

Legal & Tax: Crypto Currency
Fintech & ICO: Future Challenges
Crypto Law Comparison: 10 Countries

Thai Fintech Association

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Outline

- Crypto Law & Tax
- Crypto Law Comparison
- Crypto Law Comparison (10 Countries)
- Future Challenges in Thailand

Crypto Law (Digital Asset)

&

Crypto Tax



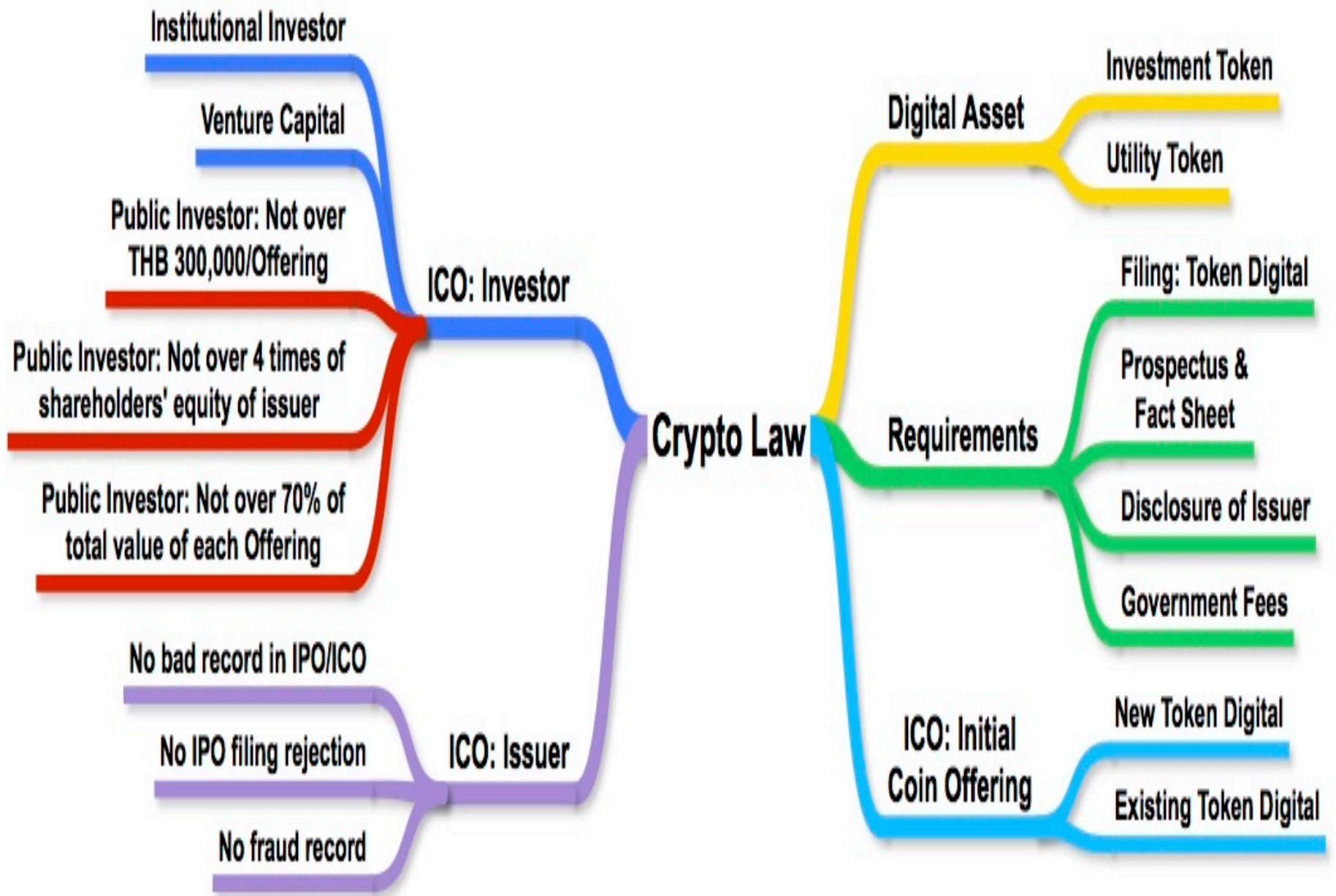
Crypto Law



- Emergency Decree on Digital Asset Business B.E. 2561 (2018)
 - Announced: 13 May 2018
 - Effective: 14 May 2018

