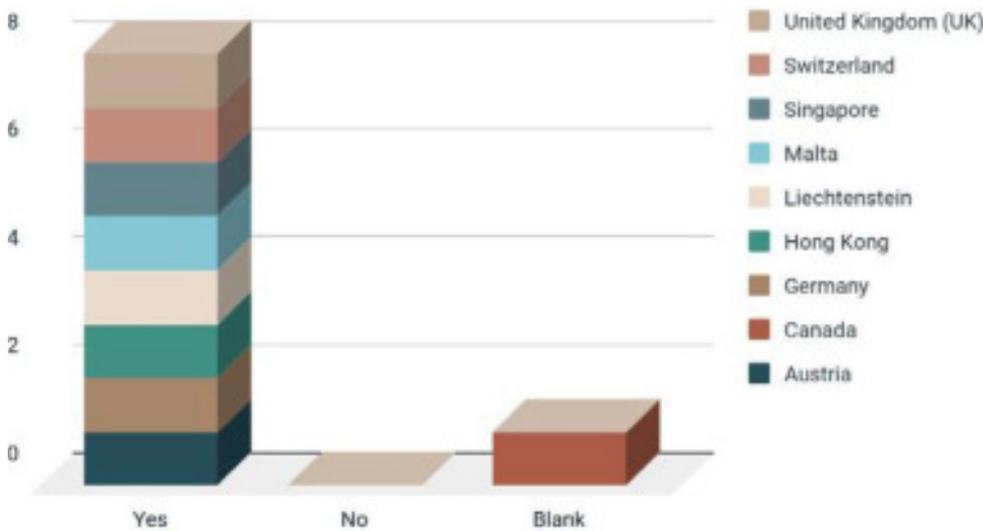


There are no tight restrictions in any of the participating countries when it comes to paying for security tokens. Nine out of nine answered that 'Yes' it is possible to invest using cryptocurrencies such as bitcoin directly. Furthermore, eight out of eight answered 'Yes' it is possible to invest via a bank account.

**88. Is it possible to directly invest using cryptocurrencies (payment tokens like bitcoin or altcoins)?**



## 89. Is it possible to indirectly invest via bank account?



### B. Prevention of fraud and technical failures

Fraud and technical mistakes may potentially result in severe losses for the investors in case of a lack of sufficient legal requirements towards and supervision of the service providers involved in the investment process.

We asked one key question regarding this and unfortunately got seven different answers from eight respondents - respondent number nine was unable to answer the question - which clearly indicates that this is an area that needs to be looked closer into to obtain some alignment. The answers were:

**Austria:** *"By law, the service provider has to ensure that its own assets are kept separate from investor's assets."*

**Singapore:** *"Depends on the terms of the agreement between the investor and the company, between the company and the service provider, and between the service provider and the investor, if any."*

**Malta:** No answer

**Germany:** *"Service providers are regulated; hence a variety of protection measures apply depending on the type of business (incl. as the case may be, minimum capital, insurance, segregation)."*

**UK:** *"The investor will have to line up together with other creditors."*

**Switzerland:** *"Depends on the setup."*

**Liechtenstein:** *"By law, the investor's assets are segregated from the service provider's assets."*

**Hong Kong:** *"By law, the investor's assets are segregated from the service provider's assets."*

**Canada:** *"If the service provider is a registered investment dealer, it is required to maintain insurance. Many crypto-asset 'service providers', however, are not registered as investment dealers or do not otherwise obtain insurance, in which case the investors will likely be considered an (unsecured) ordinary creditor in any subsequent bankruptcy." ■*

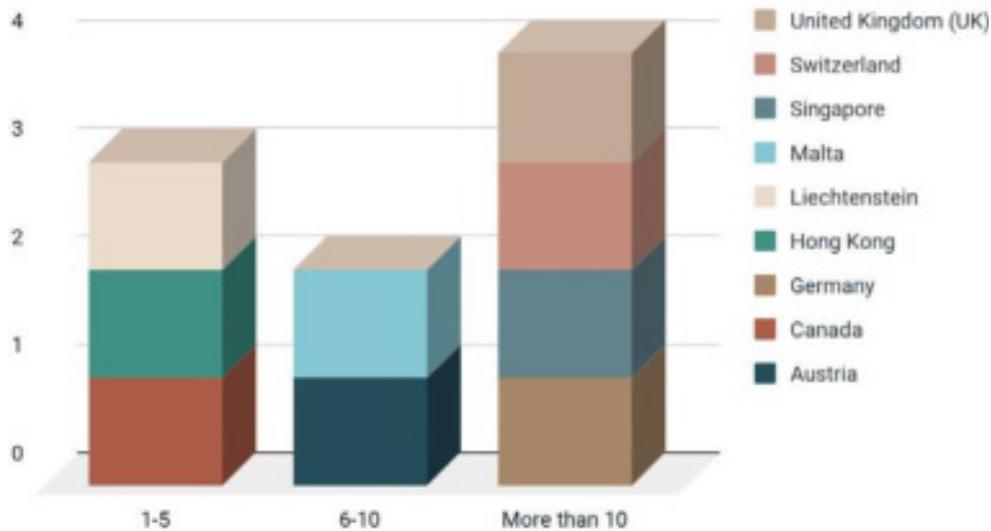
# Custody

Secure and easy custody service is yet another critical precondition for realising the potential of security tokens.

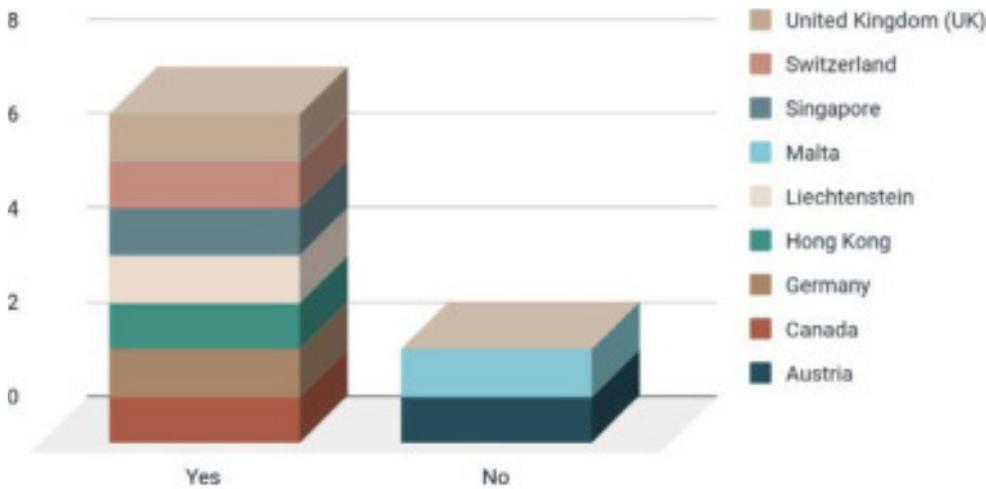
Even though decentralisation is a mantra in the blockchain space, there is little doubt that many traditional investors don't want to be left alone with the full responsibility of safekeeping their private keys - and risk losing their security tokens in case of losing their private key. That is why trusted custodians are required, and we already see these new types of custody services being offered in the market.

The questionnaire contained three questions concerning custody, and the answers to the first question show that 44.4% of the countries now have more than ten service providers offering custody services.

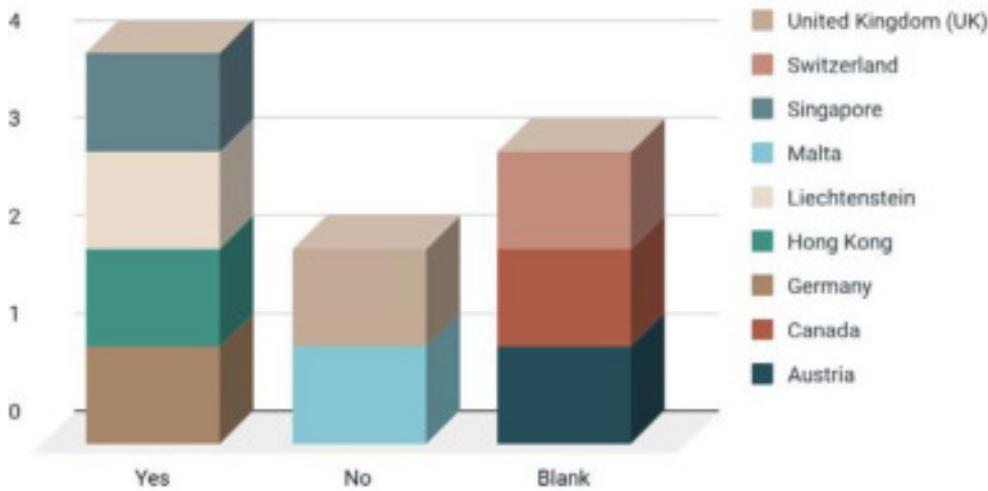
## 91. How many custody service providers are available?



92. Is the case of bankruptcy/default of a custody service provider regulated in your country?



93. If 'Yes': Are the tokens by law segregated from the service provider's assets?



These numbers are promising, but since trustworthiness and security are critical when talking about custodians, it's essential to know that these service providers are regulated and that investor tokens are safely segregated from the service provider's own assets in case something unfortunate happens. We would have liked to see confirmation of this from 100% of the respondents, but unfortunately, this was not quite the case. However, a substantial majority of the participating countries lived up to these expectations. ■

# Trading

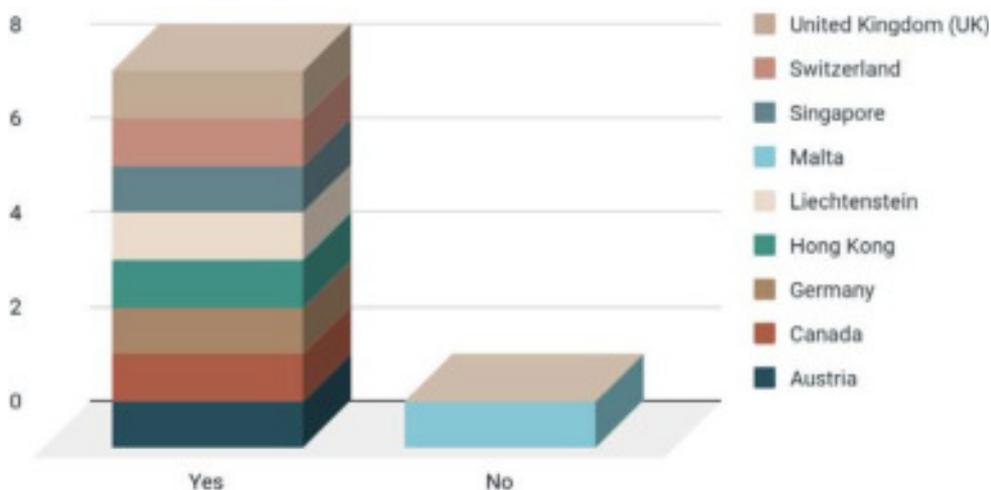
Without a vibrant secondary trading market, security tokens will never become the number one blockchain killer app that many expect it to become. However, it is still early days of security tokens, and the secondary market for security tokens still needs some time to mature and unfold its potential. Nevertheless, the emerging industry needs to show progress to convince new investors and asset owners that the trend of security tokens is genuine and not just another hype.

