Legal Checklist for Tokenization

From a technical perspective

tokeny

Table of Contents

Disclaimer

The information provided on this document does not, and is not intended to, constitute legal advice. All information and content available on this document are for general informational purposes only. Information on this document may not constitute the most up-to-date information. The content on this document is provided "as is", and no representations are made that the content is error-free. Tokeny shall not be held liable with respect to actions taken or not taken based on the contents of this document

Readers of this document should contact their legal advisor to obtain advice with respect to any particular legal matter. No reader of this document should act or refrain from acting on the basis of information on this document without first seeking legal advice from counsel in the relevant jurisdiction. Only your legal advisor can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation. Use of, and access to, this document does not create an attorney-client relationship between the reader and Tokeny.

Please note that this document is a reference checklist for legal advisors of issuers and is solely intended to provide a technical perspective on a non-exhaustive list of matters. It is important to consult and follow the advice of the legal advisor for the preparation of legal documentation.

tokeny

About Tokeny

Tokeny provides an enterprise-grade infrastructure to allow companies and financial actors to compliantly issue, transfer, and manage assets on the blockchain, enabling them to improve asset liquidity. Tokeny is a Blockchain 50 company recognized by CB Insights. They are backed by Euronext Group, Inveniam, and K20 Funds.

Introduction

As the leading technology solution provider for tokenization, Tokeny is committed to providing top-notch technology solutions that empower our clients to lead and thrive in the era of tokenization.

While we do not offer legal advice or consulting services, we understand the importance of collaboration between our technical experts and legal advisors to ensure that issuers comply with all legal requirements when issuing tokenized securities or security tokens.

Given the complexity of blockchain technology, legal advisors often seek our technical insights to clarify the actions that issuers, agents, and investors can take on the tokenized securities, in order for them to prepare the legal documentation.

To support legal advisors in their work, we have created a comprehensive reference document that provides a non-exhaustive checklist, from a technical perspective, covering frequently asked questions on blockchains, smart contracts, tokens, digital identity, wallets, and other critical areas.

Security Tokens

☐ **Type of Security**

Define the qualification of the token as a security and the type of security under applicable law. For example, it could be a registered security or a dematerialized security.

☐ **Security Token Rights**

Define the rights embedded into the security token. For example, it could bear interest, have a dividend right, include voting rights, etc.

☐ **Collateral**

Describe whether the security tokens are to be used as collateral, and if this is the case, what type of collateral is being created under applicable law.

☐ **Token Register**

Based on the applicable law, describe whether the issuer may use the blockchain as a securities register or it needs to maintain a separate (mirror) register off-chain.

☐ **Permissioned Tokens**

Even though the issuance of security tokens as permissioned tokens may not be legally required, issuers may elect to use permissioned tokens to assist them in performing compliance and management tasks, such as:

    ☐ **Identify Token Holders and Eligibility**

    Security tokens may link token ownership to blockchain identities (rather than wallets) to maintain the integrity of the blockchain registry and verify eligibility.

    ☐ **Control Tokens**

    Issuers may retain complete token control, including the ability to freeze or recover tokens. Moreover, they can approve or reject potential token holders.

☐ **Decimalization**

Describe whether the security token price may have decimals.

    ☐ **Maximum Decimal Precision**

    Define up to how many decimals.

    ☐ **Impact of Decimals on Distribution and Rights**

    The impact of such decimals on dividend/interest distribution and voting rights (for instance, whether only full round tokens give entitlement to such rights).

☐ **Currency of Reference**

If applicable, describe whether other currencies and/or cryptocurrencies are accepted for subscribing to the security token, and how exchange rates are calculated.

☐ **Payment Methods**

Define the payment methods accepted for investors to subscribe to the token (including any applicable delay, validation of the order, refund policy, fees, etc).

☐ **Exchange Rate**

Explain whether the exchange rate and quantity of tokens mentioned during the subscription process are just estimates, and what will be moment taken as a basis for calculation of the rates (e.g. the moment that payment is effectively received by the issuer).

☐ **Transfer Conditions**

Define under what conditions security token holders may transfer their tokens.

☐ **Private Key Transfer**

Despite permissioned tokens allowing to identify the token holders, wallets are still required to store and display the security tokens. The legal documentation should describe what happens if a transfer of private wallet keys occurs.

☐ **Buy-back Possibility**

Describe whether issuers have the possibility to buy-back security tokens at any point.

☐ **Governing Law**

Define the governing law of the security tokens.

Issuers

☐ **Type of Issuing Company**

Define the type of company that will be issuing the security tokens under applicable law.

☐ **Qualification**

Check whether the company may qualify as another vehicle under applicable law, for example as an investment fund.

☐ **Approvals & Licenses**

Check whether the company has to obtain any regulatory approvals or obtain licenses to issue or manage the security tokens under applicable law.

Investors

☐ **Qualification of Investors**

Define whether only duly authorized and pre-approved investors will be allowed to hold and transfer the security token, along with the inclusion of relevant KYC and AML rules and policies, as well as any other applicable compliance or regulatory matters.

☐ **Investor Information**

Describe whether investors are required to provide data and documents requested by the issuer and/or its mandated agent, and any applicable data protection policies.

☐ **Investor Wallet**

Describe whether the investor should provide the issuer with the address of its blockchain wallet, or whether a wallet should be provided by the issuer to the investor.

☐ **Token Recovery**

Consider including an acknowledgment from the investor that it will have to identify itself in case it loses the private key of its non-custodial wallet (if applicable) and requests a "token recovery process".

☐ **Transfer Restrictions**

Consider including an acknowledgment from the investor that the issuer may require that, in case of the transfer of security tokens, the transferee has to qualified by the issuer or its agent, and may be subject to the issuer or its agent's prior approval (conditional transfer).