Crypto Law (ICO)

- SEC Announcement No. GorJor.
15/2561 Re: Digital Token Public
Offering
 - Announced: 3 July 2018
 - Effective: 16 July 2018



Crypto Tax

on

Digital Asset

Crypto Tax

Corporate Tax

Personal Tax

&

Crypto VAT

Crypto Tax

- “Digital Token” is defined to mean ‘**assessable income**’ for income tax purpose (passive income)
 - Corporate Income Tax
 - Personal Income Tax
- **Equity or Debt Instrument ???**

Equity vs. Debt

Difference Treatment	Debt	Equity
Ownership / Control	No	Yes
Redemption Period	Limit	No
Return	Interest	Dividend
Asset Participation	No	Yes
Return on Liquidation	Before	After

Crypto Tax

○ “Digital Token”

○ Profit Sharing or Any Benefits

deriving from owning or holding

the Token (No transfer of Token:

Similar to Dividend)

○ “Digital Token”

- Gain on transfer of Token

(Similar to Capital Gain on share transfer)

○ “Digital Token”

○ Subject to Withholding

Tax at the rate of 15%

Crypto VAT

○ Digital Asset (**Intangible Asset**):

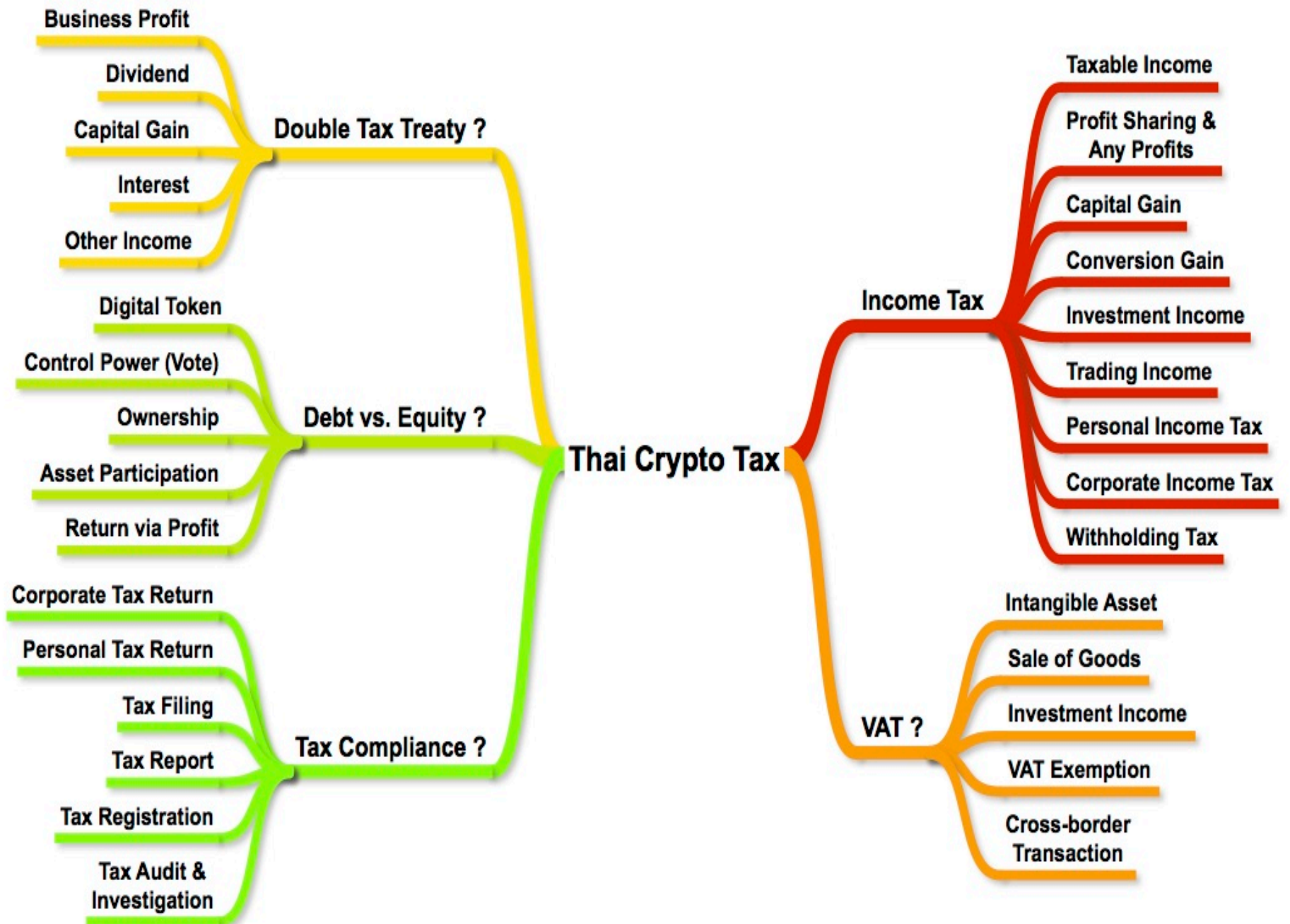
Subject to VAT

○ **The Thai Revenue Department**

tends to exempt VAT for individual

holder on Token holding (Purpose:

Tax relaxation)



Future Challenges

Crypto Law

Crypto Tax



Future Challenges Crypto Law & Tax

- Crypto Currency under Double Tax Agreement
- Thai Accounting Standard vs. IFRS
- Criminal offences on fraud and theft
- Tax Fraud = Money Laundering



Future Challenges Crypto Law & Tax

- Exchange Control Law & Conversion
- Debt foreclosure and court execution
- System Security & Confidentiality
- Investor & Consumer protection

Crypto Law

Comparison

By 10 Countries*

*Initial Coin Offerings: The Top 25 Jurisdictions and Their Comparative Regulatory Responses (Wulf A. Kaal, Professor at University of Saint Thomas School of Law, 2018)

