

Practitioner's note: advising a token project in 2017

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A lawyer in Zug who advised a token project in 2017 would typically work through a short list of questions. The first was the legal form of the issuer, where most projects chose a foundation for reasons that Chapter III examines. The second was the nature of the token and the rights that it conferred on its holders, which determined whether securities law or the anti-money-laundering rules applied. The third was the process for accepting contributions, including the identification of contributors and the exclusion of persons from sanctioned or restricted jurisdictions. Many projects excluded residents of the United States and China. The fourth was the tax treatment of the proceeds at the level of the issuer, the fifth the banking relationship.

The documentation usually comprised a white paper describing the project, terms and conditions of the token sale, a legal opinion on the classification of the token, and the foundation's statutes and regulations. The opinions were often cautious, concluding that the token was probably not a security under Swiss law and that the foundation was probably not a financial intermediary, subject to assumptions about the functioning of the token at the time of issue. From 2018, projects could ask FINMA for a no-action letter, which many did: FINMA reported that it had received 155 detailed enquiries on the regulatory framework for ICOs by the end of 2018.¹

1 Notes

1. FINMA, Annual Report 2018, 4 April 2019, [finma.ch](https://www.finma.ch), pp. 28 and 30: FINMA had received a total of 155 detailed queries on the ICO regulatory framework by the end of 2018, most of which were addressed; 45 per cent concerned payment tokens, 43 per cent asset tokens and 12 per cent utility tokens. ↩

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