

Master's Thesis

Regulation of Initial Coin Offering (ICO)

An International Comparison with Focus on Switzerland

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Abstract

The issuance of digital tokens based on a distributed ledger technology (DLT) called blockchain is an innovative method for companies to raise capital. The so-called initial coin offering (ICO) simplifies and democratizes the raising of capital for companies, as almost everyone can participate as an investor via the internet. The process of funding capital without intermediaries also offers cost advantages and a faster execution. This thesis demonstrates the increasing trend towards ICOs. Since mid-2016 there has been a significant increase in the number of ICOs carried out and the amounts of money collected per ICO and in total. Moreover, this trend was confirmed in the first quarter of 2018. In this thesis the main reasons for the abovementioned ICO boom have been identified as, the ideology of a decentralised world, the coverage of this topic in the mass media, investors' fears of missing out on an excessive return, and the lack of regulatory frameworks. While uncertain or non-existent regulation is partly responsible for the boom, clear regulatory treatment of tokens will be crucial for the success of legitimate token-issuing companies in the future. In addition to a high level of legal certainty, ICO-friendly regulation and an open and active discussion between the regulator and the industry are identified as important criteria for promoting this form of financing.

The international comparison of the regulatory frameworks based on interviews with experts and a literature review, identifies different approaches regarding the ICO phenomenon. The USA generally classifies all tokens as securities, and attempts to counteract the boom with this restrictive approach. Different treatment of tokens by the various regulatory authorities reduces the attractiveness of the largest ICO location. Moreover, the deterrent of criminal prosecution leads to a migration to ICO-friendly countries in Europe and Asia. Singapore, as an ICO hub in Asia, furthermore benefits from a ban on ICOs in China. While Singapore's high anti-money laundering requirements with regards to all tokens can be perceived as a market barrier, they nevertheless make the country unfavourable for scams and attract more trustworthy projects. Singapore has also established several international collaborations with regulators from other countries in order to support the development of an ICO friendly ecosystem. Such international cooperation promotes appropriate regulation and can also be observed in other countries. As a promoter of financial technologies, the UK has not yet made clear and unambiguous statements on the regulation of ICOs. However, the regulatory authority in the British overseas territory of Gibraltar did create a DLT-specific regulation. This has improved Gibraltar's attractive position regarding ICOs and attracts new business. The international comparison undertaken in this thesis concludes that Switzerland is also a very ICO-friendly country. Clarity with regard to the way tokens are dealt with and the opportunity to receive feedback from the regulator provide a high level of legal certainty. However, it is not only regulation that is decisive for the attractiveness of a location. Access to investors and their risk appetite are also relevant points, among many others.

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Index of Abbreviations

| | |
|--------------|--|
| AML..... | Anti-Money Laundering |
| BA..... | Banking Act |
| BoE..... | Bank of England |
| BankO..... | Banking Ordinance |
| CFT..... | Countering the Financing of Terrorism |
| CFTC..... | Commodity Futures Trading Commission |
| CHF..... | Swiss Franc |
| CIS..... | Collective Investment Scheme |
| CVA..... | Crypto Valley Association |
| CWG..... | Crypto Working Group |
| DCE..... | Digital Currency Exchanger |
| EU..... | European Union |
| FDF..... | Federal Department of Finance |
| FinCEN..... | Financial Crimes Enforcement Network |
| FINMA..... | Swiss Financial Market Supervisory Authority |
| FINMASA..... | Financial Market Supervision Act |
| FinSA..... | Financial Services Act |
| FMIA..... | Financial Market Infrastructure Act |
| FSB..... | Financial Stability Board |
| GBP..... | Great Britain Pound |
| ICO..... | Initial Coin Offering |
| IPO..... | Initial Public Offering |
| MAS..... | Monetary Authority of Singapore |
| MiFID..... | Markets in Financial Instruments Directive |
| ROI..... | Return on Investment |
| SEC..... | Securities Exchange Commission |
| SESTA..... | Stock Exchange Act |
| SFA..... | Securities and Futures Act |
| SGD..... | Singapore Dollars |
| SRO..... | Self-regulatory organisations |
| UK..... | United Kingdom |
| USA..... | United States of America |
| USD..... | US Dollar |