Percent of ICO's v. Percent of Funds Raised n=25

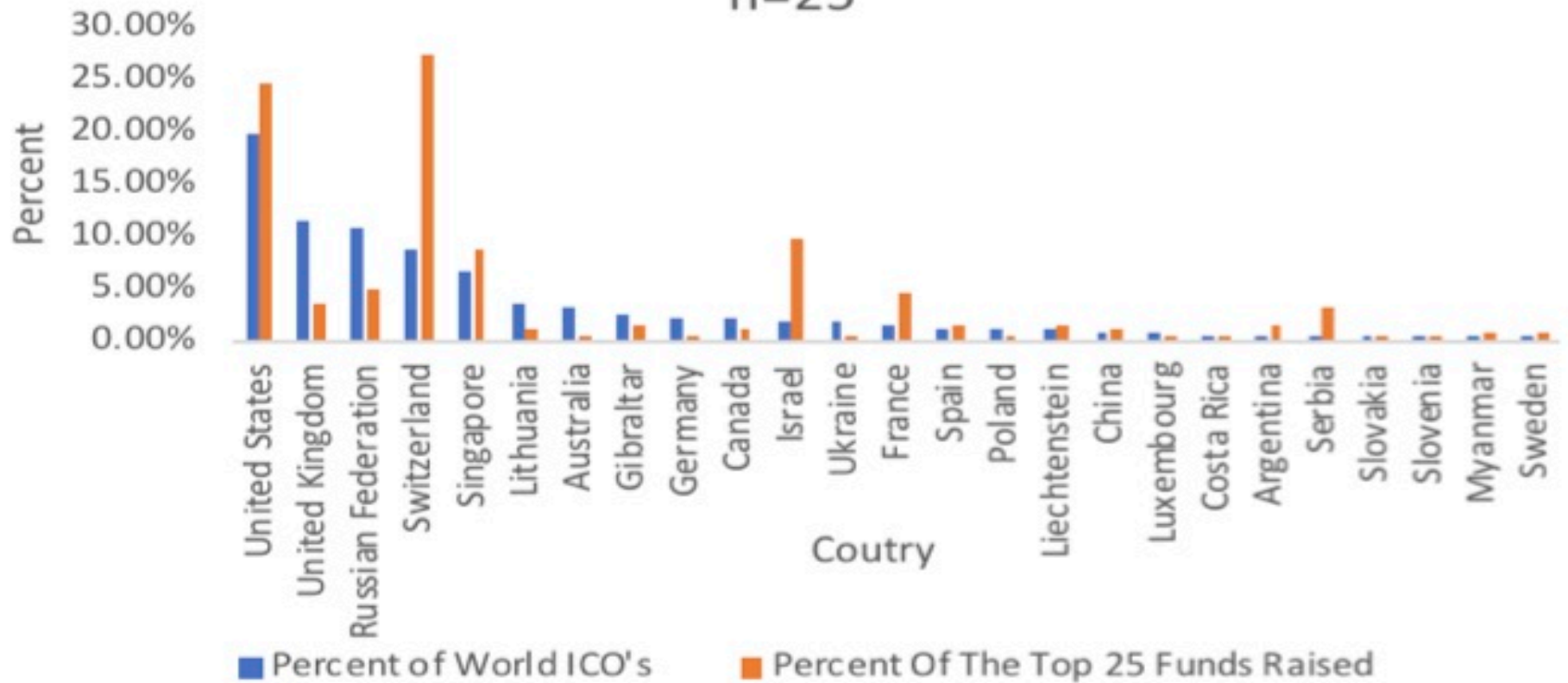


Figure 3: Percent of ICOs v. Percent of Funds Raised

*Initial Coin Offerings: The Top 25 Jurisdictions and Their Comparative Regulatory Responses (Wulf A. Kaal, Professor at University of Saint Thomas School of Law, 2018)



Crypto Law

10 Countries Comparison

- Point of 'Legal Concern' in other countries
 - Regulating ICO
 - Cryptocurrency
 - Compliance Program
 - Exchanges
 - Securities

