



VISCHER

Initial Coin Offerings (ICOs)

What are Initial Coin Offerings?

In an ICO, tokens are sold to the public. Tokens are digital data on a blockchain. Whether these tokens will be treated similar as coins by the public following the ICO, depends on future developments. Earlier ICOs were therefore called crowd sales of tokens.

Are they like IPOs?

The term ICO has been inspired by the term IPO. The purpose of ICOs and IPOs is to raise funds. In an IPO, you are purchasing exchange traded shares which entitle to dividends and you have voting rights in the company that has offered the shares. Companies that are doing an IPO typically have a track record of their business. In an ICO, the situation is typically very different. The investor does not acquire any shares or other membership rights, but digital data in a new project (often beta version). It depends on the software that is the underlying of the token what type of rights the investor will acquire.

Who can offer tokens?

In principle, anybody can offer tokens. In Switzerland, ICOs have typically been done by foundations. While a foundation may offer advantages, the use of this structure also leads to important restrictions for the time following an ICO. It is therefore important to analyze the specifics of a project to choose the right structure. We help you to find the right solution in order to avoid future surprises.

Is Switzerland the right place?

Switzerland has a longstanding reputation for research and development. The Swiss Federal Council and the regulator are committed to support Fintech innovations. The tax rates are low and, even more important, will keep being low. The Swiss labour law provides for flexible hiring of staff, and also for termination of employment agreements without severance payments.

Which financial regulations apply?

Frequently, ICOs do not trigger any license, or registration requirements in Switzerland. This, however, needs to be examined on a case-by-case basis. We do have the technical understanding required for this purpose. Further, it is important to note that not only the financial regulations at the place of the ICO, but also at the domicile of the potential investors may apply. We help you in liaising with law firms in the relevant countries. The general rules are as follows:

- The sale of securities may trigger license requirements. The features of tokens can be very different. It depends on the facts whether tokens may qualify as securities.
- Companies which accept monies should verify before beginning to operate, if they require a license or if they can rely on an exception.
- Whoever transfers money from one account to another has to keep in mind the necessary registrations as a financial intermediary in accordance with the anti-money laundering regulations.

Given the increasing popularity of ICOs, we expect the regulation to further evolve in many countries including Switzerland.

Don't forget...

ICOs is not only about making sure that you do comply with financial regulations, but also with other regulations, for example consumer protection and data protection rules. Further, even if there are no prospectus requirements, general contract law and tort law applies when issuing or selling tokens. Any documentation and website should therefore be carefully drafted. We help you in setting up a compliant structure.

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