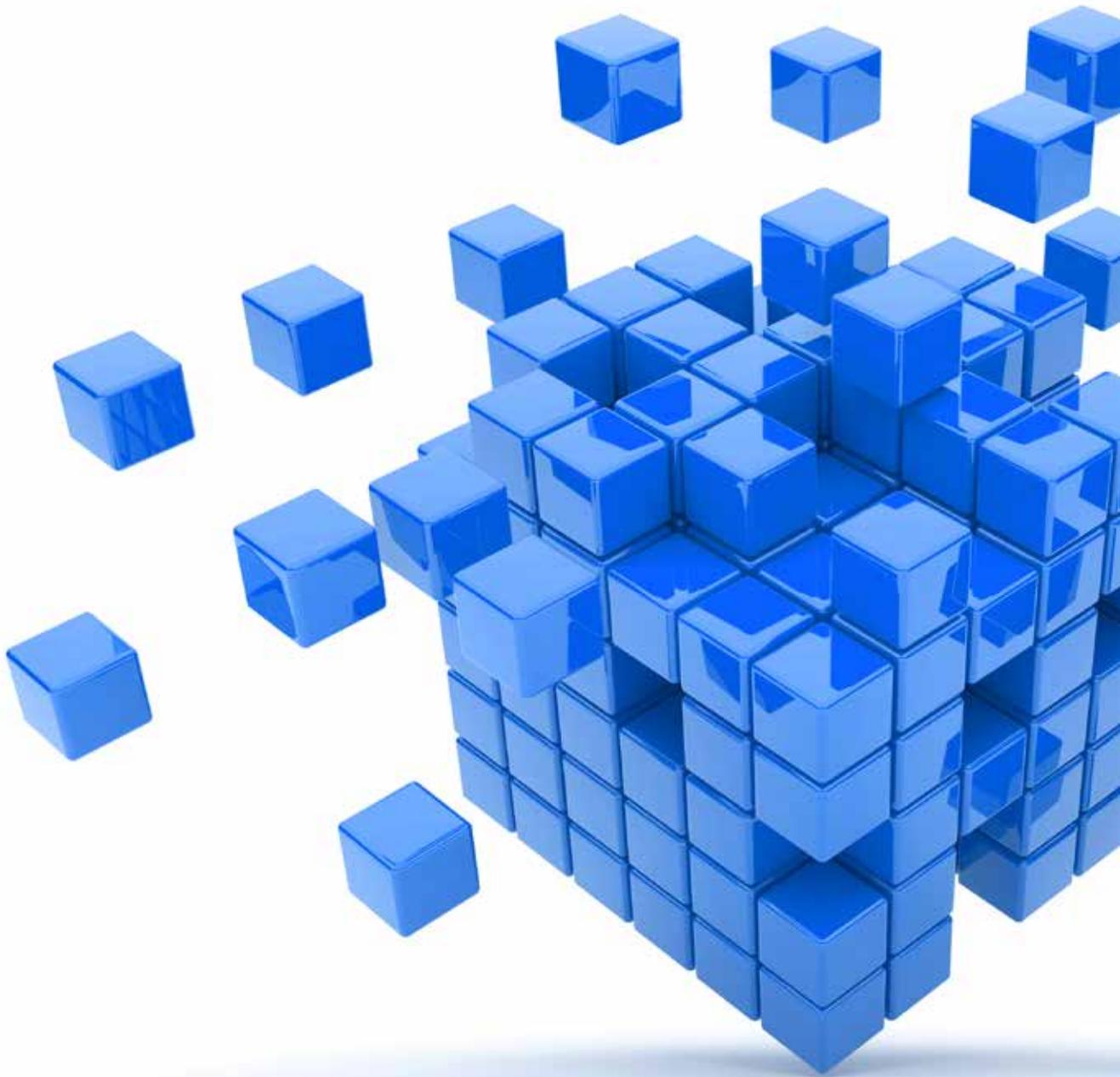


# ALLEN & OVERY



## Initial Coin Offerings: *Innovating in a changing market*

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*“The firm is able to draw on an outstanding depth of expertise in banking and finance matters, as well as a great deal of technical understanding, especially in relation to blockchain and payments platforms.”*

Chambers 2019 Fintech Guide: UK-wide

# Initial Coin Offerings: *Innovating in a changing market*

Allen & Overy is an active and engaged player across all aspects of the market for distributed ledger technology.

We began looking at the legal aspects of blockchain and cryptocurrencies several years ago, when prospective use cases were theoretical at best. In the intervening period we have engaged with our clients and with a wide range of market participants to follow emerging developments and contribute our perspectives on how existing and emerging legal and regulatory frameworks might be applied to new business models built on distributed ledger technology. We are now seeing our clients start to move from theoretical to proof of concept to, in some cases, live applications of the technology, and our experience of this exciting area of technology has grown as the market has matured.

There are a number of reasons why we are particularly well placed to advise our clients on blockchain projects and these include:

- our global footprint, which allows our cross-border team to efficiently monitor, share and learn from regulatory approaches across the globe;
- our strong track record in financial services and, specifically, financial services regulation, which is a key part of many (though by no means all) DLT applications; and
- our strong relationships with regulators and other opinion forming groups active in this market.