We concluded the questionnaire with a handful of questions on trading and the promise of a coming secondary market. In the first question (94) eight out of nine respondents confirmed that it is - already now - possible to trade security tokens on a peer-to-peer basis directly. Only the Malta respondents answered that this was not an option.

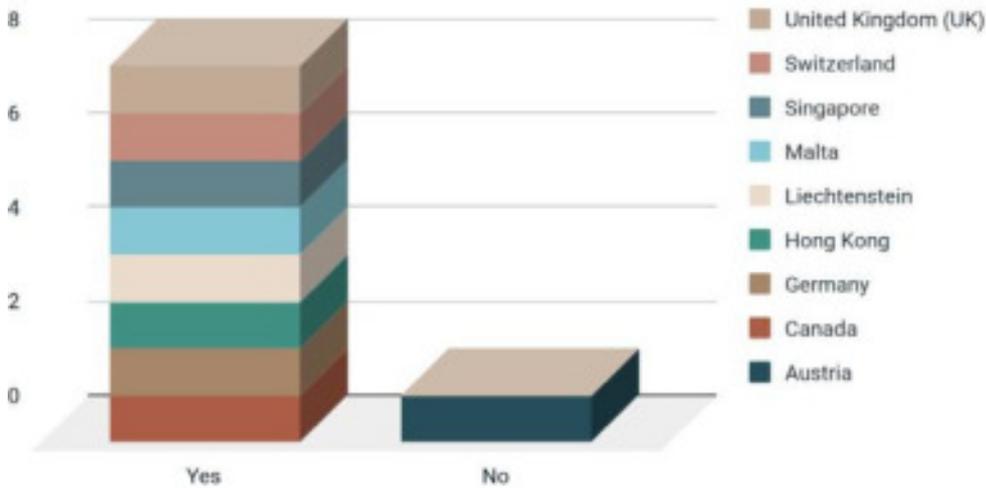
Correspondingly, eight out of nine respondents answered that secondary trading of security tokens via exchanges is - already today - regulated in their countries. Only the Austrian respondent answered that this is currently not the case.

With the follow-up question about the number of security token exchanges in the countries, it became evident that the security token industry is still very immature in some ways. Five out of nine (55.6%) respondents answered that they still got zero active security token exchanges in their countries, and four out of nine answered '1 to 5' security token exchanges.

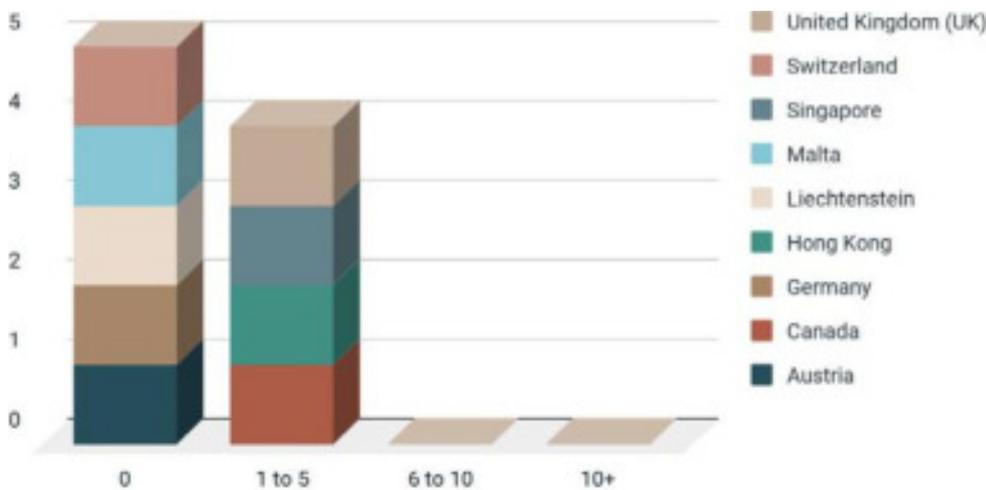
## 94. Is it possible to directly trade security tokens on a peer-to-peer basis?



95. Is secondary trading of security tokens via exchange regulated in your country?

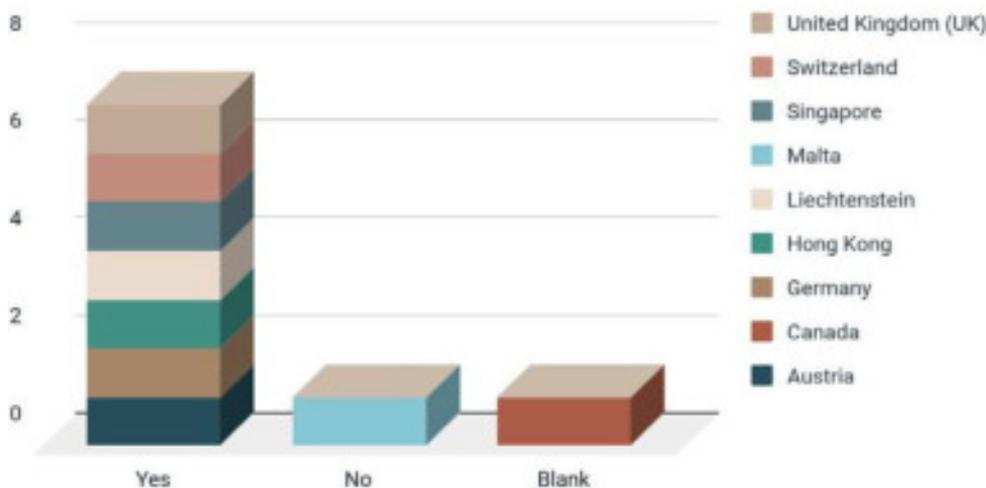


96. How many active security token exchanges do you have in your country currently?



Finally, we asked whether trading of security tokens on decentralised exchanges is allowed in the countries, and the good news is that seven out of eight confirmed that this is the case. The Malta respondent answered that trading via a DEX is not an option, and the Canadian respondent did not answer the question. ■

97. Does the regulatory regime of your country allow trading of security tokens on decentralised exchanges (DEX)?



# Top-Three Global Frontrunners

As part of the qualitative phone/video interviews with the nine respondents, we asked them to make their own global Top Three-list of countries that they believe are the most innovative, most friendly and most supporting in terms of security tokens and STOs.

We did not ask them to choose only among the nine countries participating in this analysis, and as we will see, this added a line of other interesting countries to the list. Furthermore, we allowed the respondents to point at their own country if they believed they represented a Top Three candidate.

Below you can see the results of the question: "If you should mention the Top Three leading global regulatory frontrunners within security tokens, who would they be?"

A particularly interesting perspective on this question was brought forward by the **Hong Kong respondent, Padraig Walsh**. His suggestion was to divide the jurisdictions of the world into three categories based on their regulatory approach:

- › *"Firstly, there's the prohibition approach. Let's discard that for present purposes.*
- › *Secondly, you have smaller, more versatile, nimble jurisdictions. These jurisdictions tend to introduce customized laws and regulations. That's where Liechtenstein, Bermuda, and Gibraltar fit in.*
- › *Thirdly, there is a category of more established, more mature financial services centres. These jurisdictions generally do not introduce new laws; they look at adapting or refining their existing laws. That's the group that Hong Kong sits in."*

## **Austria, Oliver Völkel:**

*"That's difficult to say. Definitely **Austria** and **Liechtenstein**, but it's difficult to point out the third one. Most likely, it would be one of the European member states that have no additional regulation in place whatsoever. Most likely, the ones who they would also just apply MiFID, but I can't really tell you."*

## **Canada, Usman Sheikh:**

*"**Singapore** is definitely up there. **Switzerland** is definitely up there. And I would also say **Canada** and the **United States** are up there. And again, Canada, United States, they take perhaps a little longer to get to a result, but the quality of thinking, the quality of position is, I think, what sets these two jurisdictions apart."*

## **Germany, Dr. Nina-Luisa Siedler:**

The German legal expert Dr Nina-Lisa Siedler picks five countries for her list of frontrunners. The countries are: Gibraltar, Switzerland, Liechtenstein, Malta, and Singapore.

**Hong Kong, Pdraig Walsh:**

*"This is a difficult question. Most projects wind up being multi-jurisdictional. To say one jurisdiction is above another depends on what lens you're looking through.*

*It does behove me to include **Hong Kong** for all the reasons we've discussed.*

*I admire how **Gibraltar** developed their regulatory framework. The Gibraltar authorities have been active in promoting maintaining interest, but without diluting their focus on quality and standards. So Gibraltar is a jurisdiction I like.*

***Bermuda** has a good history when it comes to regulation – take their approach to the insurance industry, for example. Bermuda has taken a similar approach to Gibraltar in customized frameworks for the cryptocurrency industry. Bermuda has adopted specific laws based around providing a framework for the entire value chain for cryptocurrency in financial services.*

*Within Europe, **Liechtenstein** is doing some interesting things. Many of the structures in **Germany** use Liechtenstein as a favoured jurisdiction. This is based on respect for what Liechtenstein has achieved with its rules and approach.*

*I'm going beyond three now. Let me justify this with a framework.*

*If you are selecting a jurisdiction for a project based on regulation alone, you could divide the world into three categories. Firstly, there's the prohibition approach. Let's discard that for present purposes. Secondly, you have smaller, more versatile, nimble jurisdictions. These jurisdictions tend to introduce customized laws and regulations. That's where **Liechtenstein**, **Bermuda**, and **Gibraltar** fit in. Thirdly, there is a category of more established, more mature financial services centres. These jurisdictions generally do not introduce new laws; they look at adapting or refining their existing laws. That's the group that **Hong Kong** sits in. So if you were to look within that set, I think Hong Kong has done an exceptionally good job and is probably the leader in Asia. If I were to choose two other jurisdictions, I would look to probably the **UK** and **Switzerland** as being towards the forefront. That would be my three for that category.*

*So it's six in total, but three for each of two parts."*

**Liechtenstein, Thomas Nägele:**

*"With all of the honesty and everything, I think it is Liechtenstein for the moment. **Liechtenstein**, **Switzerland**, and the third one is actually pretty hard because there are quite some others as well. Maybe my third one is Southeast Asia and the Middle East. If you want to narrow it down to a single country, I would guess **Singapore**."*

**Malta, Leonard Bonello:**

*"Well, I think I would need to mention **Singapore**. And although they're not a front runner per se, right now, I am curious to see how the **US** will develop, because in some cases, they have been very reticent. But now they're going to allow banks to trade, especially fiat-backed Stablecoins. And if you start getting comfortable with Fiat-backed Stablecoins, you can easily get comfortable with security tokens too. So I wouldn't be surprised ...*

*I'm also curious how the **UK** will react to this space. They're going to be freed up from EU regulations and burdens, and the UK has always been very good at selling itself as a jurisdiction. So if they decide that they want to make this a key area for them, or an area for growth outside the EU, they can very well do so."*