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1 Introduction

After blockchain and cryptocurrencies were widely reported in the mass media for their massive potential and rise in value, initial coin offerings (ICOs) also became increasingly well known. It was primarily the immense amounts of money raised through ICOs – amounts that continued to grow, in the first quarter of 2018 – that focused, close attention on this topic (Kops 2018). An initial coin offering is a new and effective way that is used, mainly by start-ups, to raise money by issuing their own cryptocurrency, also called tokens (Sherry 2018). The tokens are often based on blockchain technology. Blockchain is an electronic distributed ledger in which transactions are recorded in a documented and reproducible way, without any centralised authority (Wöckener et al. 2017). Blockchain technology enables disintermediation, i.e. the removal of intermediaries that are necessary for traditional forms of capital funding such as venture capital investments or initial public offerings (IPOs). Since a blockchain is easily accessible and requires only an internet connection to participate, this technology further democratises access to investment opportunities (Interviewee I 2018). With the ICO as a novel path to raise capital, start-ups as well as established companies can avoid the stringent and regulated fund-raising methods of traditional financial institutions. In a token sale event – as ICOs are also called – the new digital currency is sold to initial financiers of the project in exchange for means of payment or other cryptocurrencies, such as Bitcoin or Ether (Sherry 2018). The newly created tokens can be traded online on certain websites, known as digital currency exchanges (DCEs), which enable customers to exchange the new tokens for other assets, such as other digital currencies or legal tender, as fiat money (Investopedia n.d.).

These new ways to raise capital and exchange currencies online pose new challenges for regulators. There are several different strategies to handle this new method of funding capital around the globe, ranging from a complete ban to ICO friendly jurisdictions. Getting regulation right is crucial for the success of ICOs and the business they support (Hacker and Thomale 2017). Around the globe, governments are experimenting with different approaches to deal with this phenomenon in the hope of realising the potential of blockchain technology, without destroying it (Larkin 2018). Countries that are faster and more successful in the implementation of ICO and DCE regulation will attract more investors. Participation in ICO involves high risks, but can also promise exceptionally high returns. It is therefore necessary to clarify the legal situation of ICOs in order to provide security and certainty for all parties involved (Emtseva and Morozov 2018). A clearly regulated crypto environment has the advantage that it could enable cryptocurrencies to be part of mainstream finance and facilitate the true development of distributed ledger technology (DLT) and its applications. Moreover, regulations facilitate differentiating between serious and fraudulent ICOs and help to make the business of digital tokens more legitimate (Larkin 2018).

This thesis presents the current state and development of the market ICOs. It further analyses the regulatory approach to ICOs in six different countries and compares the different strategies that are adopted to regulate ICOs and their tokens. The objectives and limitations of the thesis are described in chapter 1. In order to fully understand how ICOs can be regulated, the second chapter introduces decentralised blockchain technology and the concept of cryptographic currencies, focusing on the characteristics of ICOs. The third chapter highlights the current state of and recent developments in the ICO market around the globe. In the fourth chapter, the regulations and requirements of the ICOs in Switzerland, the United States of America (USA), the United Kingdom (UK), Gibraltar and Singapore are analysed separately, and the strengths, weaknesses, opportunities and risks of the individual regulations are discussed. In the fifth chapter, the various regulatory approaches and efforts are compared on the basis of systematic criteria. The comparison is illustrated by means of a spider diagram. Finally, a conclusion and practical implications for token sale events is developed in the form of a regulatory guideline for the successful execution of an ICO in Switzerland.

1.1 Research Objectives

The objective of this thesis is to provide an overview of the current and proposed crypto regulation in Switzerland, with a focus on the regulation of ICOs. This paper aims to present certain key trends and current developments in the market of digital tokens. Furthermore, it intends to draw a comparison between the various approaches adopted by different countries in the world. Besides Switzerland, the USA, and the UK, Gibraltar and Singapore are also of interest. This comparative study is intended to compare the strengths and weaknesses of the different approaches. In addition this analysis aims to provide guidelines for the issuing of tokens in this uncertain and fast-moving regulatory environment, and to identify the most important regulatory factors for a successful ICO in Switzerland.

The following research questions aim to give guidance throughout the research project:

- What are the main characteristics of the regulatory approaches concerning ICOs in Switzerland, the USA, the UK, Gibraltar, and Singapore?
- What are the key strengths and weaknesses of the different regulatory frameworks?
- What are the major differences and similarities between the regulatory environments for ICOs in the countries of interest?
- What are the most important points to consider when carrying out an ICO in Switzerland?

1.2 Methodological approach & Data

This study adopts a qualitative research approach in the main. First, the existing regulations are reviewed, and the guidelines and information published by the different governments and regulators are examined. Second, to ensure that the analysed regulation has the necessary practical relevance, interviews are conducted with experts involved in ICOs. At the request of the interviewed experts, the interviews are made anonymous. The complete transcription of the interviews and details on the experts can be found in the appendix A to C.

