

FINMA's guidelines on initial coin offerings

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

On 16 February 2018, at the height of the uncertainty that followed the ICO boom, the Swiss Financial Market Supervisory Authority published guidelines on the treatment of initial coin offerings under Swiss financial market law. Because FINMA had received numerous enquiries from projects in 2017 about the regulatory classification of their token sales, the guidelines were intended to give market participants transparency about its approach.¹

Without creating new rules, the guidelines explained how the existing laws applied to tokens. Their central instrument was a classification of tokens by their economic function. Payment tokens, also called cryptocurrencies, are intended to be used as a means of payment and have no other function. Utility tokens give access to a digital application or service. Asset tokens represent assets such as claims against the issuer, participations in companies or earnings streams, which makes them comparable in economic function to shares, bonds or derivatives. A token may combine several functions, in which case it is treated as a hybrid.²

The consequences of the classification were set out clearly. Asset tokens are treated as securities, with the consequences that securities law attaches to their issue and trading. Utility tokens are not treated as securities if their only purpose is to give access to a functioning application at the time of issue. Payment tokens are not securities, but their issue and transfer are subject to the anti-money-laundering rules, since a token that functions as a means of payment is a vehicle for the transfer of value. The guidelines were well received by the industry, which valued their clarity and the willingness of the regulator to engage with the technology. They became a reference internationally as regulators in other countries adopted similar approaches. For Zug, they offered a regulatory framework in which serious projects could operate with legal certainty, helping to separate the industry from the excesses of the boom. FINMA supplemented them in 2019 with

guidance on stablecoins and on the application of the anti-money-laundering rules to transfers on the blockchain.³

1 Notes

1. FINMA, press release "FINMA publishes ICO guidelines", 16 February 2018, [finma.ch](https://finma.ch/en/press-releases/finma-publishes-ico-guidelines): guidelines for enquiries regarding the regulatory framework for initial coin offerings, based on existing financial market law; numerous ICO classification enquiries received in 2017; three token categories; payment ICOs subject to anti-money-laundering requirements and not treated as securities; asset tokens treated as securities; risks of anonymous transfers and money laundering, price volatility and uncertain enforceability under civil law. ↩
2. FINMA, press release of 16 February 2018: the authority distinguishes tokens by their economic function (payment tokens, utility tokens, asset tokens). ↩
3. FINMA, press release "FINMA publishes 'stable coin' guidelines", 11 September 2019, and the supplement to the ICO guidelines of the same date, [finma.ch](https://finma.ch/en/press-releases/finma-publishes-stable-coin-guidelines); FINMA Guidance 02/2019 "Payments on the blockchain", 26 August 2019, [finma.ch](https://finma.ch/en/press-releases/finma-guidance-02-2019-payments-on-the-blockchain): application of the anti-money-laundering rules on the transmission of originator and beneficiary information to token transfers. ↩

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