What Regulations Address n=25

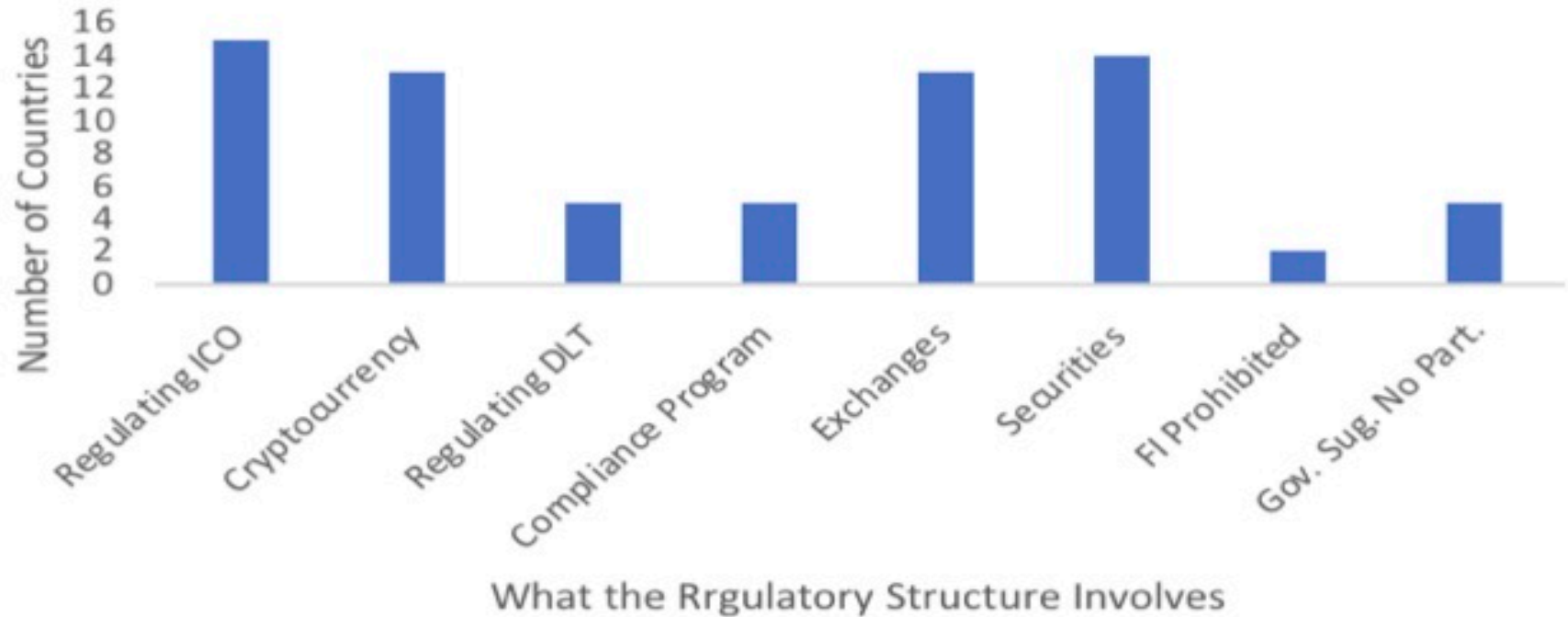


Figure 8: What Regulation Addresses

*Initial Coin Offerings: The Top 25 Jurisdictions and Their Comparative Regulatory Responses (Wulf A. Kaal, Professor at University of Saint Thomas School of Law, 2018)