In order to analyse the different types of ICO regulation, each national approach is evaluated individually in a SWOT analysis based on the analysed literature and information collected from the interviews. To create an international comparison, the regulatory approaches are compared and finally illustrated in a spider chart. The key findings and conclusion will be used as a basis on which to develop, practical regulatory guidelines for successful ICOs in Switzerland.

Due to the fact that cryptocurrencies and ICOs are part of a young and not yet fully mature phenomenon, it is difficult to find high-quality, consistent data for a quantitative analysis. A limited number of data sources do, however, exist. The data from the following ICO listing platforms are used to analyse the past and current development of the ICO market:

- ICOStats.com is a statistics website dedicated to cryptocurrencies and ICOs. The website displays the data of recently introduced cryptocurrencies, including the weekly winnings, the starting price and the current price. ICO Stats is an ICO performance tracker, which provides free information about the development of tokens (Bitcoin Exchange Guide 2018).
- The website Coinschedule.com is one of the first portals for ICO listings. Coin schedule provides information about ICOs and aims to contribute data for different ICO projects. This includes the market capitalisation of the ICO market per month and year. ICOs are classified by category and industry (Coin schedule n.d. a).
- ICOWatchlist.com presents a mixture of different cryptocurrency tokens and ICO projects and offers them to investors. The provided information indicates ICOs by geography, industry, and platform used (ICO Watch List n.d. a).

1.3 Limitations

In order to keep the scope of this thesis within an appropriate range, the USA was selected in addition to Switzerland because of the USA's high market volume as the largest ICO market. The UK was also selected on the basis of the market volume criterion but also offers better comparability due to its geographical location in Europe. Since both Singapore and Gibraltar are largely comparable to Switzerland in terms of the size and their global financial importance, as well as in terms of promoting innovation, these two countries were also selected for the analysis. This thesis was unable to cover the entire crypto world. Therefore, an analysis of the regulation in Malta – another innovative financial centre in Europe – was beyond its scope. Nor was Russia – one of the largest ICO markets – considered in this thesis because at the time when the topic of this thesis was defined, it was not yet possible to estimate when Russia would make a specific statement on this topic. The aspect of taxation is ignored in the international comparison in order to be able to make a close but in-depth analysis of the regulatory treatment in the various countries. Nevertheless, the guidelines for ICOs in Switzerland briefly address the most important points of this topic. The reader should bear in mind that many criteria other than regulation are essential for the attractiveness of an ICO location.

The interviews were conducted both with people from the crypto industry and with consulting specialists in the applicable laws related to ICOs. The Swiss regulator FINMA, as well as the State Secretariat for International Financial Matters, cancelled the request for an interview for time and capacity considerations. It is therefore not possible to provide more detail in respect of these regulators than is stated in their official notices.

2 Economic and Technical Background

In order to discuss the regulation of ICOs it is essential to have a certain understanding of blockchain technology and certain knowledge of tokens and cryptocurrencies. According to Robinson (2018), to achieve the above it is not necessary to be a computer scientist or cryptographer, however, realising the possible impact of this innovative technology is crucial. The concept of decentralisation and the removal of intermediate stages promise to question many common ideas about what is possible, what is not possible, and how we manage to create consensus among ourselves as a society (Robinson 2018). This section introduces the necessary basic knowledge and clarifies the most important terms of this research topic.

2.1 Distributed Ledger Technology and the Blockchain

Hacker and Thomale (2017) identify the DLT as the core technology behind most ICO projects. This technology is a distributed and decentralised database called a ledger, with the intention to achieve matching and reliable agreement over a record of transactions between independent participants, without any central authority. The independent participants of the network are called nodes and perform the update of the ledger independently from each other. The network nodes conclude on the updates to ensure that the majority of nodes agree with the result. This voting and agreement over a copy of the ledger is called consensus and takes place automatically using a consensus algorithm (Hacker and Thomale 2017).

Blockchains are a common form of DLT using a chain of blocks to achieve a secure and valid distributed consensus. Public blockchains are based on open source software, which implies that anyone with an Internet connection can access the blockchain (Robinson 2018). A blockchain is a continuously expandable list of datasets, called blocks, which are linked together by cryptographic algorithms. The blockchain guarantees the validity of transactions by capturing it in a decentralised distributed system of registers, all connected via a secure validation mechanism (Khan 2017). Each block of the blockchain contains some data, a time-stamp, the hash of the block and the hash of the previous block. The data that is stored in the block depends on the type of the blockchain. For example, a blockchain for cryptographic currencies stores the details of the transaction such as the sender, the receiver and the amount of coins that are sent (Robinson 2018). The blocks of a blockchain store time-stamped and digitally signed records, which therefore makes them almost unchangeable and unforgeable (Khan 2017). The concept of blockchain as a distributed database management system was first described, by an unknown person under the pseudonym Satoshi Nakamoto in the Bitcoin white paper in 2008 (Satoshi Nakamoto 2008).