We pride ourselves on our ability to look at emerging technologies like initial coin offerings and map how they will fit within existing regulatory frameworks and how we can work with regulators to shape the ways in which such technologies might be governed in the future. In emerging areas where law and regulation is being made to “flex” to cope with innovation, lawyers need to be able to listen to the market, be agile and creative in their thinking, and be great at building consensus.

We have all the skills our clients need to innovate in developing markets.



*Band 1*

Chambers 2019 Fintech Guide:  
Global wide

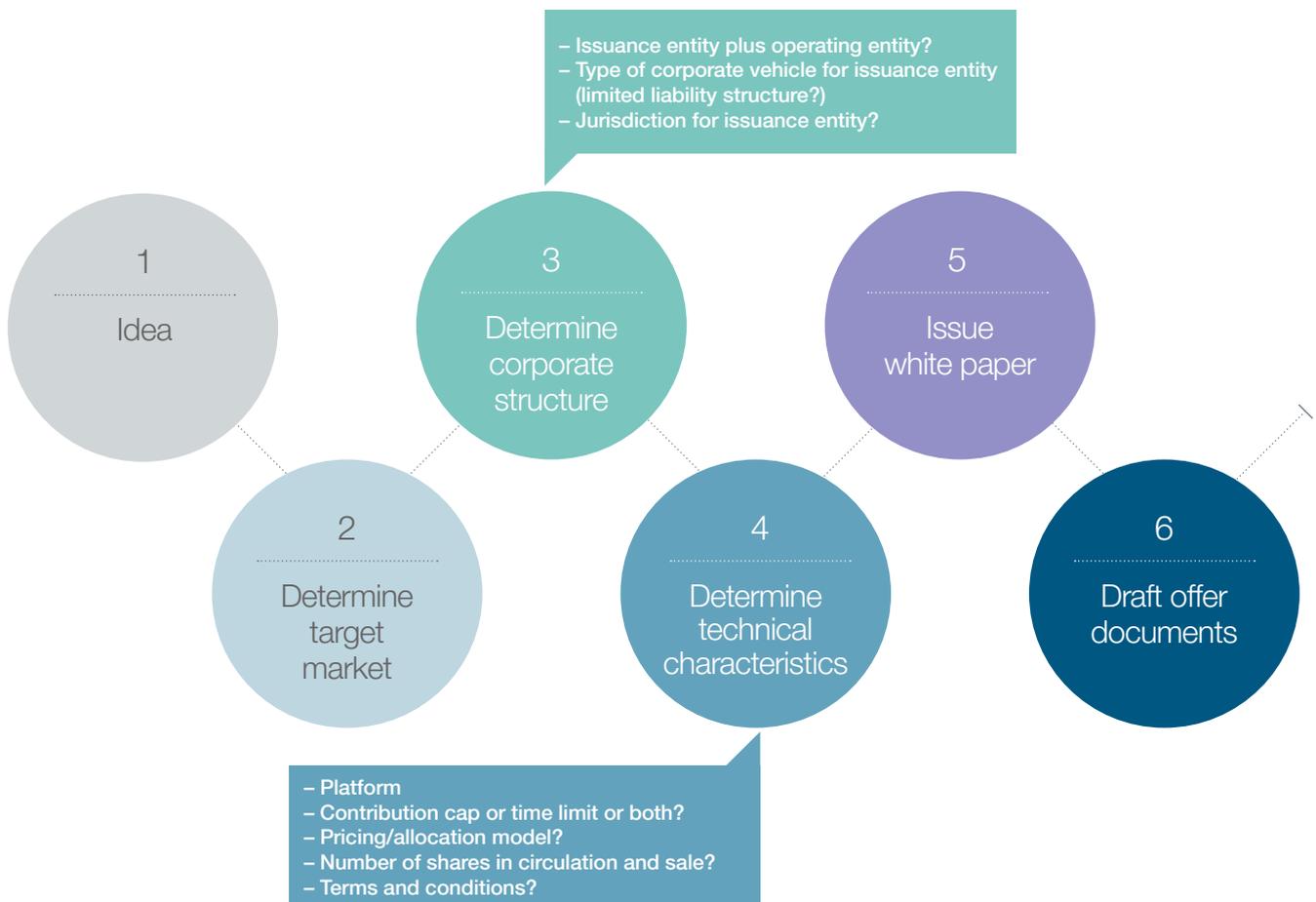
# Our advice

We have a growing practice advising on token sales or initial coin offerings – an area of the market that has been the subject of much interest from potential issuers and also from funds.

Initial coin offerings cover a wide variety of token or coin issuances where a newly issued token is exchanged for fiat currencies or cryptocurrencies such as Bitcoin or Ether. These tokens can then be traded between holders or bought by new parties and often carry pre-defined rights provided or offered by the token issuer.

This can take the form of being able to spend the tokens for goods or services provided by the issuer or other rights, such as a financial return or a right to an underlying asset.