**Singapore, Li-Ling Ch'ng:**

*"I would actually rank **Liechtenstein** and the **US** as the leading global regulatory front runners. But I wouldn't really know which country to rank as the third. So I would just mention these two because already two years ago, security token offerings were coming out of the US. And Liechtenstein because they have already issued their blockchain law."*

Question: *"Okay. So you will not say that **Singapore** should be number three?"*

**Li-Ling Ch'ng:**

*"It's difficult to say because I know that **Switzerland** is also very progressive, so if I had to name a third, it probably would be Switzerland."*

**Switzerland, Andreas Glarner:**

*"Certainly, **Switzerland** and **Liechtenstein** for me will be among them, and I think **Singapore** could be a candidate, and the **UK** as well. Also, the other **European jurisdictions** will become interesting in one or two years, once the new regulations are in place."*

**UK, Andy Peterkin:**

*"Let's exclude the **UK** just for the sake of argument, shall we? Because we've talked a lot about the UK, and I don't think it's in the top three necessarily anyway. **Malta** and **Gibraltar** are the places in the EU that have really gone heavy on this. Actually, the **US** authorities have done some really helpful thinking around how regulators ought to do this. And you can agree or disagree with what they come out with, but they are at least giving it a lot of thought - so I would put them up there as well. And obviously, there are a lot of people doing a lot of thinking in the US." ■*

# In conclusion

From a simple aggregation of the countries mentioned most frequently by the legal experts when asked about their personal Top Three of leading global regulatory frontrunners in security tokens, three countries take the lead: **Switzerland, Liechtenstein** and **Singapore**.

However, the legal experts mention nine other countries among their favourites, and it should - once again! - be underlined that this is in no way a scientific result. It is only an indicator of which jurisdictions in the world currently have a reputation of being among the most progressive and innovative countries in terms of security token regulation, according to the legal experts from the countries participating in this initial RegRadar Report.

The nine additional countries mentioned are:

- › Austria
- › Bermuda
- › Canada
- › Germany
- › Gibraltar
- › Hong Kong
- › Malta
- › UK
- › USA

All 12 countries mentioned as favourites by the legal experts have in their own ways taken innovative and progressive steps and helped move the needle towards a higher degree of regulatory clearance in the token economy.

The many countries worldwide that still do not fully grasp or accept the development of the token economy should take a closer look at those frontrunners and start learning from them.

The token economy is not going away; it has only just begun. And in particular, the area of security tokens is something that countries with an ambition of being innovative should observe carefully. ■

# 12. Participating legal experts

This first RegRadar Report was made possible only due to the kind participation of the following lawyers from nine countries around the world. These lawyers are all esteemed legal experts within the area of blockchain technology, token economy and security tokens, and we would like to take this opportunity to thank them for their valuable help.



**Austria**

**Oliver Völkel**

*Partner, Stadler Völkel*



**Canada**

**Emily Dies**

*Associate Lawyer,  
Gowling WLG*



**Canada**

**Usman Sheikh**

*Partner, Gowling WLG*



**Germany**

**Nina-Luisa Siedler**

*Partner, DWF*



**Hong Kong**

**Padraig Walsh**

*Partner, Tanner De Witt*



**Malta**

**Leonard Bonello**

*Partner, GANADO Advocates*



**Hong Kong**

**Alan Wong**

*Registered Foreign Lawyer,  
Tanner De Witt*



**Singapore**

**Li-Ling Ch'ng**

*Partner, RHTLaw Asia*



**Liechtenstein**

**Thomas Nägele**

*Managing Partner,  
Nägele Law*



**Switzerland**

**Andreas Glarner**

*Partner  
MME Legal*



**UK**

**David Fletcher**

*Partner  
Farrer & Co LLP*



**UK**

**Andy Peterkin**

*Partner  
Farrer & Co LLP*

# 13. Appendix **Appendix A:** Qualitative Expert Interviews



## **Austria**

### **Europe's first country to host an STO**

*-an interview with **Oliver Völkel**, Partner, **Stadler Völkel***

#### **Question:**

Could you try to put Austria's current position in the security token industry into a historical perspective? Why are you where you are now as a country, and what has happened?

#### **Oliver Völkel:**

Already in November 2018, the Austrian Financial Markets Authority approved a capital market prospectus for a token-based security offering. And we were lucky enough to advise on that project. This was the first approval of such a prospectus within the European Union, and since then, we have seen many more in other member states of the EU.

The Austrian regulator has approached this topic rather early on and offered guidance on its website. Since the first approval of a prospectus based offering, it has been relatively clear what needs to be done to conduct a security token offering.

#### **Question:**

So the Austrian regulator mentioned STOs on their website already in 2018. That's pretty impressive...

#### **Oliver Völkel:**

I think so too. But also, the German regulator did that, if I'm not mistaken. So they were not far apart.

#### **Question:**

Obviously, the regulator is connected to the government, but anyways, at the time, how apparent was it for the government that something interesting was going on here?

#### **Oliver Völkel:**

Already in 2017, the finance minister, Harald Mahrer, organised a large-scale summit with everybody in Austria who was somehow connected to the crypto world and invited guests from other countries. It was a brainstorming workshop on how Austria could become a crypto hub, and out of this workshop came the idea of a fintech sandbox model that has already been implemented. Also, in 2017, there was a research centre for crypto-economics established at Vienna university of Economics and Business.

**Question**

That's interesting. Did you notice a drawback from the government when the ICO market went down at the beginning of 2018?

**Oliver Völkel:**

I would say they continued the same line. But it's not so much that the government has favoured crypto entities or crypto enterprises, but instead that they decided to let them do their thing, let them experiment.

Also, if you look at the prospectus based offering for security tokens approved by the Austrian regulator, it's an entirely regulated procedure. They simply looked at this as if it was a completely regular capital market offering. So, I think that the important issue to underline is not so much that there are many incentives. The government doesn't give you a pot of money and say, "Come to Austria." But they simply leave you alone if you comply with European capital markets regulations. This is what would need to be stressed.

**Question:**

And from the beginning, they believed that the MiFID II was sufficient as a regulatory framework for this, right?

**Oliver Völkel:**

Yes. So MiFID II, in some sense, but at the time, the prospectus directives, and now the prospectus regulation. It was clear from 2017 onwards that you would simply view a token that was created on a blockchain as a piece of paper. And whatever you can do with a piece of paper, you could also do with tokens. So, for example, if you print a security note on it, it becomes a security. If you print a voucher on it, it becomes a voucher. So basically, you can do the same with tokens. This was clear rather early on, so it didn't take much effort to get a prospectus based security token offering approved. And this cemented the legal view that the token can be a security.

However, there's still a couple of obstacles. What's really an issue at the moment is the secondary market for security tokens. There is no regulated entity that operates a regulated marketplace, like an MTF or OTF or whatever sort of regulated exchange. This poses difficulties, and at the moment, there is no real effort, neither on the regulator side nor on the government side, to enable this quickly.

The regulatory sandbox model was put in place earlier this year, and the first project has something to do with creating a marketplace for security tokens. But this is not an effort that came from the regulator side or the government side. This is the market trying to establish itself. In my opinion, we'll only see a regulated market for security tokens once the market in Crypto-assets Regulation has been implemented on the EU level.

What's perhaps interesting to note is that the Austrian regulator allows you to run your own marketplace on your website. So how it usually would work is, the issuer implements a subscription form, basically, and people subscribe to the security, make a payment on the security, and the issuer transfers the security tokens to the Ethereum address of the subscriber. And your placement is then completed. The issuer takes care of everything. You don't need a custody bank or a payment agent to do that.

**Question:**

Would you call it easy for a foreign company within the industry of security tokens to settle down and start operating in Austria?

**Oliver Völkel:**

Absolutely. But first of all, companies wouldn't even need to incorporate in Austria if they only want to conduct a security token offering. You can do this within any EU member states and simply apply to the Austrian Financial Market Authority for approval of your prospectus based offering. And you don't need to be a resident in Austria or have a company in Austria. If you want to settle down in Austria, you can also do that rather easily. It doesn't take much time. It's not very expensive.

I want to make a distinction between a couple of thresholds. So if you're going to make a localised or a national offering, there are a couple of different thresholds that you need to keep in mind in Austria. If you're raising 250,000 euros maximum, you don't need to prepare any offering documents.

**Question:**

Not anything at all?

**Oliver Völkel:**

Not anything at all. If it's between 250,000 euros and five million euros within a period of seven years (within a period of 12 months, you are not allowed to raise more than two million euros), you need to publish a standardised information sheet. If you want to go any bigger, you would need a capital markets prospectus. And then, this is the crucial thing, the capital markets prospectus can be passported to other EU member states, whereas the first two options can not be passported.

**Question:**

Okay. So if you want to passport to the entire EU, you have to go for the big one?

**Oliver Völkel:**

Exactly. Yes.

**Question:**

What about the practicalities of passporting? I know you have to notify the authorities in the different countries, but what does that mean? And how cumbersome is that?

**Oliver Völkel:**

In practice, it means that you have to draw up your prospectus in English and include a summary for every member state in its local language. The summary is standardised with standardised items, so you create a summary in English once and translate it into the local languages of the countries in which you would like to make the offer.

Another thing you need to do is to include a short description of how the securities you are offering are being treated under the jurisdiction's tax laws in which you make the offer. Those are the only two hurdles.

The passporting itself is simply an email that the regulator sends to the other regulators stating that "We have approved this prospectus and notified it to you, so it's now also approved for an offering in your jurisdiction." That's all there is to it.

**Question:**

Okay. So, as a company, you don't need to approach the other regulators yourself. That will be done by, in this case, by the Austrian regulator?

**Oliver Völkel:**

Yes, exactly. You tell them where you want it to be notified, and they do it for you.

**Question:**

Would you say that Austria, from a regulatory perspective, is a frontrunner in the security token space?

**Oliver Völkel:**

Yes, I would say so. We didn't need the lawmakers to create any new laws to make this possible. This was all achieved by discussing the literature and concluding that the security tokens fall under the regime of MiFID II. They are to be considered transferable securities; they are comparable to bonds, shares and the like. Also, the literature on civil law methods concluded that you could regard them as securities. And this was done with the literature and not by the lawmakers.

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## Canada

### Ethereum's country of birth

- an interview with *Usman Sheikh, Partner, Gowling WLG*

**Question:**

Could you please start by telling us a bit about the Canadian history of security tokens? Even though it's a very short history, it's still interesting to see how things have developed...

**Usman Sheikh:**

Yeah. It's a bit of a short history, but it's an important one. I can't tell you exactly when security tokens, or even tokens, or initial coin offerings really started off in Canada, but certainly, one of Canada's earliest experiences was with Ethereum.

**Question:**

Sure. Vitalik Buterin used to live in Toronto, right?