All transactions in the blockchain are protected by two cryptographic mechanisms:

- **Public – private keys** allow sending values to everyone who wants to be involved in the blockchain and ensure that only the authorised recipient can access this content. A public key is conceptually similar to the address of a traditional post office box to which everyone can send values. Only a private key can unlock the mailbox and retrieve the value (Robinson 2018).
- **The hash of a block** can be compared to the fingerprint of a block. It identifies the block and all of its content and it is always unique. Hashes consist of long chain of numbers and are usually specified in hexadecimal notation. A hash is created using a hash algorithm that converts data of any length into a fixed-length data record. Same data always leads to the same hash. But if only a single part of the data is changed, the hash looks completely different (Robinson 2018).

Including the hash of the previous block in the subsequent block creates a chain of blocks – the blockchain. By storing data in a blockchain, the content of a block cannot be changed independently of the system without damaging the integrity of the overall system (Khan 2017). The collaborative work of the individual participants and the decentralised consensus mechanism ensure the accuracy and the security of the blockchain and replace the need for a trusted third party to confirm the integrity of transactions. As mentioned previously, public blockchains are transparent and available to everyone. Thus every single node in the network can observe all transactions recorded in the blockchain. All these illustrated characteristics make it extremely difficult for a single bad participant to enter fraudulent transactions (Robinson 2018).

2.2 Virtual Tokens

The terms token and coin are used as synonyms in this thesis. Not all cryptographic tokens have the same characteristics. According to Hacker and Thomale (2017), there is no internationally accepted categorisation for tokens. However, such a categorisation facilitates the clarification of the rights of a token holder, the definition of the value of tokens and the development of a regulatory framework. Moreover, a systematic categorisation helps to minimise regulatory risks when conducting an ICO (Hacker and Thomale 2017). Mostly, tokens are classified according to their underlying economic function or target use. An analysis of the existing literature on the classification of tokens has revealed that the approach developed by MME (2018a) is one of the most detailed. The consideration of the existence and the type of counterparty of a token is the major advantage of this categorisation. The following categories are identified in this approach:

- **Native Utility Tokens** – This type of token can be transferred on a decentralised ledger from one user to another. Native utility tokens do not grant any rights to counterparties. The token owner has no further right, except the right that refers to the token itself. The determining criterion for classification into this category is the lack of a relational right towards a counterparty such as the token issuer or a third party. MME (2018a) also distinguishes further subcategories of this category, including basic payment tokens such as Bitcoin or infrastructure access tokens such as Ether (MME 2018a).
- **Counterparty Tokens** – This category covers tokens that contain any form of relative right to a third party. Such a right may be a right to use the issuer's services, a right to a financial payment, a right to receive a financial asset or certain rights of a shareholder. MME (2018a) further differentiates between IOU tokens – which include debt claims – derivative tokens, fund tokens and equity tokens.
- **Ownership Tokens** – These tokens provide ownership rights to assets based on smart contracts. The intention of ownership tokens is to transfer the rights of the related assets by transferring the token. Related assets can include several different rights – for example copyrights or even physical objects. Unlike counterparty tokens, the owner of an ownership token has no claims or relative rights against a counterparty. Rather, the tokens in this category grant absolute rights in the form of ownership of the associated assets. MME (2018a) further differentiates between joint-ownership, co-ownership and sole-ownership tokens, depending on the particular ownership model.

The individual classifications of the tokens are not necessarily mutually exclusive. It is also possible that tokens change their function during operation (MME 2018a). According to Interviewee I (2018), it is difficult to make a universal categorisation at a time when this very young technology is constantly evolving.

