



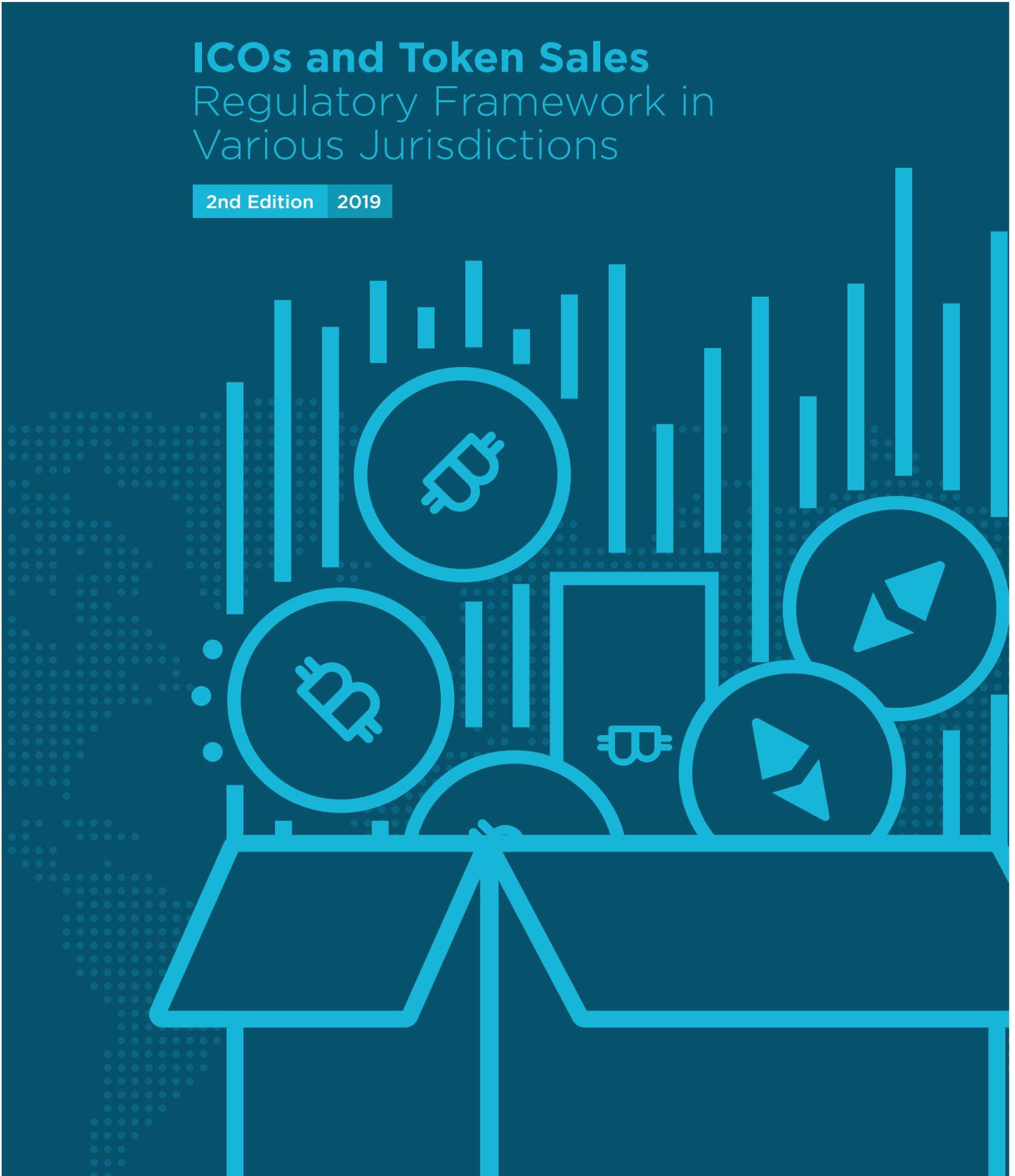
**LEGALINK**

INTERNATIONAL BUT PERSONAL

# ICOs and Token Sales

## Regulatory Framework in Various Jurisdictions

2nd Edition 2019



# INDEX

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## THE **13** QUESTIONS WE ASKED