**Usman Sheikh:**

Yes, Vitalik, Anthony Di Iorio, and many, many others. And in fact, their office was located maybe two major streets away from our office in Toronto. So we know the founders of Ethereum very well. And the story of Ethereum is the complex story of blockchain in Canada wrapped up in a nutshell because, in the very early days, if you asked the founders - and this is memorialized in many, many documents about the history of blockchain and the history of Ethereum - there was no clear guidance, from their view or for many parties in the blockchain space, as to how a token, a digital asset, would be legally characterized in our country, particularly by our securities regulators.

What you saw was, for Ethereum, that they picked up and, so the story goes, went to a jurisdiction that would provide greater certainty from the regulatory perspective, which was Switzerland. So they were one of the first early movers to Zug to start off the Crypto Valley concept.

The starting point of Ethereum gives you a sense of how things were in the early days. There was that lack of certainty as to how these tokens would be characterized, and I saw this with bitcoin as well, that parties either had to mask their identity or go to another jurisdiction. These extremely creative and inventive ideas could have been stalled because of our regulators, who at that point didn't know anything about what a blockchain was or a token was. These innovative projects would have been stalled or not gotten off the ground, to begin with, because of our legal regime. So it's a bit of an unfortunate story in that regard. I don't blame anyone for it because it just is what it is. That's the story of innovation.

But the real challenge for tokens in Canada was very much the same that you see in the United States, which is just that, unlike many other jurisdictions, if you go to the definition section of our securities legislation defines what a security is and includes a non-inclusive list of 16 things. And any one of those things could capture a token as a security, particularly this concept of an investment contract.

I used to be a prosecutor at the Ontario Securities Commission and would rely on that concept of an investment contract to tag something that looked like a security, acted like a security, quacked like a security, as a security, because the markets were very creative and you needed this basket clause provision to be able to tag something as a security, if it really was in truth and in essence, a security.

The fact of the matter is that by having a concept of an investment contract with a four-prong test, which is very similar in Canada to what is the case in the United States (if you meet it, then you're a security. But if you fail on any one of those prongs, you're potentially not a security) reasonable people can reasonably disagree as to whether those prongs have been satisfied or not.

So again, without belabouring the point and turning a short history into a very long one, the thing is that it's not only the history of blockchain, it's the history of innovation – forget about blockchain, even with robo-advisory operations or artificial intelligence, it's the same thing repeating itself over and over again. These concepts that were meant to have a certain purpose are, rightfully or wrongfully, hindering innovation that may not have been the intent, but that's the practical effect.

So where I was going to end off in terms of this story is just that for the longest time, either parties were doing what Ethereum did, which is to jump ship and go to other jurisdictions where hopefully some greater certainty could be found, or they would be operating under the radar, or frankly many projects didn't know that they were triggering securities laws as well.

And so you then come to the DAO report being issued by the United States Securities and Exchange Commission, which was in, I wouldn't say just in the United States but also in Canada, was a shot across the bow to all blockchain projects, putting them on notice that, particularly with token sales and blockchain projects you could be triggering securities laws.

And at that point, my phone was off the hook. I mean, I was getting 20 calls a day. Then slowly, over time, our regulators in Canada started to develop guidance in terms of token sales, ICO's, and how they would be triggering securities laws. And then, the enforcement actions started to come out, and we served as counsel on a number of them.

**Question:**

So this must be in 2017, right?

**Usman Sheikh:**

Yes, and the fact of the matter is that if you look at the history of things, the very first guidance piece was something like in March of 2017. I mean, the Bitcoin white paper was in 2008. And in the span of that ten years you have a lot of developments in the blockchain space. So already, after that piece came out, you have many blockchain parties in Canada and around the world up and running who are presumptively in breach. And so then you start seeing the guidance coming out, parties begin to see that there are securities law issues.

We're seeing people pivoting into other projects, which also raise securities law issues. And we're seeing a whole new wave of issues arising, including the DeFi projects, which are these decentralized finance projects that are doing things that are equally as exotic without maybe turning their mind to securities. But anyway, that's the history of tokens in a nutshell.

I think that the view now is clear in Canada and the United States; the vast majority of these tokens would probably be viewed as securities or derivatives under our laws. And there's greater recognition that parties do need to comply. They're not somehow exempt because they are blockchain. They employ blockchain technology. If it is a security, you need to comply with those laws.

**Question:**

If we look at the situation today, would you say that the government, the authorities, and the FSA are knowledgeable about the token economy and especially security tokens?

**Usman Sheikh:**

Back in 2016 and 2017, they had very limited knowledge about this area. And they have now come up to speed, in truth, partly because of our efforts as well.

**Question:**

Would you say that Canada today has a vision for the token economy?

**Usman Sheikh:**

In terms of whether they have a vision, I mean, the story is yet to be written on that, in a sense. Our regulators have been one of the leading regulators worldwide, particularly at IOSCO, the United Nations of all securities regulators, to advance how to bring regulation to crypto-asset trading platforms because these platforms are rife with conflict. I mean, you have in one entity all these functions being performed that, in the traditional world, would have been severed. You would not have a custodian who is also the exchange, the dealer, who is also the advisor, all connected in one platform.

And so, our laws were really not meant for that. It didn't contemplate all these functions being segregated into one thing. And so they're still trying to sort that out, but we understand that within this quarter, they will be coming out with their vision and that regulatory framework to deal with that.

**Question:**

So what is the strength and weakness of our jurisdiction vis-a-vis these others?

**Usman Sheikh:**

I would say that each jurisdiction is different, and I don't profess to know the ins and outs of every other jurisdiction, but we've looked at some of the comparable positions of other jurisdictions, like Singapore, Switzerland and so forth. So in terms of our strengths, I think the brand of Canada comes with a lot and the fact that it's a G7 nation. And so, a lot of parties are looking to work in Canada because if you're able to pass and be regulated properly and have no legal issues in Canada, that means a lot. Versus if you're regulated, and I don't mean to say this in a negative way, but from a much smaller country that may not have as much clout from a capital markets perspective. So Canada has a lot of that going for it.

I guess, in terms of some negatives, some say our regulators don't move quick enough compared to some other jurisdictions. So Switzerland came right out of the gate, and they really wanted a pivot in this space. And the same thing with Singapore.

**Question:**

Could you please try to point out some of the most important differences between Canada and the US regarding regulation within the token economy and the security token industry?

**Usman Sheikh:**

Our laws are very comparable. So the Howey test is a good example of that. Our case of the Supreme court of Canada, which adopted Howey, is called the Pacific Coastal Coin exchange. It was decided in the 1970s.

A big difference between Canada and the United States is that the United States, just by the sheer size of their market, is dealing with many more cases than we are in Canada. So if you type into Google SEC cyber enforcement cases, they then have a page listing all of the enforcement actions they've taken in the blockchain space, and there's 20 to 30 of them. Whereas in Canada, collectively across our entire country, there may be four to six public cases in terms of that.

So I would say that even though our regulators are advanced, the key difference is that in the United States, just by the sheer size of their market, they have been experiencing and dealing with a lot more issues than we have.

We've also seen their regulators come up with far more guidance. And so, whether it's securities regulators or FinCEN on the AML front and others, they have been far more proactive.



## Hong Kong

### A highly regulated financial services centre

- an interview with *Pdraig Walsh, Partner, Tanner De Witt*

**Question:**

Could you please start by telling about the development within the token economy and the security token industry in Hong Kong?

**Pdraig Walsh:**

It started for me probably around six years ago, give or take, which would have been relatively early days in Hong Kong.

**Question:**

And anywhere, I guess...

**Pdraig Walsh:**

Yes, anywhere, but I think Hong Kong was at the vanguard, largely because of the dynamics here. That was at a time where we had an inquiry about a particular business involved in cryptocurrency trading that wanted to make trading available to retail. There wasn't any framework under which they could be licensed at the time. So the advice we gave was that there was no license in Hong Kong that was necessary for them. But they were quite ambitious, and they said, "Whether we need it or not, is there a license we could apply for?". So that was a general indication of the Hong Kong market at the time. This was a business that wanted to be regulated and wanted to try to do the right thing. However, over the next two to three years, the vast preponderance of inquiries that we fielded were very much on the other side of that extreme with businesses focussing on how to avoid being regulated. That probably gives you an insight into where Hong Kong was.

Hong Kong is a highly regulated financial services centre and cryptocurrency businesses have faith in the stability of the system here. For a start, it's got a very strong culture of dealing and trading, and there has always been a significant amount of capital here in Hong Kong. At the same time, within mainland China, from the very early days, you had a clampdown and prohibition in respect of ICOs and other cryptocurrency transactions. which meant that Hong Kong became the centre of activity in this part of the world.

There was a time lag before regulation caught up. Things happened that shouldn't have happened under our securities law and regulation. The Securities and Futures Commission and other regulators identified the issues and immediately started to engage. Firstly, the SFC clamped down on bad actors and bad activities, particularly where the retail investing public was at risk. Then secondly, the SFC put together a framework based on existing laws that were suitable for Hong Kong as a financial services centre and to allow financial institutions to begin to engage in this new asset class.

So that's probably a potted history of that period in Hong Kong, where it started from a wild west frontier land, to now where there is a well-developed regulatory framework in place that is probably the best in this part of the world.

**Question:**

But there's no specific regulatory framework for security tokens in Hong Kong, right?

**Padraig Walsh:**

Well, there's no specific law. The Securities and Futures Ordinance was not specifically amended to account for virtual assets. Instead, the Securities and Futures Commission issued regulatory frameworks, guidelines, codes of conduct and these kinds of regulatory guidance. This was all conducted under the existing legislation. For instance, there is a regulatory framework that has been published in respect of ATSS, automated trading systems, which is basically what the token exchanges are. The framework also deals with dealer brokers in respect to virtual assets. Then there's another regulatory framework put together with supporting codes that have been published in respect of fund managers that have exposure to cryptocurrency assets.

Recently, there's a consultation paper that's been published, which will bring other forms of token exchanges and other forms of virtual asset trading under the framework of the Securities and Futures Commission, primarily for AML and KYC compliance purposes, even if it does not involve virtual assets that are securities under the Securities and Futures Ordinance. So in time, what you will have is an almost level playing field for almost all aspects of the cryptocurrency domain.

**Question:**

I guess you are familiar with the new European regulation called MiCA - Market in Crypto Assets - and of course MiFID II. And in Europe, the MiCA regulates almost all types of crypto, except for the financial instruments like security tokens that are already covered by MiFID II. So it includes the majority, but it leaves out the security tokens, and it sounds as if it's perhaps a little bit the same here?

**Padraig Walsh:**

Yes, it's similar in terms of having one framework for tokens that are security tokens, and another framework for other forms of virtual assets. However, in Hong Kong, soon both systems of regulation will be under the same regulator.

**Question:**

Could you elaborate a little bit on Hong Kong's relation to mainland China regarding this area? I suppose there might have been some pushback from the big Chinese neighbour since they do not seem too happy about the crypto space. Could you say a bit about that?

**Padraig Walsh:**

Hong Kong operates a one country, two systems policy. Hong Kong is part of China, but has a different legal system to mainland China. So, there are two legal systems. This is relevant in respect of cryptocurrency. In mainland China, there was a clampdown on cryptocurrency - almost an absolute prohibition. However, I never got the sense that there was any overt or even indirect pressure on regulatory bodies in Hong Kong to follow the same policy.