2.3 Smart Contracts

The development of the Ethereum platform in 2014 facilitates the development and issuance of new tokens. The platform was created with a view to making it possible for anyone to upload data and execute programs. The possibility of using full programming language¹ permits to run decentralised software applications on top of the Ethereum blockchain. These applications are able to interact with each other through the use of self-executing smart contracts (Robinson 2018). Smart contracts are like contracts in the real world. The only

¹ Some of the most popular coding languages such C++, Python, and Java can be used to develop decentralised software applications on top of the Ethereum platform. However, smart contracts are usually written in the programming language Solidity, developed especially for Ethereum (Hacker and Thomale 2017).

difference is that they are entirely digital. In fact, a smart contract is just a piece of code that is stored inside a blockchain (Hacker and Thomale 2017). Smart contracts enable the exchange of money, property, or other assets without the need for an independent middle organisation or third party. On the one hand, they contain information about the transaction – the terms and obligations, as in traditional agreements. On the other hand, they automatically ensure the fulfilment of all the terms of the contract (Iurina 2017). In the same way that owners of cryptocurrencies have to pay low transaction fees for the execution of monetary transactions, the computation of smart contracts must also be paid for with a small fee known as gas money (Hacker and Thomale 2017). Since smart contracts are stored in a blockchain, they possess some attractive properties – they are immutable and distributed. As it is immutable, no one can change a smart contract once it has been established. As a result of smart contracts being distributed, everyone on the network can validate the outcome of the contract. Therefore tampering with smart contracts is almost impossible. Commonly, the distribution of information and properties by the smart contract is completely defined in the program code and triggered when certain predefined conditions are fulfilled (Robinson 2018). Nowadays they are often used for crowd financing by issuing a cryptocurrency. However, more complex fields of application already exist, such as the representation of a share or other ownership rights on the blockchain. In the future, it will be possible to use DLT and smart contracts for many more purposes (Interviewee I 2018). With a share of 82% of all new created tokens, the Ethereum platform is the most popular platform supporting smart contracts (ICO Watch List n.d. b).

2.4 Initial Coin Offerings

ICOs are a digital way of public capital funding for entrepreneurial use through the issue of an own virtual token. Most ICOs are conducted using blockchain technology. The issuance of tokens in exchange for cryptocurrencies has become a growing and convenient way for start-ups to fund capital (Hacker and Thomale 2017). ICOs have several advantages over traditional forms of financing such as venture capital or initial public offerings (IPOs). Enterprises can address many small private investors who have hardly any access to traditional forms of financing. According to Interviewee I (2018), this opportunity offers enormous potential in a global world. Cost optimisation is another advantage. Banks and other intermediaries are no longer needed due to the distributed consensus. It is theoretically possible to carry out an ICO without any intermediaries, and therefore to run an ICO at much lower costs. Furthermore, an ICO can be completed in a few months, whereas a complex IPO is preceded by a long process (Interviewee I 2018). With an ICO, the start-up companies can also bypass the well-regulated and weary way of traditional capital raising methods such as venture capital funds, with their numerous rounds of equity investments. With the development of own tokens, start-ups can model any rights and obligations for their token

owners. Due to the development of the Ethereum platform and the related token standards it is possible to create a token and carry out an ICO with only approximately 100 lines of programming code (Hacker and Thomale 2017).

The procedure undertaken in respect of an ICO is usually as follows. The designers of the token normally publish a white paper, which describes the key terms such as the outline of the business idea, the scheduled timeline, the milestones, and the developer team. The target sum to be collected and the total number of tokens are also defined. The paper is typically published on online channels, such as crypto forums and websites. Thereafter the token is sold to anybody who is willing to invest in the project. For this purpose the investor usually needs to transfer cryptocurrencies to the issuer's wallet in order to receive the new token. The purchase price of the token is usually not part of the equity of the underlying company. Rather, it represents capital that the company collects without diluting its own equity structure (Hacker and Thomale 2017). Achieving the financial target of the new token can take some time or can be accomplished in just a few second, as history has shown. For example, the AGI token from SingularityNET, a virtual marketplace for artificial intelligence, raised USD 36 million in 60 seconds in December 2017 (Fintechnews 2018). However, according to Interviewee II (2018), ICOs are not a suitable way of raising capital for every kind of business. Large companies to some extent still require more sophisticated and complex contracts (Interviewee II 2018). Interviewee I (2018) states that blockchain also carries risks for both issuers and investors, which must always be taken into account. Although blockchain is fundamentally unsuitable for laundering funds and financing illegal business activities due to its structure, as described in Chapter 2.1, it is repeatedly associated with such activities because of the anonymity of the transaction. Moreover, there are also risks concerning cyber security. While blockchain itself is extremely forgery-proof, the most vulnerable points for criminal activities lie in the input and output interfaces (Interviewee I 2018). Hacker and Thomale (2017) also explain that investors need to be aware that issuers can quickly convert the raised capital into euros, dollars, or other fiat currencies, and that the capital can be used by the issuer for efficient or legal purposes.

