



Crypto regulation in Switzerland

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FinTech Regulation and ICO Guidance in Switzerland

The new FinTech rules (1)

BankO in force from 1.8.17 / FINMA Circular 08/3 on deposits

- A form of deregulation in relation with the accepted deposits is being proposed:

- No authorization until CHF 1 Mio or 60 days settlement

Max 20 deposits of more of CHF 1 Mio for a maximum of 60 days are allowed.

This change should allow firms to try out a business model before they are finally required to obtain authorization in the case of public funds of over CHF 1 million.

Consultation project dated 1.2.17 for new BankA

- aim to regulate fintech and other firms that provide services outside normal banking business according to their risk potential
- Simplified authorization until CHF 100 Mio with no lending business

Simplified operating requirements relative to the current banking license in the areas of accounting, auditing and deposit protection. Less stringent requirements particularly in the areas of minimum capital, own funds and liquidity would have to be regulated within the scope of implementing regulations to be issued later.

- Normal authorization if more than CHF 100 Mio

But with a case by case study that could allow simplified requirements if justified.

Blockchain and ICO to be further regulated

Blockchain/ICO working group established

Bern, 18.01.2018 - The State Secretariat for International Financial Matters (SIF) has established a blockchain/ICO working group, which will review the legal framework and identify any need for action with the involvement of the Federal Office of Justice (FOJ), the Swiss Financial Market Supervisory Authority (FINMA) and in close consultation with the sector.

In its response to the Béglé motion on 15 November 2017, the Federal Council promised that SIF would set up such a working group because blockchain technology gives rise to fundamental legal issues concerning both financial market law and general pieces of legislation (Code of Obligations, Swiss Civil Code, etc.). The working group will evaluate the legal framework for financial sector-specific applications of blockchain technology, with a particular focus on initial coin offerings (ICOs). It will identify potential needs for action and present courses of action. The work will be carried out in a steering committee consisting of the SIF State Secretary, Jörg Gasser (chair), the Director of the FOJ, Martin Dumermuth, and the Director of FINMA, Mark Branson. The steering committee will work closely with the sector.

Online identification as essential part of FinTech

New

FINMA revises circular on video and online identification

The Swiss Financial Market Supervisory Authority FINMA is updating the due diligence requirements for client onboarding via digital channels to reflect advances in technology. The consultation period for the changes to the circular will run until 28 March 2018.

Almost two years have passed since FINMA Circular 2016/7 “Video and online identification” came into force and initial experience with digital identification has been positive. While technology has since advanced and financial intermediaries have in part adapted their processes, new risks of misuse have also emerged. The amended circular takes account of these developments and ensures that innovative capacity, technology neutrality and effective money-laundering prevention are maintained. FINMA is launching a consultation on the changes which runs until 28 March 2018.

Specifically, the video identification process no longer contains the provision regarding the single-use password (TAN). Instead, at least three randomly selected visual security features of identification documents must be checked. For online identification, FINMA no longer requires a transfer from a bank in Switzerland to ensure compliance with due diligence requirements: under certain conditions, a transfer from a bank in an [FATF member state](#) is now also permitted. Additionally, liveness detection is required as a further security measure when checking photographs.

Online identification as essential part of FinTech

Amending of FINMA Circular 16/7

Better requirements for online identification:

- Use of three randomly selected visual security features of identification documents must be checked
- transfer from a bank in an FATF member state is now also permitted
- contracting party's photo shall be created in the course of the identification process (e.g. by using liveness detection).
- financial intermediary will compare the identification documentation with an identity document database

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FINMA FinTech's Department



Welcome



Explained in simple terms

FINMA's activities explained for the public and creditors

→ [FINMA Public](#)

Favourite links

- [List of all authorised institutions and products](#)
- [Public warnings issued by FINMA](#)
- [Investigating agents acting for FINMA](#)

FinTech

Financial technology is an important focal point for FINMA. See our new web page for information about regulatory issues regarding FinTech.

→ [FinTech web page](#)



FINMA enforcement

19 September 2017

Press release

FINMA closes down coin providers and issues warning about fake cryptocurrencies

The Financial Market Supervisory Authority FINMA has closed down the unauthorised providers of the fake cryptocurrency "E-Coin". The developers of E-Coin had accepted some million Swiss francs in public deposits without holding the required banking licence. FINMA has also launched bankruptcy proceedings against the legal entities involved.

Guidance FINMA 4/2017

When issuing a token, the issuer should take care of the following.