On a practical level, if you prohibit something in one location, then there's a spillover from that location. We saw a number of people who had previously been operating in mainland China, looking to operate elsewhere. Some of those came to Hong Kong for a spell of time until regulation caught up.

Hong Kong didn't take the approach of absolute prohibition. It just took the approach of saying: "We have flexible laws that already deal with most of the evils around this, so we can continue to enforce those laws". This allowed the regulator to, at the same time, identify the potential benefits of the underlying technology and its future direction. So it was a carrot-and-stick approach.

**Question:**

Do you expect any pushback or any attempt to influence Hong Kong from China going forward? Or do you think that the way you are doing these things in Hong Kong might instead affect mainland China?

**Padraig Walsh:**

In the past, you could see how mainland China looked to Hong Kong as a jurisdiction for particular trial initiatives, and eventually link that back into mainland China. The trend in mainland China now seems to be to focus on creating breathing space for state-controlled initiatives essentially to foster and gain traction development. The digitized RMB is an example of that.

So I think there will be different approaches, but there will be crossovers. Hong Kong wouldn't necessarily adopt the same policies as mainland China in the financial services domain. This will happen though in areas where it makes sense to collaborate.

**Question:**

Would you say that the government and the Hong Kong authorities have a vision for the further development of the token economy?

**Padraig Walsh:**

You should look at this at a couple of levels.

Firstly, at a macro level, the Hong Kong vision for the future, in general, is based around technology, technology development, and being part of the digital world and the digital environment. So if you look at that, and then you acknowledge that financial services is a core area of strength for Hong Kong, then you will see that promoting Hong Kong as a tech hub or as a tech centre also involves promoting Hong Kong as a fintech hub and a fintech centre. This is where cryptocurrency and the token economy fits into government policy.

Then, more specifically, is the role of Hong Kong in respect of cryptocurrency and the token economy. The policy I see materializing is to pursue this on a regulated playing field. If you are an underfunded and disruptive new project, Hong Kong may not necessarily be the right place for you. However, if you are well-funded with experienced people, both in terms of the financial aspects and technology aspects, and you are bringing forward a project that is well thought out and well-planned, then Hong Kong is very close to the top of the list in respect of where you might bring that project forward and develop it.

**Question:**

In terms of paving the way for the security token industry in the future, could you say something about the strengths and challenges for Hong Kong?

**Padraig Walsh:**

One key strength, looking at it as a lawyer, is that there's a higher degree of regulatory certainty in Hong Kong compared to many other jurisdictions. That taps into a few other things, particularly for securities token offerings. For instance, you already have an experienced group of professionals, advisors, consultants, custodians, and participants in financial markets generally. This expertise is already all here in Hong Kong. The different pieces of the jigsaw are in one place. That's a key advantage.

**Question:**

And in terms of challenges?

**Padraig Walsh:**

The challenges are similar to those in many places. You need more quality projects coming through to provide the right kind of liquidity and the right kind of profile and success. The ripple effect of that will attract more projects. So that needs to happen.

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## Liechtenstein

### The country of The Token Container Model

- An interview with *Thomas Nägele*, Attorney at Law, *Nägele Attorneys at Law*

#### Question:

As a member of the EEA, Liechtenstein is also a MiFID II country, and when it comes to security tokens, most other EU/EEA countries seem to think: 'Okay, we have the MiFID II, which regulates securities, and if a security token is a security, we don't need anything else.' But Liechtenstein went further and implemented its own Blockchain Act in 2020, including the so-called Token Container Model, which also regulates security tokens. So why didn't you just say: 'Well, MiFID II is good enough for us, let's stick to that?'

#### Thomas Nägele:

When it comes to financial instruments, MiFID II is good enough. However, MiFID II only applies to financial instruments. But there are plenty of tokens that do not qualify as financial instruments. A token can represent anything: a currency, a security, a voucher, a guarantee, a car or simply nothing at all. We wanted to provide a legal basis for all kinds of tokens and thus create legal certainty for the whole token economy. This is the basic idea of our blockchain Act.

However, the EU Commission itself is also in the process of amending MiFID II to include the possibility of issuing financial instruments by means of distributed ledger technology. Moreover, to create clarity with regard to the definition of financial instruments. That's why the EU Commission has put forward its Digital Finance Package, MiCA and a Pilot Regime for DLT MTFs.

#### Question:

How did you proceed then?

#### Thomas Nägele

We had been thinking about how we needed to adapt our legal framework to give way to the tokenization of assets as a whole. So what we did was to analyze the Liechtenstein corporate law. We had been considering where we needed to adapt existing laws to enable fully digital token issuance. We came to the conclusion that we needed to amend our corporate act by including dematerialized securities such as fully digital securities. So at the end of the day, the Liechtenstein Blockchain Act is not only about issuing utilities or real securities in a tokenized way. It's much more than that.

For example, if you want to transfer your membership rights and your voting rights in a company, you have to do that based on the local laws. Because the transfer is based on property laws since you actually transfer a piece of paper, which is represented through a security. This was made possible due to the bearer shares regulation of the European Union. Our ambition was to find a legal solution for the transfer of tokens or the transfer of a membership right using blockchain technology.

**Question:**

What conclusion did you reach?

**Thomas Nägele**

We wanted to find a way to enable the transfer using blockchain technology. And that's why we ended up defining the token legally. In that way, we have created our own route for the transfer of tokens and gained legal certainty from a private law perspective as well.

For the securities part, we solved this by amending the Corporate Act. We also found a very flexible solution for many other assets and rights within our framework. Because sooner or later, it will not only be about securities. Although this is the first use case, there will be many more things getting tokenized, and we wanted to provide a proper legal framework for all of them.

**Question:**

The government of Liechtenstein then designed this rather famous way of letting a Token representing almost any right as part of the country's Blockchain Act. I know that you personally were closely involved in helping the government's team develop both the regulatory framework and the token model. Could you please explain how the model works?

**Thomas Nägele**

To be very precise, I had the honour to be a part of the government workgroup. Regarding the main concept, I call this way of tokenizing assets 'The Token Container Model'. The token acts as a container and transfers the right using blockchain technology or, as we call it, 'Trusted Technologies'. In other words, this allows you to define a right and then let a token represent that right. With the transfer of the token, the represented right is also transferred. There are some limitations based on mandatory laws, but it is a very flexible approach to allow tokenization of a variety of assets.

**Question:**

What were your primary challenges?

**Thomas Nägele**

The government was aware that this technology changes very fast, and to avoid being forced to change the model again in some months or some years due to fast-developing technology, the lawmakers had to find a technology-neutral approach. But, also, it was pretty clear that Liechtenstein had to define what a token is. And to define it in a way where it is not tailored specifically for securities, utilities, or currencies. So the core question became: 'What is the token really doing?' And the lawmakers ended up with the conclusion that a token can represent nearly anything, and that's it.

**Question:**

How about securing a trustworthy link between the token representation of the asset and the actual asset?

**Thomas Nägele**

As a next step, Liechtenstein had to define a relationship model between the digital world and the individuals dealing with the digital world – the analogue world. From a private law perspective, the transfer works in the following way: If you have the right of

disposal over a token, you should also have the same rights over the represented asset. However, this is not as simple as it seems. In a pure digital setup with a digital security, it is relatively simple: If you have the disposal over the token, you also have the disposal over the right. When it comes to a physical object, it is more complicated, but it's possible as well. Thanks to the extensive civil regulations in The Blockchain Act, it has become possible in Liechtenstein to tokenize any type of economic asset: paintings, art objects, vintage cars or even pure gold.

In principle, the idea is as follows: You have the assets, and you define the right you want to be represented by the token, like ownership. In this case, the token represents an ownership right. For the token economy to flourish, there is a need for different kinds of service providers. To protect investors, regulation of these service providers is needed. This is quite a paradox in a funny way because this technology started with getting rid of intermediaries, and in the end, you identify areas where you require some additional intermediaries.

#### TOKEN DEFINITION ACCORDING TO THE LIECHTENSTEIN BLOCKCHAIN ACT

A TOKEN IS A PIECE OF INFORMATION ON A TT SYSTEM, WHICH:

- › can represent claims or rights of memberships against a person, rights to property, or other absolute or relative rights; and
- › is assigned to one or more TT Identifiers (aka public keys).



## Malta

### Used to be ahead of the curve

- An interview with *Leonard Bonello*,  
Partner, *GANADO Advocates*

#### Question:

I would like you to look back a little bit at the topic of security tokens and assets tokenization from a historical perspective. How did this start to become something of interest in Malta?

#### Leonard Bonello:

I would say that everything started around three years ago. As a legal community, we were strongly lobbying the Maltese authorities that blockchain and cryptocurrencies were something that they should have been looking into with a strong focus.

I come from a traditional financial services background, so I've had a bit of a diverse client base, but as a result, I've done a number of IPO's, a number of bond issues and so on. So I am very familiar with the traditional, like CRR, CID requirements by prospectus directive and the prospectus regulation. So to me, it was clear that the same framework, the same technology from blockchain and cryptocurrencies could easily be used within what we call traditional financial services. And at that point in time we were strongly lobbying with the authorities and the Maltese government to start focusing on this area.

The initial focus was very much on cryptocurrencies, because of investor protection issues. And Malta was actually one of the first jurisdictions to have a specific framework on the cryptocurrencies.

The Maltese authorities, the MFSA, were always looking at EU frameworks, EU directives and regulations as a benchmark. And in 2018, that actually resulted in three specific legislative acts being passed through the Maltese parliament. And one of them, which is called the Virtual Financial Assets Act, is very close to what the EU is proposing as MiCA. In fact, we are currently assisting the Maltese regulators in carrying out an analysis of the recalibration of the framework for Malta to align itself with MiCA. And I would say as a country, we are already 90% there. So whereas other countries will be starting from zero, for us it will be a fine-tuning exercise.

**Question:**

Okay. Interesting. Probably not a lot of people know about that...

**Leonard Bonello:**

At one point the Malta Stock Exchange was actually looking into the possibility of having a security token exchange. And this is public knowledge. It had started two joint ventures, one of them with Binance and another with OKEX. They had submitted applications with the MFSA to start setting up these exchanges.

So in 2018, we were quite ahead of the curve. And we were having discussions, which I now realize in some other jurisdictions were happening a year or two later.

Regarding utility tokens, Malta's jurisdiction felt very comfortable that that was uncharted territory. And by taking initiatives in that space, it wouldn't be in any way contravening any EU directives or regulations.

But when it comes to security tokens, all of a sudden you can't ignore traditional financial services. And the main concern there was the prospectus regulation body of laws. The MFSA had a number of consultation exercises, but it started to drag its feet because it wasn't comfortable taking initiatives, if perhaps the EU a couple of months down the road, would take initiatives in a completely different direction.

**Question:**

So if we go back to the period of 2017, when the ICO industry was booming, Malta was actually ahead of the curve and taking a lead. But now with the new industry of security tokens, the authorities are slowing down, or perhaps getting a little nervous. Does this have to do with some bad experiences from when the ICOs were flourishing?

