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Swiss – FINMA Regulate ICOs and Publish Guidelines



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Guidelines Published by the Swiss Financial Market Supervisory Authority for ICO Organizers.

The Swiss Financial Market Supervisory Authority (FINMA) (https://en.wikipedia.org/wiki/Swiss_Financial_Market_Supervisory_Authority) has published a press release regarding how it plans to apply financial market legislation in handling queries from the ICO (<https://coindelite.com/news/latest-ico-news/>) organizers. The press release also describes the information FINMA requires for dealing with such inquiries and the principle upon which it is going to imply based on the responses created transparency for the market partners.

FINMA has seen a massive increase in the number of initial coin offerings (ICOs) prepared or executed in Switzerland and a corresponding improvement in the volume of inquiries regarding the applicability of regulation. ICOs are a digital blockchain-based form which is used to raise funds for business purposes. Given a legal and regulatory framework, Today FINMA has published guidelines (<https://coindelite.com/news/wp-content/myimages/wegleitung-ico-regulierung.pdf>), which complement its first FINMA Guidance (<https://coindelite.com/news/wp-content/myimages/20170929-FINMA-Aufsichtsmittteilung-04-2017-4.pdf>) 04/2017, describing how it intends to treat inquiries from ICO organizers. Creating transparency at this time it is essential in the dynamic market and the high level of demand.

Each Case Must be Decided on its Individual Merits

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Regulations and Financial market laws are not applicable to all ICOs, and it depends on the manner in which ICOs are designed, they might not also be subject to regulatory conditions. Things have to be considered on a case-by-case basis. As set out in FINMA guidance 04/2017, there are many areas in which ICOs are probably affected by financial market regulation. As of now, there is no ICO-specific regulation, nor there is any relevant case law or consistent legal position.

FINMA's Systems will Focus on the Function and Transferability of Tokens

While evaluating the ICOs, FINMA will be focusing on the economic function and purpose of the tokens (i.e., the blockchain-based (units) which is declared by the ICO organizer. The key factors are the underlying purpose of the tokens whether they are already tradeable or transferable. As of now, there is no such recognized terminology for the classification of tokens either in Switzerland or internationally.

FINMA categorizes tokens as three types, those are:

Payment tokens: which are compatible with cryptocurrencies and have no further functions or links to other developing projects. In some cases, Tokens can only develop required performances and will be accepted as a method of payment within a particular time.

Utility tokens: which are designed to provide a digital path to an application or service.

Asset tokens: which represent assets such as participation in real physical underlying, companies, or earnings streams, or entitlement to distributions or interest payments. Regarding their economic function, the tokens are similar to equities, bonds or derivatives.

Focusing on Anti-Money Laundering and Securities Regulation

FINMA's report shows that money laundering and securities regulation are the most important to ICOs. Projects those fall under the Banking Act (governing deposit-taking), or the Collective Investment Schemes Act (governing investment fund products) are not expected.

The Anti-Money Laundering Act includes provisions for financial intermediaries including, for example, the requirement of establishing the identification of profitable owners. The law aims to preserve the financial system against the risks of money laundering and the finance of terrorism. Money laundering risks are particularly high in a decentralized blockchain-based system, in which assets can be transferred anonymously and without any regulated intermediaries.

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

From the criteria mentioned above (function and transferability), FINMA will handle ICO inquiries as follows:

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 treat such tokens as securities.

Utility ICOs: These tokens do not change as securities only if their single purpose is to give digital access rights to an application or service and if the service token can already be used in this way at the point of issue. If a utility token functions entirely 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 notes 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 composite forms of the above categories.

Blockchain technology has Innovative Possibility

Following further concentration of this supervisory practice, In the future, FINMA may publish its review in the form of a circular.

FINMA recognizes the innovative possibility of blockchain technology and supports the federal government's Blockchain/ICO Working Group (<https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-69539.html>), where it is participating. Clarity about the underlying civil law framework will be a determining factor in establishing this technology sustainably and successfully in Switzerland.

FINMA CEO, Mark Branson said:

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"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 inquiries 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 many times paid attention to the risks that ICOs can pretend for investors. Tokens collected in the context of an ICO will be subject to high price volatility. Since many ICO projects are at an early stage of development, they are subject to numerous risks. Moreover, it is uncertain under the current civil law whether contracts executed via blockchain technology are legally binding.

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