The issued token can be listed on so called digital currency exchanges (DCEs) and hence be traded for other cryptocurrencies in order to generate liquidity (Clifford Change 2017). DCEs are organisations that enable their customers to exchange cryptocurrencies or tokens for other assets such as legal tender – for example, US dollars, euros or Swiss francs – or for other digital currencies. As market makers, these platforms charge fees in the form of a commission or a bid/ask spread. Often, credit card payments, bank transfers, money orders, cryptocurrencies, or other payment methods are accepted in exchange for digital currencies (Investopedia n.d.).

3 Current State and Development of ICOs

A large number of investors who earned enormous returns as a result of the growing prices of cryptocurrencies in recent years have chosen to reinvest their profits in the latest ICO projects, driven by their fear of missing out an opportunity or by ideological values of a decentralised world (Interviewee III 2018). Furthermore, the appearance of cryptocurrencies in the mass media and their potential high yield – in combination with weak or non-existent regulations – led to a real ICO boom (Interviewee I 2018). According to ICO Stats (n.d. a), the average return on investment (ROI) of all ICOs listed in their directory on May 5, 2018 was 17'829%. The ROI of the 100 most successful ICOs is more than twice as much – 38'207%. The Nxt token, with an ICO price of USD 0.0000168 and a current price of USD 0.241, reports the highest ROI. As Table 1 indicates, this results in an ROI of 1'434'524% (ICO Stats n.d. b).

Table 1: Top five ICOs in terms of Return of Investment

This table lists the five most successful ICOs in terms of ROI. Furthermore, it shows the year of the ICO, the amount of money raised in USD, the number of tokens sold and the current price in USD. The ICO price is calculated as follows: USD raised in the token sale divided by the number of tokens sold during the ICO. The ROI represents the increase in the token's value expressed as a percentage. All data used originate from ICO Stats (n.d. b).

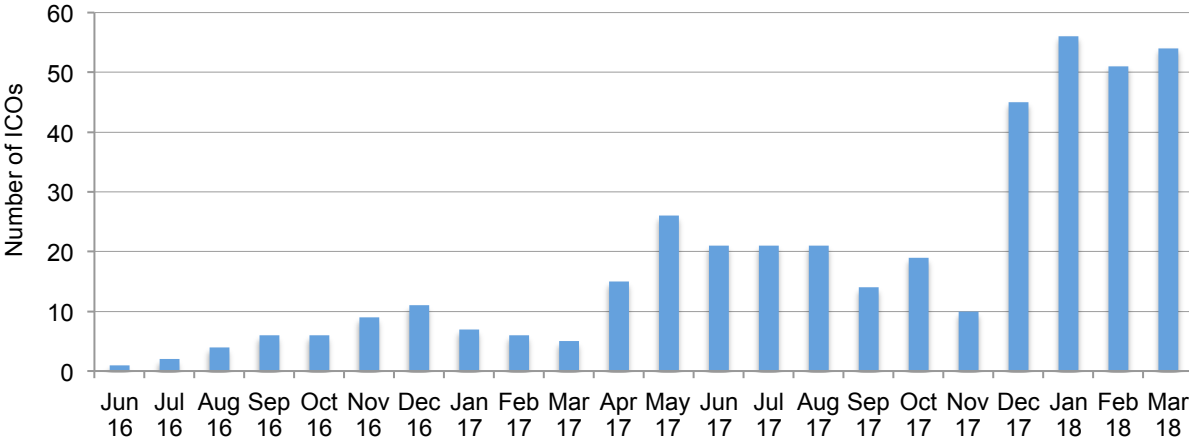
| | ICO year | Money raised | # of tokens sold | ICO price | Current price ² | ROI since ICO |
|-----------------|----------|--------------|------------------|-----------|----------------------------|---------------|
| NXT | 2013 | 16'800 | 1'000'000'000 | 0.0000168 | 0.241 | 1'434'524% |
| IOTA | 2015 | 434'512 | 999'999'999 | 0.0004345 | 2.378 | 547'281% |
| Neo | 2015 | 556'500 | 17'500'000 | 0.0318 | 85.603 | 269'192% |
| Ethereum | 2014 | 1'5571'000 | 50'000'000 | 0.3114 | 814.274 | 261'471% |
| Stratis | 2016 | 610'908 | 84'000'000 | 0.0072727 | 8.135 | 111'856% |

According to Interviewee II (2018), new keywords such as blockchain, DLT and Bitcoin attract people, as investors who may not thus far have been typical investors. Anyone can invest via the internet, and this offers enormous potential in a global world (Interviewee I 2018). The large scope and democratisation of investment opportunities is an additional reason for the increase in value and numbers of ICOs, according to Interviewee I (2018). Furthermore, Interviewee II (2018) and Interviewee III (2018) identify the relatively undeveloped regulatory framework as one of the main reasons that such an ICO boom still exists. As indicated in Figure 1, the number of ICOs conducted has increased significantly since 2016. At present there are more than 1'500 different cryptocurrencies, and this number is growing (Coin schedule n.d. b).