- 1 Does your country allow or prohibit ICOs and Token Sales?
- 2 Does your country regulate ICOs and Token Sales?
- 3 If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?
- 4 If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.
- 5 Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.
- 6 If a foreign entity conducts an ICO and offers tokens to residents of your country, will your government require the foreign entity to comply with any rules and regulations? If so, please provide an overview of how ICOs conducted by foreign entities are regulated by the government of your jurisdiction.
- 7 What is the legal nature of crypto in your country (for example, is crypto considered a security, commodity, currency etc.)?
- 8 Has the government of your country prosecuted, civilly or criminally, any ICO issuers, token developers or crypto exchanges for violating your country's laws? If so, please provide an executive summary of the most significant prosecution(s).
- 9 In your country, are there any significant commercial disputes or civil cases (non- government) involving crypto? If so, please provide an executive summary of the most significant dispute(s)/ case(s).
- 10 Does your jurisdiction tax crypto transactions? If so, please provide a basic explanation of how and at what rate they are taxed.
- 11 Separate from ICOs, does your jurisdiction regulate crypto trading or crypto exchanges? If so, please provide an overview of the regulation.
- 12 Does your country offer any unique or important benefit to crypto-focused companies (for example, clear regulatory guidance)? If so, please describe the unique/ important benefit.
- 13 Please identify a point of contact at your firm for cryptocurrency- related matters.

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**1** Does your country allow or prohibit ICOs and Token Sales?

Yes, ICO's and Token Sales are allowed and so far not specifically regulated. FINMA, the Swiss Financial Market Authority issued recently a guidance on how FINMA intends to deal with such transactions in a regulatory manner (FINMA Guidance 04/2017 of September 29, 2017, see annex). Depending on how an ICO is structured, however, some parts of the procedure may already be covered by existing regulations. This concerns the following areas in particular:

- provisions on combating money laundering and terrorist financing;
- banking law provisions;
- provisions on securities trading;
- provisions set out in collective investment scheme legislation.

**2** Does your country regulate ICOs and Token Sales?

See answer 1), ICOs are currently not governed by any specific regulation in Switzerland.

**3** If your country regulates ICOs and Token Sales, what are the names of the government agencies responsible for regulating them?

See answer 1), FINMA is responsible to apply the above mentioned regulations on cryptocurrencies or ICOs, if necessary and indicated.

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**4** If your country regulates ICOs and Token Sales, please provide a short summary of the regulatory framework. For example, do ICOs and Token Sales need to be registered or comply with any rules; or can they only be sold to certain types of purchasers/investors.

See again answer 1); depending on the structure the transactions may be subject to one of the above mentioned regulations. In most cases AML-legislation will be applicable, provided certain thresholds values per investor are exceeded.

**5** Please provide any additional information you feel is important to understanding ICO and Token Sale regulation in your country.

See FINMA Guidance 04/2017 in the annex.

**6** Please identify a point of contact at your firm for cryptocurrency-related matters.

Marcel Aellen (Bern office, ex FINMA director) - [marcel.aellen@bratschi-law.ch](mailto:marcel.aellen@bratschi-law.ch)  
Rolf H Weber (Zurich office, expert in the field and Prof. emeritus University of Zurich),  
[Rolf.Weber@bratschi-law.ch](mailto:Rolf.Weber@bratschi-law.ch)  
Daniel Glasl (main Legalink contact)  
[Daniel.Glasl@bratschi.ch](mailto:Daniel.Glasl@bratschi.ch)

ANNEX  
**FINMA Guidance**  
**04/2017**

# FINMA Guidance

## 04/2017

### Regulatory treatment of initial coin offerings

29 September 2017

## 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](mailto: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.<sup>1</sup>

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<sup>1</sup> 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/>.



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