**Leonard Bonello:**

No, I don't think so. I think the factors are external, because when you compare Malta's experience in the ICO space, the fact that Malta put a framework in place meant that it was actually, to a degree, harder to do an ICO in Malta than in other jurisdictions. So players who were in it for a quick buck were choosing to go to other jurisdictions.

Now, what has impacted Malta a lot is that for a number of reasons, Malta is currently being evaluated by Moneyval. Moneyval is carrying out its periodic evaluation of jurisdictions, and while assessing Malta, it made a strong comment about the fact that Malta is prominent in a number of industries, which according to Moneyval are high risk

industries. Malta is strong in shipping, which for Moneyval is considered to be high risk. Malta is very strong in online gaming too. When you look at, for example, the number of deposits held by Maltese institutions compared to the size of the jurisdiction the ratio is high. It's nowhere close to Luxembourg levels, but the ratio is disproportionate probably when you compare it to Denmark.

And then they said it's not right. And Malta is now also getting highly involved in cryptocurrencies, blockchain, which Moneyval also sees as very high risk. So, at the same time, there was a strong drive to be first movers in the industry. But on a political level, the tune started to change: Does Malta really want to be in so many industries which Moneyval considers to be high risk?

So, all of a sudden, the impetus to be a first-mover started to slow down a bit. And we said, "All right, listen. We've been first-movers in this space. Perhaps we don't need to be a first-mover in the STO market, but we can let others take the lead, and we'll follow very quickly after."

**Question:**

Okay. So that's the current attitude?

**Leonard Bonello:**

Yes. I think if you had to draw a curve it went up very quickly, and then it plateaued for a long period of time. And I would say that today, we are still on this plateau.

**Question:**

So you can't really say that the Malta government currently has a vision for the token economy and the security token industry?

**Leonard Bonello:**

No. If we had to sum it up, I think the official vision is now to wait and see. And especially now that the EU is taking so many initiatives with MiCA, with DORA<sup>19</sup> and so on. It's all correlated.

**Question:**

So Malta is also not actively encouraging foreign companies to come to the country if they want to make an STO?

**Leonard Bonello:**

No, not at all I would say, at this point in time. And I consider it to be a pity because I would rather have been adventurous in STOs than be adventurous in cryptocurrencies, but sometimes you get overtaken by events. To a degree, there is the impression that Malta is much more advanced in security tokens, simply because it was advanced in blockchain and then in cryptocurrency. Whereas in reality, although there is the knowledge, the timing and the appetite is completely different.

19. DORA - Digital Operational Resilience Act



## Singapore

### Encouraging innovation

- An interview with *Li-Ling Ch'ng, Partner, RHTLaw Asia*

**Question:**

Could you please tell a bit about how Singapore got into the tokenization and security token space?

**Li-Ling Ch'ng:**

Actually, I think that compared to, for instance, Liechtenstein, we are still relatively new to this. My understanding is that Liechtenstein already has passed its blockchain law.

Whereas Singapore's current position regarding security tokens is still based on traditional securities regulations. We analyze the token to see what its characteristics are. And as long as it complies or fits the definition of securities or capital market products, we deem it to fall within the jurisdiction of the securities and futures act. So that is the quick and short answer.

Whether I consider Singapore to be open and friendly towards tokenization, the answer is definitely yes. I can share a few examples with you. Our Monetary Authority of Singapore has been very progressive. In 2016 they rolled out a project called Project Ubin, an industry-wide collaboration between banks, including J.P. Morgan, and technology service providers to use blockchain technology and enable instantaneous delivery and payment. So clearing and settlement of payments as well as securities. And that's just one phase of the whole project, and they have already moved past five phases. So this is actually a milestone and a signature project of the Monetary Authority of Singapore.

**Question:**

And this project started already in 2016?

**Li-Ling Ch'ng:**

Yes, and a second and very recent example is DBS bank - Development Bank of Singapore - that recently obtained approval from the Monetary Authority of Singapore (MAS) to operate their own digital exchange that will enable the listing and trading of cryptocurrencies as well as security tokens. So you have a traditional bank that is now able to operate this platform that enables people to trade cryptocurrencies and security tokens. So, it's a big deal that shows that cryptocurrencies and security tokens are entering the mainstream of financial services.

Admittedly, this platform will only be available to accredited and institutional investors because, when it comes to the trading of securities, once you've touched securities, any issue and trading fall within the prospectus requirements. So to be prospectus exempt, these offers can only be accessible for accredited and institutional investors. So these are the two examples that I like to share to show that Singapore is indeed open and friendly. Our central bank and financial services regulator really want to lead the way for the sector.

**Question:**

Would you say that Singapore has a declared vision for the future of security tokens?

**Li-Ling Ch'ng:**

I would say yes. Less than 10 years ago, the Singapore government rolled out its smart nation initiative, a country-wide vision to leverage technology and improve people's lives. It covers all the major sectors of Singapore, and in financial services, MAS is taking the lead in exploring how technology can transform traditional ways of doing business and traditional ways of investing in banking and finance.

**Question:**

Would you call it easy for a foreign company within the security token industry to settle down and start operating in Singapore?

**Li-Ling Ch'ng:**

The short answer is yes. Singapore frequently ranks as one of the most competitive economies in the world. It's very easy to do business here. So to set up a company takes two to three days. Whether it's easy actually to start operating, well, the devil is in the details. But generally, I would say that it's relatively straightforward and easy.

**Question:**

What are the main barriers for companies within the security token industry?

**Li-Ling Ch'ng:**

Barriers to entry into the industry, I reckon, would be the technology itself. Not the regulatory side of things.

**Question:**

What do you consider the primary strength of Singapore in paving the way?

**Li-Ling Ch'ng:**

The government is quite progressive. We are an international fintech hub, and Singapore has a very good international reputation as a regulator that holds itself and its regulated entities to very, very high standards. So you have many applicants from all over the world coming here to apply for licenses.

Singapore also has strong governance standards. It's politically safe, relatively corruption-free. The main weakness in Singapore would be the same challenges that Singapore faces when it comes to raising capital. Compared to the biggest global securities sectors like in the US, our stock exchange is relatively small.

**Question:**

Okay. So there's no pushback or resistance from the government or the authorities?

**Li-Ling Ch'ng:**

No, I think they embrace it. They encourage innovation. The pushback or the challenge wouldn't be a regulatory one, but it would be more related to the market.

**Question:**

What do you mean by that?

**Li-Ling Ch'ng:**

As I mentioned, every issue of securities requires a prospectus, and of course, to issue a prospectus is a lot of work, and it costs a lot of money. So people would tend to fall within the safe harbour provisions where they don't need a prospectus. So, the issuance can only be made, for example, to accredited and institutional investors. But although Singapore is a private wealth hub as well and an asset management hub, access to this pool of accredited institutional investors, might be pretty challenging unless the issuer has access to a broader and bigger pool that includes accredited institutional investors outside of Singapore.

I would also like to add that our regulators embrace innovation, and I believe the policy stance is not to have regulations 'frontrun' innovation. However, our regulators continue to take a risk-based approach to market activities. In the area of cryptocurrency trading, for example, such activity is not prohibited, but licensing is required and, our regulators want to see that entities who engage in crypto dealing and exchanges put in place systems and processes to manage money-laundering and terrorism-financing risks.

**Question:**

Do you consider Singapore to be a global regulatory front runner within the security token space?

**Li-Ling Ch'ng:**

I think it belongs among the top countries. So I would rank Liechtenstein and the US as the leading global regulatory front runners. But I wouldn't know which country to rank as the third. So I would mention these two because already two years ago, security token offerings were coming out of the US. And Liechtenstein because they have already issued their blockchain law.

**Question:**

Okay. So you will not say that Singapore should be number three?

**Li-Ling Ch'ng:**

It's difficult to say because I know that Switzerland is also very progressive, so if I had to name a third, it would probably be Switzerland.

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## Switzerland

### Clear support of the token economy

- An interview with, *Andreas Glarner, Partner, MME Legal*

**Question:**

Could you please tell us a bit about Switzerland's crypto journey so far and the current status of security tokens in the country?

**Andreas Glarner:**

The regulator in Switzerland has had a lot of exposure, a lot of experience in tokenization, tokenizing projects and tokenizing all types of goods, including securities, and all that dates back to 2013 when the first projects were domiciled in Switzerland. One of the first bigger ones was Ethereum back in 2014.

**Question:**

Were you and your company involved when Vitalik Buterin moved Ethereum from Canada to Switzerland?

**Andreas Glarner:**

Yes, we were structuring the ICO of Ethereum back then.

**Question:**

That's a piece of history...

**Andreas Glarner:**

It is a piece of history. I remember quite well sitting at a table with Vitalik, and at the beginning, not really understanding what he wanted to build. I have a tech lawyer background, and that's why I was engaged in the project, but everything was so new - like the concept of smart contracts. Now the concept is part of the daily work, and things have evolved at an unbelievable speed. This also plays into the security token discussion.

What was a fully decentralized movement started to have an impact on the centralized financial industry. Banks started to participate, offering custody services and trading services for crypto assets. New banks were established, the stock exchange started to become interested in shifting their technology to blockchain to digitize all existing assets. And basically, after 2016, it became clear that blockchain could be a potential solution to digitize securities and start trading securities. I think Switzerland has been one of the leading countries in that respect, but not the only one, of course. Liechtenstein certainly and some others too, and now it's a big global movement. It's been very interesting to see that.

**Question:**

Is there a competition between some of the front-running jurisdictions, or is it more like a collaboration?

**Andreas Glarner:**

I guess I wouldn't call it competition necessarily. At the end of the day, each jurisdiction needs to have a system for tokenizing securities or creating digital assets on DLT technology. I think the competitive level is more from a legal protection perspective, which jurisdiction provides the benefits and advantages of the legal certainty you need for these types of projects. You want to set it up in a jurisdiction where you can rely on the rules and don't have to be concerned that those rules change the next day again. It's a lot about creating legal certainty around digital assets.

**Question:**

Since Switzerland is not an EU or an EEA country, passporting, for instance, an approval of an STO prospectus from Switzerland to other European countries is not an option. Do you see this as an obstacle to the development of the security token industry in Switzerland? Or is it in some ways also an advantage for you that you are on your own?

**Andreas Glarner:**

It's a bit of both, right. On the one hand, not being a member of the EU and the EEA gives Switzerland a bit more flexibility to do things the Swiss way, maybe sometimes slower, and sometimes a bit faster. But of course, it also has disadvantages. And that brings us back to the old topic of how to target non-Swiss markets with regard to particular offerings? In the security space, it's not that difficult. It doesn't change that much for a Swiss company because you need to comply with the cross border rules anyway. Of course, it would be beneficial if you could passport prospectuses, but I hope this will be the case in the coming years.

**Question:**

Would you say that Switzerland as a country has a vision when it comes to the crypto area, including asset tokenization and security tokens?