²Current price from May 5, 2018 (ICO Stats n.d. b).

Figure 1: Number of ICOs conducted from June 2016 to March 2018

This figure presents the number of ICOs conducted from June 2016 to March 2018. All data used originate from Coin schedule (n.d. b). This period was chosen for purposes of consistency, as Coin schedule was founded in 2016.



The data from Coin schedule (n.d. b) indicates that both the number of cryptocurrencies and the market capitalisation increased rapidly in the last two years, as presented in Figure 1 and 2. The same pattern can be observed by analysing the total amount of money collected per ICO, as set out in Figure 3 (Coin schedule n.d. b). This reveals that the average size of an ICO has increased. The decrease in the number of ICOs as well as the reduction in the amount of funds collected in November 2017 is due primarily to the ban on ICOs in China (EY 2017).

Figure 2: Total funds raised through ICOs from June 2016 to March 2018

This figure presents the amounts raised in USD billions – by ICOs conducted from June 2016 to March 2018. All data used originate from Coin schedule (n.d. b). This period was chosen for purposes of consistency, as Coin schedule was founded in 2016.

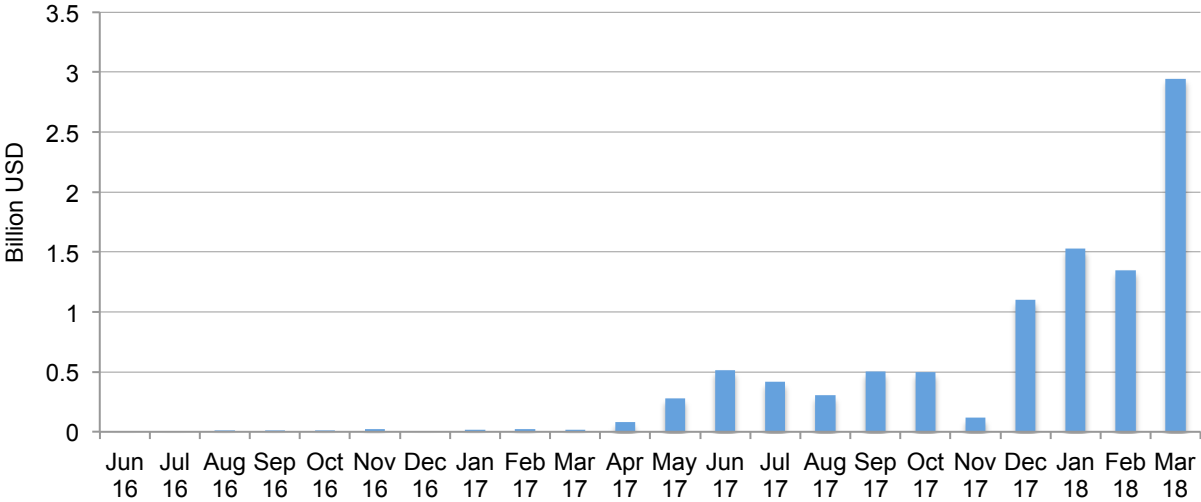
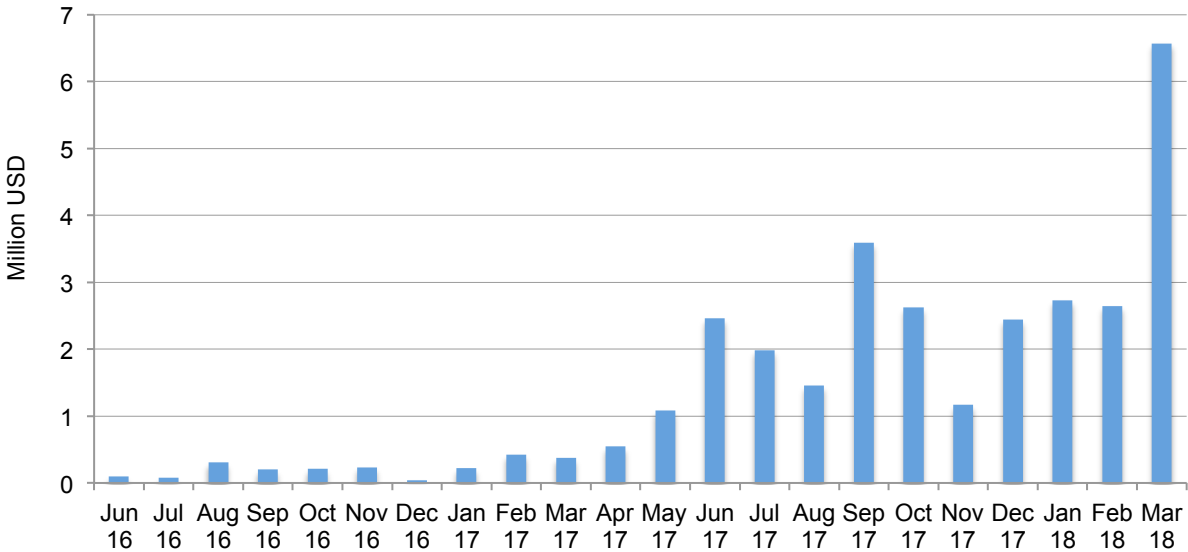