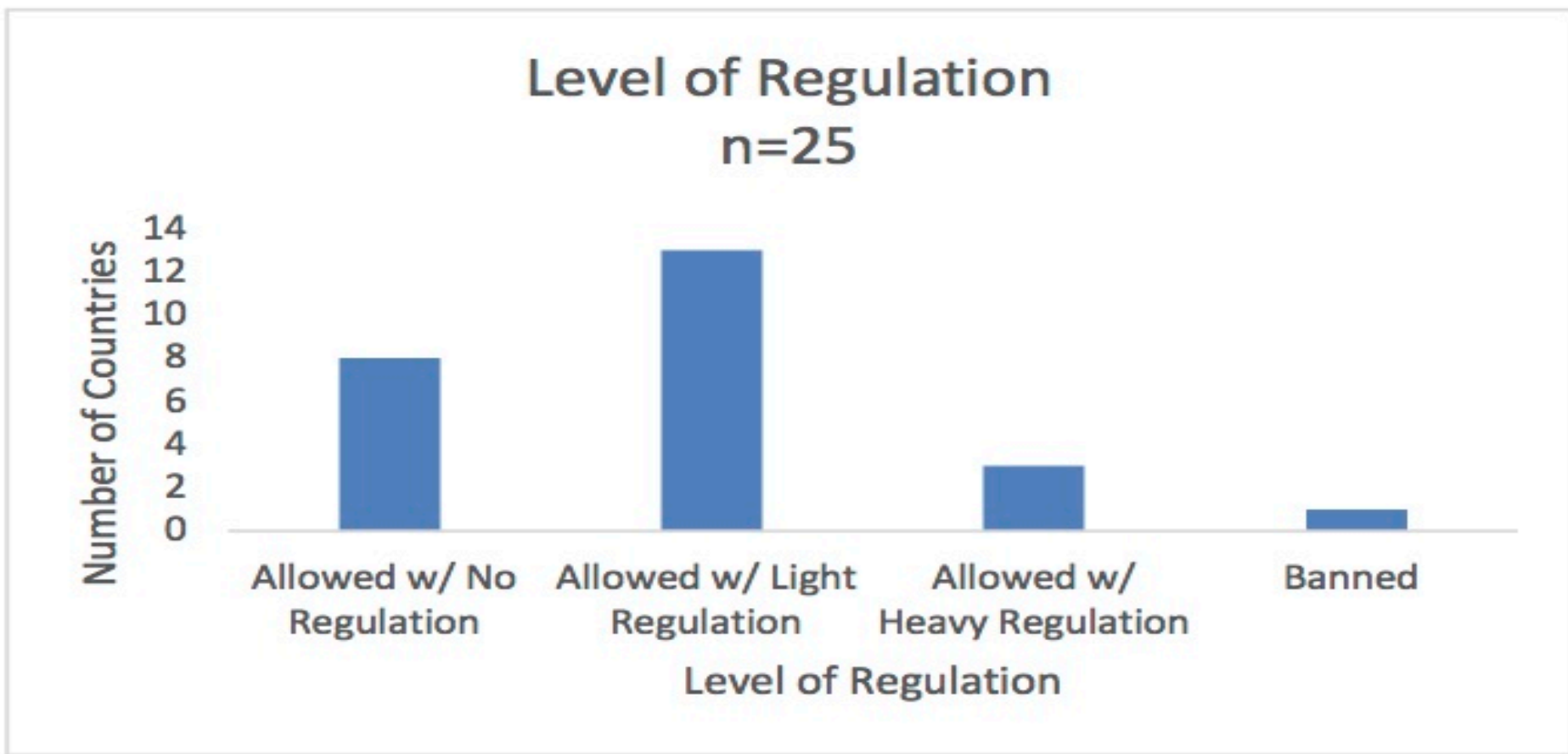


Figure 6: Level of Regulation

*Initial Coin Offerings: The Top 25 Jurisdictions and Their Comparative Regulatory Responses (Wulf A. Kaal, Professor at University of Saint Thomas School of Law, 2018)

Crypto Law

10 Countries Comparison

○ UK (United Kingdom)

- Regulator: The Financial Conduct Authority (FCA)
- ICO & Cryptocurrency: No clear regulation but determination on a case by case basis. Focus on the outcome rather than the process.

Crypto Law

10 Countries Comparison

○ Russian Federation

- Regulator: The Central Bank of the Russian Federation
- ICO & Cryptocurrency: In process of legislation (Draft of the **Digital Assets** Regulation Bill).

Russia's Ministry of Communications and

Mass Media published: Rules for **ICO** projects²⁵

Crypto Law

10 Countries Comparison

○ Switzerland

○ Regulator: The Swiss Financial Market

Supervisory Authority (FINMA)

○ ICO & Cryptocurrency: Guideline on the

Supervisory and Regulatory Framework for

ICOs. The Guideline will support **blockchain**

technology.

Crypto Law

10 Countries Comparison

○ Singapore

- Regulator: The Monetary Authority of Singapore (MAS)
- ICO & Cryptocurrency: Guideline with ‘warning’ to regulate the ‘**Digital Tokens**’ under the Securities and Futures Act (SFA) on “**Fair Dealing**” basis.



Crypto Law

10 Countries Comparison



○ Australia

- Regulator: The Australian Securities and Investment Commission (ASIC)
- ICO & Cryptocurrency: No clear regulation on **ICO / Cryptocurrency** whether it will be applicable for the Corporations Act. Focus on **‘Disclosure Requirement’**.

Crypto Law

10 Countries Comparison

○ Germany

- Regulator: Germany's Federal Financial Supervisory Authority (BaFin)
- ICO & Cryptocurrency: Letter of Advice on Regulatory Classification of **Tokens** under Securities Supervision. **ICO** will be considered on a case by case basis.