**Andreas Glarner:**

Well, I would say the federal council had when they launched the DLT analysis paper back in 2018. For me, it shows that the government had a very clear vision when it came to digital assets and digital securities in particular. And that's also been the basis of the amendments of the new law, which is not a new piece of legislation, but amendments in roughly 20 different pieces of legislation to make sure that the law is fit and proper to a digital world related to digital assets. The government wants Switzerland to be able to have digital DLT-based assets launched, traded and issued.

But it's not the same when you go to cryptocurrencies in DeFi. There is still a lot of ambiguity. I think DeFi is very difficult to grasp for regulators.

**Question:**

What do you consider Switzerland's barriers and strength when it comes to paving the way for security tokens?

**Andreas Glarner:**

Let me start with the strengths. Basically a very clear legal framework on how to issue DLT securities. I think that the weaknesses or the barriers are on the secondary market side. Currently, there are limited trading venues, which are allowed to list security tokens, and that's a global issue, it's not a Swiss issue only, and it will change in the near future.

**Question:**

Do you consider Switzerland as a global regulatory front runner within asset tokenization and security tokens?

**Andreas Glarner:**

Yes, I do. I think Switzerland is one of the first jurisdictions to have a clear regulatory framework for DLT securities. There are others which have been faster - like Liechtenstein has been, I think, one year ahead of us, or even more, possibly. But Switzerland is among a handful of jurisdictions that have been able to raise legal certainty and regulatory certainty and at a relatively fast speed in this area.

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**The UK**

**With a focus on infrastructure improvements**

- An interview with *Andy Peterkin, Partner, Farrer & Co LLP*

**Question:**

What does the UK history of security tokens look like?

**Andy Peterkin:**

Going back, obviously, the possibilities of this were known and talked about in the first half of the last decade, I suppose, but it's not really until 2016 or 2017, the regulators start paying attention to it. And the thing that really kicked it off here in the UK was the advent of the regulatory sandbox, which you've probably heard about. The FCA's regulatory sandbox was really the first big one, I think, in a major jurisdiction. And the FCA, in terms of the sandbox, has been slightly ambivalent around tokens. They have allowed in people like Archax, who is an exchange.

They're not anti token, but what they really want the sandbox to be used for is infrastructure improvements. So they're interested if you've got some way of making it easier to administrate insurance agreements, or you've got something that assists investment management compliance, or something like that. They like using it for infrastructure, and I think Archax was able to get in there because they are infrastructure in the sense that they're an exchange. We found that they are less keen to hear from people who just want to tokenize things.

**Question:**

Why not?

**Andy Peterkin:**

Well, I think to some extent they take the view, "Well look, we know we can tokenize things, and we'll come onto this", and they basically say, "We've told you what we think the regulation says about tokens, and security tokens, and other types of token. Over to you to make that work. We don't think there's anything particularly new under the sun." But let me pick up the narrative again. So in '16, '17, they started the sandbox up. At the same time, Bitcoin was going through its first oscillation, and obviously, it hit the news

in a big way. The FCA starts thinking it needs to do something about crypto assets in general, and it needs to decide what the regulation is.

So during 2017, 2018, they're thinking about what the position should be, and in early 2019, the basic position that they come up with is that, in common with a lot of the other bigger European jurisdictions, they say, "Look, we will just treat security tokens as if they were the security they purport to be. So if you've got a token that is equity-like, we'll treat it as a share. If you've got a token that is bond-like, we will treat it as a debt security," and it follows from that. All the UK regulation around those securities, advising on them, managing them, arranging deals in them, apply.

So whilst, as of the last ten days, it's wrong to say that that is the MiFID regime; it is the MiFID regime because it's not diverged yet, and it's not going to diverge in a major way anytime soon. So that's basically where we are in terms of regulation.

One thing, of course, that has come about, and again, this will be common across Europe, is that the AML five has extended AML/KYC regulation to token infrastructure. So wallet providers and exchanges are now also regulated.

**Question:**

Is there a possible Brexit angle to this topic? I mean, now that you are on your own, what do you think will happen?

**Andy Peterkin:**

Yes, it's interesting. I mean, the general feeling here is that certainly around MiFID, the regulation will not diverge quickly because the FCA is after stability and continuity, but of course, it does open up the prospect over time. And no doubt the commission will get round at some point to finalizing their crypto-asset rumblings and consultation papers. It does leave open the possibility that the UK might go and do the same thing on crypto assets.

**Question:**

Is it the MiCA regulation you are thinking about?

**Andy Peterkin:**

Yeah, exactly. So they might go with that, or they might not. And actually, as a jurisdiction, it's got enough weight to not, if you see what I mean, and to do something interesting and clever around it, because it's essentially completely new territory if we want to go and make specific regulations for it. So there's a lot of scope, I think, for them to be creative.

Look, it's probably just worth touching on a couple of legal points, completely outside the regulation. The first one is there was some doubt as to whether crypto assets are property for the purposes of UK law. There were a bunch of older cases that essentially held that mere information was not property. So the fact that you have written things on a piece of paper does not make the things written on a piece of paper your property. And there's a slightly strange case where a university student had stolen exam question answers, and this is 1971 or something like that, and essentially it was held that the stuff that was written on the paper was not intellectual property or property.

And there was essentially a concern that that was analogous to a crypto asset held on a blockchain record, but we had a really helpful case called AA and Persons Unknown,

which was a Bitcoin theft case, where the court said, "No, we're very happy that this is property." So that completely took away that level of uncertainty.

What we haven't had yet is a case where someone has said, "I've got a token that links to a share in an English company. How does the company's act apply to that?" So the answer is at the moment, we just don't know.

We've got a lot of clarity on the property point; there's no problem there; we're just waiting for the courts to decide exactly how the company's act applies. My feeling is that they will simply say, "Look, you just treat this as an instrument that references to a share." And again, we're not going to try and make the company's act apply in some weird and unpredictable way; just treat it as a warrant or something like that.

**Question:**

In this context, do you see Brexit primarily as a weakness or a strength for the UK? Because I think it could be both, actually...

**Andy Peterkin:**

Yeah, I think that's right. I mean, there is the potential of Brexit, as you say, for it to go both ways. Contrary to what some people have said, there is a very little appetite here for massive deregulation. That's not how the FCA sees London. It sees London very much as a blue-chip jurisdiction with high standards of regulation and high standards of control. It also wants it to be a hub, which means it needs as much access to Europe as it can possibly get. So if we get it right, there'll be a lot of cross cooperation on regulation. London will do 90% of what the EU does, and hopefully, the 10% that is different will be an improvement. I think that's the model they're shooting for, and that will flow across into the token space.

**Question:**

Based on what you just said and what you have answered in the questionnaire, it seems as if you consider the FCA and the government as knowledgeable but not particularly friendly or visionary when it comes to security tokens. And it's a bit hard for me to understand because I've been part of the fintech industry for several years, and mostly I have comprehended that the FCA has had a rather innovative approach towards the fintech space. So to me, it seems a bit strange that they are somewhat reluctant to take the lead in this part of the space as well...

**Andy Peterkin:**

Yeah, absolutely. I think you're absolutely right there, and I think it's because of the nature of the UK as a financial services centre. A lot of what we've got here is heavy infrastructure if you like. So it's enormous insurance companies processing millions of insurance contracts every day; it's huge, huge information flows in and out of investment management. And when it comes to fintech, I get the impression that that is what the FCA, from a strategic perspective, is looking to encourage. So it's looking really to foster infrastructure improvements.

I wouldn't want anyone to get the idea that they're anti tokenization, or anti the token industry, or anything like that, I think it's just down their list of priorities. They're more interested in fintech infrastructure, they focus on other things, but they're not hostile, so long as you comply with the regulation.

# Appendix B: Methodology

## 1. Background

This section outlines the methodological considerations behind The Security Token RegRadar Report, which is a joint project between Liechtenstein's Office for Financial Market Innovation (SFI) and the international security token media and data platform The Tokenizer based in Copenhagen, Denmark.

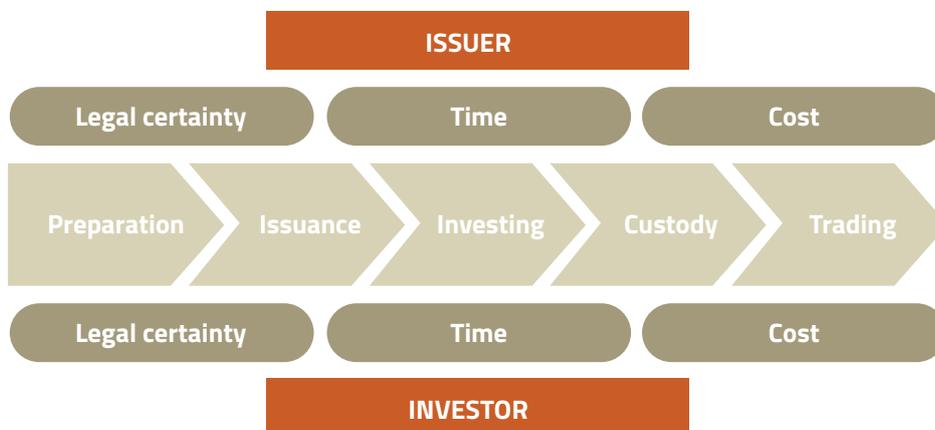
## 2. The methodological approach

### 2.1 Problem

The overall problem that gave legitimacy to The Security Token RegRadar Report and made it relevant was the lack of overview of the global regulatory landscape within security tokens across countries and jurisdictions.

Evidently, behind the missing overview was and still is the lack of regulatory clarity primarily because security tokens and the industry of security tokens are still in their infancy. Regulatory authorities and governments around the world have just recently started to dip their toes in the new waters of tokenization, and the lack of standards make it too demanding to keep up to date with regulatory changes.

All aspects that are relevant KPIs:



We considered five phases and aspects relevant for an STO: Preparation, Issuance, Investing, Custody and Trading:

- › For Preparation, the political and cultural environment, the legal environment, the availability and content of information, the foundation of a company, and the legal and regulatory procedures are relevant.
- › For Issuance, the actual creation of the token, the public sale and the token transfer are to be considered.

- › Investing deals with the aspects of market access, the preparation of the investment and the investment process.
- › Custody considers availability and regulation aspects.
- › And finally, trading is the last of the identified KPI for an STO.

The methodology identified the issuer and the investor as the main stakeholders and interested parties and considered the aspects of legal certainty, time and costs.

## 2.2 Purpose

The purpose of The Security Token RegRadar Report is to make a comparative analysis across nine selected countries regarding their legal status as well as their attitude towards security tokens.

### 2.2.1 The thoughts behind the use of the concepts of Friendliness, Readiness and Vision

**1. Friendliness** - how positive a view does the country have on security tokens and the security token industry?

To what extent is the country considered friendly towards companies and projects involved in the security token industry; and towards citizens and foreign investors who want to invest in and/or trade different kinds of security tokens.

**A.** We wanted to be able to judge on several parameters how friendly towards the security token industry a particular country was.

**B.** We wanted to compare the participating countries and be able to list the countries based on their level of security token friendliness.

