

FINMA Guidance

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Regulatory treatment of initial coin offerings

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1 Background

FINMA recognises the innovative potential of distributed ledger/blockchain technology. It welcomes and supports all efforts to develop and implement blockchain solutions in the Swiss financial centre.

Recently there has been a marked increase in initial coin offerings (ICOs), either conducted in or offered from Switzerland. ICOs are a digital form of raising funds from the public. They exclusively take place using distributed ledger or blockchain technology. "Token sale" or a "token-generating event" are other terms used.

Under the usual procedure for ICOs, financial backers will transfer a certain amount of cryptocurrency to a blockchain-generated address supplied by those organising the ICO campaign. In return, financial backers receive blockchain-based coins or other tokens connected with a specific project or company run by the ICO organisers.

How ICOs are structured from technical, functional and business standpoints varies markedly from offering to offering. There is no catch-all definition.

2 Regulation

ICOs are currently not governed by any specific regulation, either globally or in Switzerland. Equity and debt capital-raising, deposit-taking and the activities of financial intermediaries are controlled by existing laws that protect creditors, depositors and investors and which ensure that financial markets function properly. Swiss legislation on financial markets is principle-based; one such principle is technology neutrality. Consequently, collecting funds for one's own account without a platform or issuing house acting as an intermediary is unregulated from a supervisory standpoint in cases where repayment is not obliged, payment instruments have not been issued and no secondary market exists.

However, due to the underlying purpose and specific characteristics of ICOs, various links to current regulatory law may exist depending on the structure of the services provided. This concerns the following areas in particular:

- Provisions on combating money laundering and terrorist financing: the Anti-Money Laundering Act applies where the creation of a token by an ICO vendor involves issuing a payment instrument. If this is the case, other supervisory issues may be effective for third parties, especially for professional cryptobrokers or trading platforms which carry out

exchange transactions or transfers with tokens (secondary trading with tokens).

- Banking law provisions: accepting public deposits where an obligation towards participants arises for the ICO operator because of the ICO generally necessitates a banking licence.
- Provisions on securities trading: a licensing requirement to operate as a securities dealer may exist where the tokens issued qualify as securities (e.g. derivatives).
- Provisions set out in collective investment schemes legislation: potential links to collective investment schemes legislation may arise where the assets collected as part of the ICO are managed externally.

Due to the close proximity in some areas of ICOs and token-generating events with transactions in conventional financial markets, the likelihood arises that the scope of application of at least one of the financial market laws may encompass certain types of ICO model. This is also the case for ICO activities which aim to circumvent those provisions. Owing to the wide variety in structure of ICO models, FINMA can only carry out a conclusive regulatory assessment in specific cases. Currently, FINMA is assessing a number of such cases. Where financial market legislation has been breached or circumvented, enforcement proceedings will be initiated.

FINMA does not carry out legal assessments of ICOs beyond the area of financial market legislation (e.g. the Swiss Code of Obligations and/or tax law).

Launching ICOs

Companies or individuals who intend launching an ICO have to ensure that they comply with the requirements set out in the relevant financial market laws. FINMA therefore recommends parties interested in launching an ICO to inform themselves in time about the statutory provisions applicable to their business plan as set out in financial market legislation.

For further information about ICOs, interested parties are welcome to contact FINMA's FinTech Desk (fintech@finma.ch).

Information for investors

Coins or tokens acquired as part of an ICO may be subject to high price volatility. Often ICO projects are at an early stage of development, which results in a number of uncertainties regarding the financial and implementation aspects involved.

FINMA cannot rule out that ICO activities may be fraudulent, especially in light of current market developments. It has therefore issued a general warning about increased fraudulent activities by providers of fake cryptocurrencies.¹

¹ See FINMA's press release dated 19 September 2017 "FINMA closes down coin providers and issues warning about fake cryptocurrencies" at <https://www.finma.ch/en/news/2017/09/20170919-mm-coin-anbieter/>.