- **Banking Act**, if the coin issuer is not holding the private keys controlling the coins, he does not accept deposit and does not require a banking licence
- **Anti Money Laundering Act**, cryptocurrencies which have a function of a mean of payment and are listed on a Exchanger are to be considered as assets; a power to dispose such assets requires a AML licence and KYC. However the issuance of a token which is not a mean of payment and is not tradable should not require such licence.
- **Financial Market Infrastructure Act**, a token issued on the blockchain may be qualified as a security. This is often the case if the token is related to an underlying which is giving a profit sharing or another financial right. The issuance of a token which is a derivative does not need (today) a prospect, but can be listed only on a authorized Exchanger
- **Stock Exchange and Securities Trading Act**, the professional issuance of token which are considered as a security on behalf of a third party requires FINMA approval
- **Collective Investment Schemes Act**, if the assets obtained with the issuance of the token are managed by a third party and the token holders have right to a proportional part of the profit, then the token is to be considered as a quota of a fund and require FINMA approval (which cannot be given due to gap in the legislation)

FINMA ICO Guidelines 16.2.18

- **Purpose:** provide information to market participants about how FINMA will deal with enquiries.
- **Principles and contents:**
 - Assessment based on the underlying economic purpose of the ICO;
 - Appreciation on case-by-case basis;
 - Token categories;
 - Moment of token issuance.

Which assets can be tokenized leveraging blockchain/DLT technologies?

Type of tokens according to FINMA Guideline

Payment Tokens	Utility Tokens	Assets Tokens	
They are intended to be used as means of payment for acquiring goods or services, or as means of money or value transfer. There is no claims on their issuer	They grant access to a digital application or service, now or in the immediate future	They represent assets which are not security with a claim against the issuer	Non Security
	They grant access to a digital application or service in the distant future	They represent assets which are securities or enable IOUs for physical assets to be traded	Security

Which assets can be tokenized leveraging blockchain/DLT technologies?

Exemples

Payment Tokens	Utility Tokens	Assets Tokens	
Bitcoin, Ethereum	Eidoo, Sgame, many others	Fiat asset tokens	Non Security
	Tezos Ethereum before blockchain in use	Profit sharing tokens (bonds, shares, other) Financial products tokens	Security

Which authorization for which token?

Examples

Payment Tokens	Utility Tokens	Assets Tokens	
KYC Mandatory	KYC Voluntary (but banks requires it)	KYC Mandatory	Non Security
	ICO Organizer and Exchanger need FINMA authorization, not the issuer	ICO Organizer and Exchanger need FINMA authorization, not the issuer	Security

Business cases



ICO

The foundation ICO

A NewCo in Fintech requires seed money for developing its activity. The activity is based on a protocol which is not rentable, but the applications on the protocols are. The NewCo creates a new coin which will be used for financing a foundation with the scope to create and maintain the protocol. The coin will be the «fuel» of the protocol, users of the protocols must pay in coins.

Why its works

- No authorization required (self issuing)
- As more people use the protocol for their business, the value of the coin will increase.
- Investors (in the prospectus called donators) are willing to invest money in a project with very high risk to fail, but also a very high reward in case of success.

The bond like ICO

For the development of a project a Company issues a coin. The gains from the project will be used for buying back the coins.

Why its works

- No authorization required (self issuing)
- The coin can be exchanged on a platform, therefore the money invested is liquid
- As more coins will be bought back, the higher will be the price of the coin. However, if the company does not gain enough to buy back the coin, its value will be zero

Business cases



ICO

The share like ICO

A company wants to seed more capital in order to have more money for their activity and let the shareholder sell part of the capital. An IPO procedure is however too expensive. The Company is therefore creating a coin which replicates its shares and sells it through a ICO.

Why it's works

- No authorization required (self issuing)
- The coin can be exchanged on a platform, therefore the money invested is liquid
- Dividends are paid directly to the coin holder (in cryptocurrency)
- Custody of the coins can be done by the shareholder itself (or by a bank which would allow the custody of coins)

The commodity ICO

A company acquires gold and backs it on the blockchain creating a coin. The company sells the coins that are a proof of property of the gold in custody by the company

Why it's works

- No authorization required (precious metal dealer)
- A commodity once difficult to transfer is now easy to transfer
- Custody of the coin can be done by the shareholder itself (or by a bank which would allow the custody of coins)

Business cases



ICO

The voucher ICO

A company wants to seed capital in order to finance the development of its activity. To do so the company issues a coin which represents a voucher for the purchase of the future service/product. Thanks to the money obtained with the sale of the coin the company will be able to develop a new service/product. The buyer of the coin will be able to purchase in the future the service/product at a discounted price.

Why it's works

- No authorization required (voucher is not a security)
- Tax optimization (gains are accounted only when the coin is used and after deduction of the development costs)
- ICO is a great marketing platform
- Clients take a risk but they are rewarded with an interesting discount

A new use?

The use of ICO is unlimited. Every company can adopt the coin to its will and create a completely new product. Every business model can therefore use a coin according to its needs

Why it's works

- Usually no authorization required
- A prospect may be required
- A new way to obtain money which adapts to the markets needs will always be successful
- ICO is a great marketing platform

Thank you

Ready for the Blockchain?



Contacts



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