## ICO PROCESS



## Types of tokens

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### Utility tokens

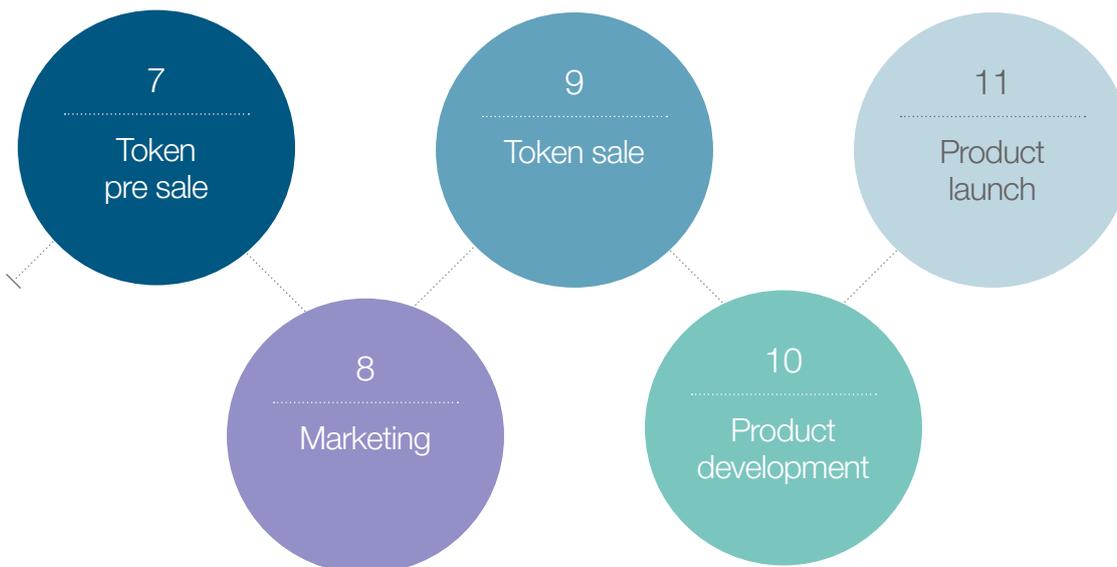
Access to products or services



### Securities tokens

Securities-like rights,  
eg share of profits, voting etc

We are currently working on a number of confidential ICO projects for both issuers and funds. Our advice has largely focused on helping clients assess whether their offerings will be viewed as securities by regulators or whether they can be characterised as utility tokens or virtual currency and, where necessary, we have assisted our clients with working towards compliance with relevant global financial services regulations.



# Navigating ICO regulatory and legal frameworks

For as much as there has been considerable excitement about ICOs disrupting venture capital and bringing new liquidity and opportunity to the early stage technology market, ICOs have also attracted their fair share of criticism and have been charged with operating in a “wild west” environment where speculation and even fraud are rife.

Some jurisdictions, including China and Korea, have currently banned initial coin offerings, whereas other regulators, such as the U.S. Securities and Exchange Commission and the UK Financial Conduct Authority, have expressed concern around the high risk and speculative nature of initial coin offerings. A number of regulators are actively working on regulations governing the use of blockchain technology in capital-raising transactions, and the regulatory environment relating to initial coin offerings is expected to develop rapidly.

A key regulatory question boils down to a matter of definition. Are tokens “securities” or the equivalent? If the structure of an ICO means the tokens are securities, the issuer will need to observe existing securities regulation in all the jurisdictions where the tokens are available for purchase – not a straight forward task given their electronic form and the variety of responses from regulators around the world. ICOs which might be held to stray into the areas of loan-making, deposit-taking, collective investment schemes, insurance products or any other regulated financial services activity will need to be similarly mindful of existing regulations.

Even outside the realms of financial services and capital markets, there is a significant body of additional law and regulation for prospective ICO issuers to consider down the path towards launching a token sale. Depending on the specific facts, these areas may include:



Inevitably, the ICO market will also have to deal with disputes. To mitigate the risk of challenges to the forum in which any dispute in relation to their tokens are determined, prudent issuers will deal with this question in advance in their documentation.

Issuers might also consider what will happen in the event of insolvency. Will token holders rank with general creditors and ahead of shareholders, or will liquidators

treat them like quasi-equity holders and prefer other creditors of the issuing company first? We anticipate that the courts will take a view on this over time, but might expect a particularly pro-consumer view to be taken where token holders have manifestly not seen the benefits promised by the issuer or where the token holder is not a sophisticated investor and a court wishes to take an interventionist stance.

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## GLOBAL PRESENCE

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Allen & Overy is an international legal practice with approximately 5,400 people, including some 550 partners, working in over 40 offices worldwide. Allen & Overy LLP or an affiliated undertaking has an office in each of:

Abu Dhabi	Bucharest (associated office)	Hong Kong	Munich	Singapore
Amsterdam	Budapest	Istanbul	New York	Sydney
Antwerp	Casablanca	Jakarta (associated office)	Paris	Tokyo
Bangkok	Dubai	Johannesburg	Perth	Warsaw
Barcelona	Düsseldorf	London	Prague	Washington, D.C.
Beijing	Frankfurt	Luxembourg	Rome	Yangon
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