Crypto Law

10 Countries Comparison



○ Canada

- Regulator: The Canadian Securities Administration (CSA)
- ICO & Cryptocurrency: 4 Factor Test to be registered as 'securities'; (1) Solicit broad base of (retail) investors; (2) Using the internet to reach a large number of potential investors (3) Attending public events to advertise the sale of tokens/coins; (4) Raising a significant amount of capital from a large number of investors

Crypto Law

10 Countries Comparison

○ Israel

- Regulator: The Bank of Israel (BOI)
- ICO & Cryptocurrency: BOI Speech: “*Bitcoin and similar virtual currencies are not a currency, and not considered foreign currency*”.

Main view = Financial asset

Crypto Law

10 Countries Comparison

○ France

- Regulator: The Autorite Des Marches Financiers (AMF)

- ICO & Cryptocurrency: **Unsure of ICO**

technology. New program = the Universal

Node to ICO Research & Network (UNICORN)

Crypto Law

10 Countries Comparison

○ China

- Regulator: PRC (The People Republic of China)
- ICO & Cryptocurrency: **ICO** will be banned including Offering of coins and the exchanges to trade the coins. Focus on market harm (potential deception and fraud) and investor protection under current laws.

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1. ประสบการณ์มากกว่า 25 ปีในงานให้คำปรึกษากฎหมาย ด้านภาษีอากร / IPO / M&A ตลอดจนสัญญาทางธุรกิจ รวมถึง Offshore Incorporation / Family Business
2. ให้คำปรึกษาแก่ลูกค้าทั้งในไทยและต่างประเทศร่วมกับ Partner อีก 13 คนและที่ปรึกษากฎหมายอีกกว่า 120 คนผ่านสำนักงานของ SCL ในไทย เมียนมาร์ / สเปน. ลาว / กัมพูชา และ ASEAN
3. วิทยากรบรรยายเรื่องสัญญาธุรกิจและภาษีในงานสัมมนาและฝึกอบรม ตลอดเวลากว่า 15 ปี เป็น “อาจารย์พิเศษด้านภาษีอากร” และ กฎหมายธุรกิจใน หลักสูตรปริญญาตรี/โท International Program คณะนิติศาสตร์ / คณะบัญชี
4. วิทยากรประจำให้แก่ สถาบันกรรมการไทย (IOD) สมาคมบริษัทจัดการลงทุน (AIMC) ตลาดหลักทรัพย์แห่งประเทศไทย (SET / MAI / TSI) สภาวิชาชีพบัญชี (FAP) กระทรวงพาณิชย์ ธนาคารฯ และ สมาคมธุรกิจต่างๆ
5. “คณะกรรมการภาษี” ของสภาหอการค้าแห่งประเทศไทย (Board of Trade of Thailand) และ “ผู้ไกล่เกลี่ยคดีภาษี” ประจำศาลภาษีอากรกลาง
6. “กรรมการตรวจสอบ” (Audit Committee) บริษัทจดทะเบียนในตลาดหลักทรัพย์ฯ

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Chinapat has more than 25 years of experience in being a professional legal and tax advisor on corporate & tax laws, finance & securities regulations as well as M&A, IPO, property fund, REITs, family business, private equity fund, venture capital, hotel & property, offshore incorporation and major business law practices including business contracts.

Chinapat joined SCL as the Partner in order to render advice to both Thai and foreign clients along with the other 10 partners and more than 80 associates through SCL offices in Thailand, Myanmar, and Laos.

Chinapat also has more than 12 years of experience as a public speaker and in-house training on commercial contract, tax planning and tax risk management, family business, hotel/apartment, franchise, and family business as well as a visiting lecturer on tax and intellectual property programs for both Bachelor's and Master's Degrees in the state/private universities and business associations.

Moreover, Chinapat provides advice and lecture to the Association of Investment Management Companies (AIMC), Thai Financial Planners Association (TFPA), the Stock Exchange of Thailand (SET), commercial banks, life insurance companies, and other business associations. Chinapat also assists the business sector as the "Sub-Tax Committee" (Revenue Tax) under the Thai Chamber of Commerce / Board of Trade of Thailand and he is appointed to act as the tax reconciliator of the Central Tax Court as well as the "Audit Committee" in the listed companies of the Stock Market.

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