☐ **Privacy**

Describe what data is stored inside and outside the DLT, and assess the legal implications (e.g. GDPR) and measures to protect customer data.

Blockchain & Smart contracts

- ☐ **Establish the blockchain of reference**

  Clarify which blockchain network will be used to issue security tokens

- ☐ **Right to Change Blockchain**

  Define whether the issuer has the right to change the blockchain of reference from the blockchain where the security tokens were originally issued to another blockchain.

  - ☐ **Trigger Event**

    Check whether such change is to be treated as a trigger event (for example, a corporate event) and has to be communicated to token holders in advance.

  - ☐ **Forked tokens' Validity**

    In the event of a fork, it is important to verify that only the tokens issued on the reference blockchain will be recognized as valid representations of the security token issued by the issuer, even if existing tokens are replicated on this fork.

- ☐ **DLT & Smart contracts**

  Describe the risks associated with the issuance on a distributed ledger (the risk analysis should at least cover strategic risks, legal and regulatory risks, security risks, performance risks, and confidentiality risks linked to the use of a distributed ledger).

  - ☐ **DLT Model**

    Consider defining any access rights, creation rights and/or validation rights.

  - ☐ **DLT Governance Framework**

    Consider describing how the blockchain parameters/rules may be updated (e.g. changing consensus mechanisms).

  - ☐ **Regulated Services**

    Define whether the technology service providers have any licenses or would require a license or registration with any competent authority.

  - ☐ **Liability**

    Consider including dispute settlement for issues arising from the use of DLT and identifying the person in charge of any claims related to the malfunctions of the technology.

  - ☐ **Unexpected Events**

    Describe any relevant procedures for unexpected events, for instance in case of having to enforce court decisions to block access to the tokens.

☐ **Smart Contracts**

Check the legal recognition, auditing, and responsibilities for their proper functioning.

☐ **DLT Considerations**

Consider other matters such as capacity and volume of the DLT (and quality of service), consensus algorithm, node management, key generation, delivery, storage, and management.

Next steps

☐ **Create Legal Documentation**

Create the documentation that outlined the terms of the offering with law firms and consulting companies. This typically includes an offering memorandum, which is a document that provides all the details investors need to know about the offering.

☐ **Set up Your Tokenization Platform**

Once the legal documents are ready, issuers then need to launch their tokenization platform to issue, manage and transfer security tokens on the blockchain.
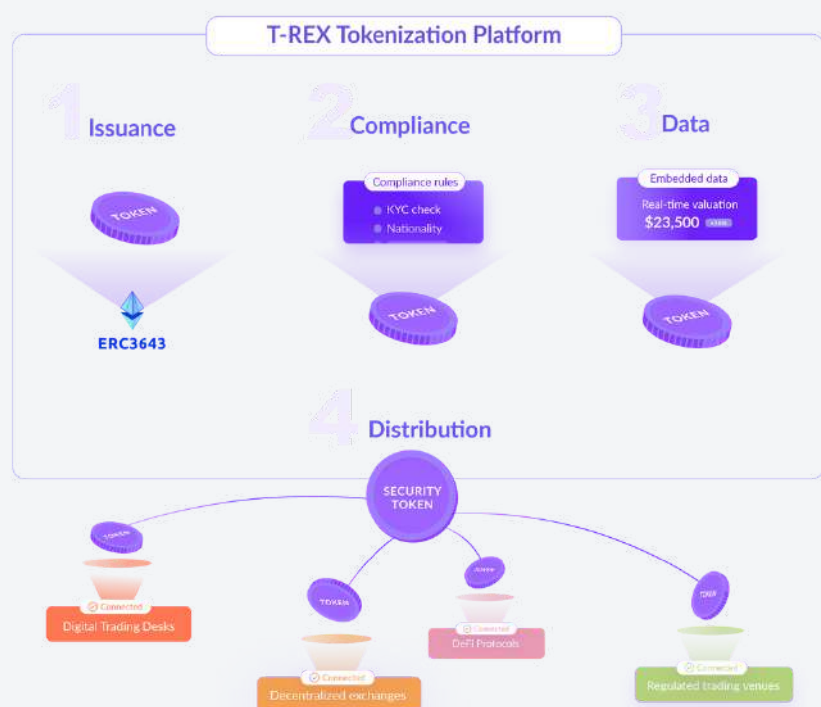
SPEED UP YOUR TIME TO MARKET

Tokeny provides a **network/assets/jurisdiction agnostic T-REX tokenization platform** for you to issue, manage and distribute ERC3643 permissioned tokens everywhere, in 4 steps:

1. **Issue** permissioned tokens via ERC3643
2. **Encode compliance** rules and offering rules into ERC3643-based security tokens
3. **Enrich data** by integrating data oracles
4. **Distribute** to any trading platforms in the same network

More info at: **tokeny.com**

About Tokeny

Tokeny provides an enterprise-grade infrastructure to allow companies and financial actors to compliantly issue, transfer, and manage assets on the blockchain, enabling them to improve asset liquidity. Tokeny is a Blockchain 50 company recognized by CB Insights. They are backed by Euronext Group, Inveniam, and K20 Funds.

2017
Founding year

$28 Billion
Value of assets tokenized

100+
Customers

180+
Jurisdictions enforced

Trusted by recognized players

EURONEXT   INVENIAM   APEX   polygon   Fireblocks

CMS law·tax·future   pwc   KPMG   AVALANCHE   Gouvernement Princier PRINCIPAUTÉ DE MONACO

CB INSIGHTS BLOCKCHAIN TOP50

2022 TADS AWARDS

KPMG GLOBAL FINTECH 100

pwc cvc GLOBAL REPORT 2022