

Crypto Advertising Practical Guidelines

April 2022

Introduction

Offering and **trading with cryptocurrencies requires a careful attention** to various regulatory risks, as it may fall in many cases under a variety of regulations and rules, while in some other case may be unregulated. Each token and its characteristics, and each jurisdiction and its applicable regulatory implications.

In addition to the constantly evolving regulatory aspects that apply to crypto, in recent weeks there has been a growing global trend towards applying existing and new **regulatory standards on advertising of cryptoassets**.

Some recent examples include, inter alia, new **advisories by the UK Advertising Standards Authority ("ASA")**; **Enforcement notice by the UK Committees of Advertising Practice ("CPA")**; **Consultation paper published by the UK Financial Conduct Authority ("FCA")** intended to apply financial promotion rules on cryptoassets; **Circular by the Spanish Comisión Nacional de Mercado de Valores ("CNMV")**; **Guidelines by the Advertising Standards Council of India ("ASCI")**; and more.

These purpose of this document is to highlight **the key common requirements stemming from this regulatory trend, with respect to serving advertisements for crypto products, assets or services.**¹ In addition, we bring some examples of ads illustrating some of these highlighted "dos and don'ts".

We encourage our clients and friends to implement these principles in the **relevant internal guidelines**, as well as in the **compliance guidelines addressed to advertisers, publishers or distributors**.

In addition to ensuring compliance with the principles set out below, companies are encouraged to carefully review all other regulatory aspects that may apply to any offering of crypto assets or services, in all the applicable jurisdictions. This document does not constitute an exhaustive legal opinion or regulatory overview of any and all applicable regulatory requirements regarding the topics addressed by it, but rather, only outlines the key issues arising from the regulatory requirements. We will be happy to provide further guidance on their applicability and the specific requirements with respect to each of the topics outlined below.

1. Since we are not licensed to practice law outside of Israel, this document is intended to provide only a general background regarding this matter. This document should not be regarded as setting out binding legal advice, but rather a practical overview that is based on our understanding of the practical interpretation of the applicable laws, regulations, and industry guidelines.

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DOS

Disclaimer presentation must be:

1. Visible and unmissable
2. Simple and clear, in the dominant language
3. Prominent

A link for further information regarding the risk of the cryptoasset service being offered

A disclaimer clarifying the following:

1. Cryptocurrencies are unregulated (if applicable)
2. Cryptocurrencies' profits may be subject to **capital gains tax**
3. Cryptocurrency investment can be **highly risky**
4. The value of investments is variable and can go **down** as well as up
5. There will be **no regulatory recourse** for any loss from such transactions

When the promotion is not clearly marked as advertising material (e.g., native promotional content; distribution via social or chat platforms):

1. fully **disclose the relationship** between you (or the affiliated endorser) and the sponsoring seller of the product
2. Disclosure should be **clear and noticeable** (e.g., "promotion", "sponsored" or #ad)
3. Endorsement should reflect honest opinion **based on actual use or knowledge**

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DON'TS



DO NOT use words such as "currency", "security", "custodian" and "depositories" without analyzing the legal implications in the relevant markets



DO NOT use minors for cryptoassets ads



DO NOT present the services as a solution to money problems



DO NOT compare cryptoassets to regulated assets



DO NOT present cryptoassets as suitable for credit purchase



DO NOT represent to be an expert or a qualified professional (e.g., financial advisor, lawyer or an accountant) without having such actual qualifications



DO NOT present returns rates claim that are not representative and supported by documentary evidence, or for less than sufficient period (e.g., 12 months)



DO NOT create a sense of urgency, or a fear of missing out



DO NOT present past performances as necessarily guiding a future income



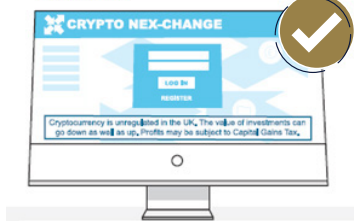
DO NOT induce to invest, such as referring a friend bonuses or new joiners' bonuses

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Exhibit A - Examples

✓ DOS

Disclaimer



✗ DON'TS

Impression of low risk



Sense of urgency



Sense of guaranteed income



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About the Herzog Technology & eCommerce Regulation Department

Herzog's Technology & eCommerce Regulation Department is a recognized market leader in its field. The team is led by domain experts who possess vital, interdisciplinary and global regulatory advisory skills, and advise a range of clients, leading multinational technology companies as well as start-ups and disruptive technologies vendors, on applicable regulatory and compliance considerations in numerous technological areas.

We understand that the regulatory exposure and attention of almost any company operating in the digital and technological sphere is much wider than one specific jurisdiction or legal discipline. Therefore, our team possesses in-depth knowledge of the increasing volume of regulations, enforcement actions and legislative trends in a myriad of jurisdictions, digital platforms and leading self-regulatory guidelines. This enables the team members to offer unique, practical and comprehensive solutions for complex situations and to assist in the development, implementation and management of adequate procedures, thereby mitigating legal and business risks.

Our practice areas spread across privacy, data protection and cybersecurity; fintech, crypto and blockchain, AML, payments and online trading; social and real money gaming and gambling; content, advertising and eMarketing; health and lifestyle technologies; artificial intelligence, computer and software protection; eCommerce and internet laws; mobile and other social media platforms compliance.

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