

Press release

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FINMA publishes ICO guidelines

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In guidelines published today, the Swiss Financial Market Supervisory Authority FINMA sets out how it intends to apply financial market legislation in handling enquiries from ICO organisers. The guidelines also define the information FINMA requires to deal with such enquiries and the principles upon which it will base its responses, creating clarity for market participants.

FINMA has seen a sharp increase in the number of initial coin offerings (ICOs) planned or executed in Switzerland and a corresponding increase in the number of enquiries about the applicability of regulation. ICOs are a digital blockchain-based form of public fund-raising for entrepreneurial purposes. Given a legal and regulatory framework with partially unclear applicability, FINMA is today publishing [guidelines](#), which complement its earlier [FINMA Guidance 04/2017](#), setting out how it intends to treat enquiries from ICO organisers. Creating transparency at this time is important given the dynamic market and the high level of demand.

Each case must be decided on its individual merits

Financial market law and regulation are not applicable to all ICOs. Depending on the manner in which ICOs are designed, they may not in all cases be subject to regulatory requirements. Circumstances must be considered on a case-by-case basis. As set out in [FINMA Guidance 04/2017](#), there are several areas in which ICOs are potentially impacted by financial market regulation. At present, there is no ICO-specific regulation, nor is there relevant case law or consistent legal doctrine.

FINMA's principles focus on the function and transferability of tokens

In assessing ICOs, FINMA will focus on the economic function and purpose of the tokens (i.e. the blockchain-based units) issued by the ICO organiser. The key factors are the underlying purpose of the tokens and whether they are already tradeable or transferable. At present, there is no generally recognised terminology for the classification of tokens either in Switzerland or internationally. FINMA categorises tokens into three types, but hybrid forms are possible:

- **Payment tokens** are synonymous with cryptocurrencies and have no further functions or links to other development projects. Tokens may in some cases only develop the necessary functionality and become accepted as a means of payment over a period of time.
- **Utility tokens** are tokens which are intended to provide digital access to an application or service.
- **Asset tokens** represent assets such as participations in real physical underlyings, companies, or earnings streams, or an entitlement to dividends or interest payments. In terms of their economic function, the tokens are analogous to equities, bonds or derivatives.

Focus on anti-money laundering and securities regulation

FINMA's analysis indicates that money laundering and securities regulation are the most relevant to ICOs. Projects which would fall under the Banking Act (governing deposit-taking) or the Collective Investment Schemes Act (governing investment fund products) are not typical.

The Anti-Money Laundering Act contains requirements for financial intermediaries including, for example, the need to establish the identity of beneficial owners. The law aims to protect the financial system against the risks of money laundering and the financing of terrorism. Money laundering risks are especially high in a decentralised blockchain-based system, in which assets can be transferred anonymously and without any regulated intermediaries.

Securities regulation is intended to ensure that market participants can base their decisions about investments on a reliable minimum set of information. Moreover, trading should be fair, reliable and offer efficient price formation.

On the basis of the above-mentioned criteria (function and transferability), FINMA will handle ICO enquiries as follows (see also the diagram in the [Guidelines](#), page 7):

- **Payment ICOs:** For ICOs where the token is intended to function as a means of payment and can already be transferred, FINMA will require compliance with anti-money laundering regulations. FINMA will not, however, treat such tokens as securities.
- **Utility ICOs:** These tokens do not qualify as securities only if their sole purpose is to confer digital access rights to an application or service and if the utility token can already be used in this way at the point of issue. If a utility token functions solely or partially as an investment in economic terms, FINMA will treat such tokens as securities (i.e. in the same way as asset tokens).
- **Asset ICOs:** FINMA regards asset tokens as securities, which means that there are securities law requirements for trading in such tokens, as

well as civil law requirements under the Swiss Code of Obligations (e.g. prospectus requirements).

ICOs can also exist in hybrid forms of the above categories. For example, anti-money laundering regulation would apply to utility tokens that can also be widely used as a means of payment or are intended to be used as such.

Blockchain technology has innovative potential

Following further consolidation of this supervisory practice, FINMA may in future decide to publish its interpretation in the form of a circular.

FINMA recognises the innovative potential of blockchain technology and therefore supports the federal government's [Blockchain/ICO Working Group](#) in which it is participating. Clarity about the underlying civil law framework will be a decisive factor in establishing this technology sustainably and successfully in Switzerland.

FINMA CEO, Mark Branson comments: "The application of blockchain technology has innovative potential within and far beyond the financial markets. However, blockchain-based projects conducted analogously to regulated activities cannot simply circumvent the tried and tested regulatory framework. Our balanced approach to handling ICO projects and enquiries allows legitimate innovators to navigate the regulatory landscape and so launch their projects in a way consistent with our laws protecting investors and the integrity of the financial system."

Information for investors

FINMA has several times drawn attention to the risks that ICOs can pose for investors. Tokens acquired in the context of an ICO are likely to be subject to high price volatility. Since many ICO projects are at an early stage of development, they are subject to numerous uncertainties. Furthermore, it is uncertain under current civil law whether contracts executed via blockchain technology are legally binding.

Investigations into ICOs will continue

As announced in September 2017, FINMA is conducting investigations into a number of cases involving ICOs. If FINMA becomes aware that ICO business models have breached supervisory law, were intended to circumvent regulation, or were fraudulent in their intent, it will launch enforcement proceedings.