**2. Readiness** - what has the country done already, and how prepared is the government to support companies and investors within security tokens?

To what extent is the country already prepared and able to act crypto-friendly in practice? Is the legal foundation in place and tested; is the country encouraging domestic companies and investors to explore the potential of the token economy, and is the country attracting foreign companies within the security token industry and investors?

**3. Vision** - how visionary is the country on behalf of the security token industry?

Did the country have a vision for how to support the development of the security token industry going forward - and was the vision carefully supported by strategic goals and concrete tactical initiatives?

## 3. The methods of data collection

### 3.1 Combining quantitative and qualitative data

We decided to combine quantitative data collection with qualitative interviews with the experts representing the nine countries. We were aware that these interviews would only provide us with subjective and likely somehow biased views. However, since we

considered the group of selected experts to be trustworthy and knowledgeable, we expected their description and interpretation of the attitude of the country's decision-makers towards the topic in question to be interesting and relevant as a supplement to the quantitative data.

### 3.2 Selection of participating countries

The participating countries in this project were selected based on two criteria:

- › We knew beforehand that a particular group of countries were more interested in and more open to the security token industry than the average country in the world. This group included approximately 25-30 countries of all sizes from around the world.
- › Among this group of assumed open and interested countries, we decided to pick out nine countries. The selection criteria for these nine countries was simple: In interest of time and resources we chose countries in which we already had an idea of whom to contact for collection of the necessary data.

For that simple reason, this first version of The Security Token RegRadar Report has a preponderance of European countries. However, it is essential to underline that this initial version only marks the beginning of the RegRader. Future editions will include many more countries and complete the picture of the regulatory status of states and jurisdictions around the world.

### 3.3 Data collection through a survey

For the quantitative part of the data collection, we developed a survey consisting of both multiple-choice questions and questions using a scale response. The total number of questions reached 34.

The survey was sent out by e-mail to the experts representing the nine countries. In addition to sending the survey, we followed up by phone to make sure that the rights persons had received the survey (please see the 98 questions below). The questionnaires were sent out in the second half of November 2020.

### 3.4 Data collection through qualitative interviews

All experts agreed to fill-in and return the survey, and all of them also decided to participate in a qualitative interview by phone. The phone interviews were all conducted in December 2020 after the completion of the quantitative survey.

## 4. Methods of analysis

### The quantitative interviews

The quantitative questionnaire consisted of 98 mandatory questions.

All questions were checked and tested by the team of The Tokenizer before the distribution of the questionnaire.

Since the target population of the survey was only nine countries each represented by one selected legal expert (typically a lawyer) all processing and analyzing of the collected data was done manually by the team of The Tokenizer.

### **The qualitative interviews**

For the qualitative interviews, a list of questions was prepared and the interviews were conducted by phone, recorded and transcribed in their entirety. The duration of each interview was 20-30 minutes.

Each interview was manually processed, analysed (themes, patterns, possible animosities and more) and evaluated by at least two members of the team of The Tokenizer.

### **5. The methodological choices**

No controversial methodological choices were made in the case of The Security Token RegRadar Report.

To conduct a quantitative survey was a given from the beginning, and because of the relatively small population of countries/experts, we decided to add the qualitative interviews as well to make the analysis as complete and credible as possible.

# Appendix C: Questionnaire

1. Have the authorities in your country formulated a definition of security tokens?

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2. Does your country have a specific regulatory framework for security tokens?

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3. Are security tokens legally allowed in your country?

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4. If 'No', are security tokens explicitly forbidden?

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5. Are Security Token Offerings (STOs) legally allowed in your country?

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6. If 'No', are STOs explicitly forbidden?

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7. If security tokens and STOs are allowed, what types of securities are allowed for STOs?

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8. If your country has a regulatory framework for security tokens, when did it come into force?

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9. Is it possible in your country to conduct an STO without producing a full prospectus provided that the STO aims at raising less than a certain amount in total?

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10. What is the maximum amount that an STO can raise in your country without a prospectus?

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11. Based on a full prospectus, how many investor jurisdictions will an STO complying with regulations in your country likely give access to? (Notice - 'Full prospectus' as used in this questionnaire means an information material on a level and scope corresponding to the level and scope required for an IPO prospectus).

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12. Based on a limited prospectus, how many investor jurisdictions will an STO complying with regulations in your country likely give access to? (Notice - 'Limited prospectus' as used in this questionnaire is any set of information material required in connection with the conduction of an STO which is significantly less comprehensive than the prospectus required for an IPO).

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13. Is there a 'holding period' in your country after the purchase of a security token?

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14. Is it possible to participate in an STO in your country without being an accredited/qualified/experienced investor?

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15. How many - if any - STOs with the participation of non-accredited investors have been conducted so far in your country?

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16. Do the authorities of your country offer a regulatory sandbox facility for startups within the security token industry?

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17. To what extent would you describe the national authorities of your country as friendly towards the security token industry? (1=unfriendly, 5=very friendly)

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18. To what extent would you describe the national authorities of your country as knowledgeable in terms of security tokens and the security token industry? (1=not knowledgeable at all on topic, 5=very knowledgeable)

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19. If your country adopted a regulatory framework for security tokens, what was the overall purpose?
- 
20. Would you say that the government of your country has a clear vision for the future role of security tokens and STOs in your country?
- 
21. To what extent would you describe the government of your country as friendly towards the security token industry? (5=very friendly)
- 
22. To what extent would you describe the government of your country as knowledgeable in terms of security tokens and the security token industry? (5=very knowledgeable)
- 
23. Is the government in your country encouraging the further development of the security token industry?
- 
24. How would you describe the governments general attitude towards security tokens and the emerging security token industry?
- 
25. Do you think that the security token industry in your country is developing at a fast pace?
- 
26. Is the relevant public information (such as websites and events) available for people within the security token industry who want to establish a company in the country?
- 
27. Does the public administration offer information support?
- 
28. Is there any relevant support from the local government in your country to companies?
- 
29. If 'Yes', what kind of support?
- 
30. Do private companies in your country offer information for people within the security token industry who want to establish a company in the country?
- 
31. If 'Yes', how many private companies offer this service?
- 
32. Does the public administration in your country offer any support to foreign companies that want to conduct an STO??
- 
33. Do private companies in your country offer support to foreign businesses that want to conduct an STO?
- 
34. If 'Yes', how many private companies offer this service?
- 
35. Is public information available in your country for foreign companies about taxation in regard to security tokens? (websites, events)
- 
36. Do private companies in your country offer information support about taxation?
- 
37. If 'Yes', how many private companies offer this service?
- 
38. Do private companies in your country offer information support about regulatory requirements in regard to security tokens and STOs?
- 
39. If 'Yes', how many private companies offer this service?
- 
40. Is it possible to found a company by foreign persons? (non-citizen, non-resident)
- 
41. If 'Yes': is it possible to found a company without a physical presence?
- 
42. Does a foreign company need capital for the foundation of an Ltd. in your country?
- 
43. If 'Yes', how much capital is required?
- 
44. Does a foreign company need capital for the foundation of an LLC in your country?
-

45. If 'Yes', how much capital is required?
- 
46. Is it possible to fund a company with cryptocurrencies?
- 
47. Is it possible for a foreign company conducting an STO in your country to open a bank account in the country?
- 
48. On average, how much time is needed to open a bank account?
- 
49. On average, how much time is needed for the foundation of a company?
- 
50. Is a lawyer/notary/public officer mandatory for the foundation process?
- 
51. What is the total cost of public fees on average for the foundation of a company?
- 
52. What is the average total cost of the foundation of a company in your country?
- 
53. On average, what is the corporate tax in your country?
- 
54. Is there a general notification/registration/ licence requirement for companies that want to conduct an STO in your country?
- 
55. If 'Yes': Is there a distinction between own issuance and issuance as a service?
- 
56. Is there a threshold for the notification/registration/ licence requirement for own issuance of security tokens?
- 
57. If 'yes', what is the threshold?
- 
58. Is there a threshold for the notification/registration/ licence requirement for security tokens issued through service providers?
- 
59. If 'Yes', what is the threshold?
- 
60. How long does an average notification/registration/licence process take, until an STO is possible?
- 
61. Are the authorities in your country ready for advisory support and personal meetings with companies to discuss the STO process?
- 
62. What are the total fees to the regulator for notification/registration/licence for own issuance?
- 
63. What are the total fees to the regulator for notification/registration/licence for service provider issuance?
- 
64. How many active security token issuance platforms would you say you have in your country currently?
- 
65. Are the issuance service providers in your country regulated or supervised?
- 
66. Are companies required to register security tokens in a public register?
- 
67. Is there an issuance tax for STOs in your country?
- 
68. If 'Yes', If yes: is there a threshold?
- 
69. If 'Yes', how high is the tax rate?
- 
70. Are payment token transfers subject to VAT?
- 
71. Are security token transfers subject to VAT?
- 
72. Are utility token transfers subject to VAT?
- 
73. Are hybrid token transfers subject to VAT?
- 
74. Is the capital increase by STO subject to VAT?
-

75. Are private placements of security tokens possible according to the regulatory regime in your country?
- 
76. In case of a public sale: Is there an obligation for investor's information?
- 
77. If 'Yes', is there a threshold?
- 
78. What is the average duration to prepare investor's information?
- 
79. What is the average cost of advisory for investor's information? (standard security token)
- 
80. What is the public fee in relation to investor's information?
- 
81. Is the public sale of tokens subject to due diligence regulation (AML/KYC/CFT)?
- 
82. If yes: Are service providers (issuance platforms, custodians, exchanges) regulated or supervised?
- 
83. Is it possible to invest in security tokens with fiat money / over commercial bank accounts?
- 
84. Do Banks in your country offer exchange services from payment tokens to FIAT money?
- 
85. Is it possible for a non-resident investor to directly invest in security tokens without onboarding (gathering vital information on the customer and conducting identity checks to comply with KYC regulations)?
- 
86. If 'No', is it necessary to register through a service provider?
- 
87. How much time is needed for registration?
- 
88. Is it possible to directly invest using cryptocurrencies (payment tokens like bitcoin or altcoins)?
- 
89. Is it possible to indirectly invest via bank account?
- 
90. What happens in case a service provider responsible for transferring a token for an investor goes bankrupt?
- 
91. How many custody service providers are available?
- 
92. Is the case of bankruptcy/default of a custody service provider regulated in your country?
- 
93. If 'Yes', are the tokens by law segregated from the service provider's assets?
- 
94. Is it possible in [country] to directly trade security tokens on a peer-to-peer basis?
- 
95. Is secondary trading of security tokens via exchanges regulated in your country?
- 
96. How many active security token exchanges do you have in your country currently?
- 
97. Does the regulatory regime of your country allow trading of security tokens on decentralised exchanges (DEX)?
- 
98. According to your best estimate: What was the number of security token transactions in your country in the last six months? (tokens sold in STOs + tokens traded in the secondary market)
-

**The Security Token  
RegRadar Report**  
- a comparative regulatory analysis of  
nine countries

A cooperation between Office for Financial Market Innovation,  
Principality of Liechtenstein, and The Tokenizer