Figure 3: Average amount raised per ICO from June 2016 to March 2018

This figure presents the arithmetic mean of money raised per ICO in USD millions. The average amount is calculated as follows: Total funds raised in token sales divided by the number of ICOs carried out. This period was chosen for purposes of consistency, as Coin schedule was founded in 2016.



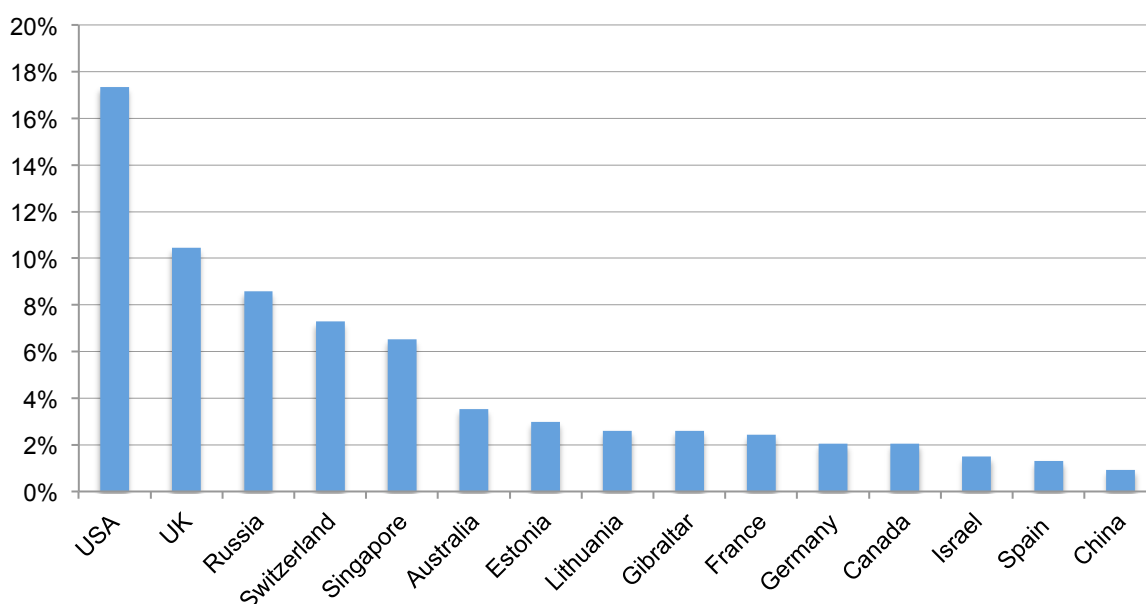
The international ICO market was operating at the highest level at the time of writing this thesis. In 2016, almost USD 100 million was raised through ICOs worldwide. In December 2017 alone, ICOs funded an amount of USD 1.1 billion. The total global issuance volume of 2017 exceeded USD 3.8 billion (Wöckener et al. 2017). According to EY (2017), this represents twice the volume of venture capital investments in blockchain start-ups. The year 2018 continues rapidly. In the first three months, the total amount of the previous year had already been topped, and had reached more than USD 4.8 billion by the end of March 2018 (Kops 2018). Even negative regulatory signs in different countries and a significant drop in the exchange rates of the major cryptocurrencies Ether and Bitcoin – with which most newly generated ICO tokens are exchanged – have not diminished the popularity of ICOs (Karavaev 2018). Nevertheless, according to EY (2017), the trend is not quite as distinctive as may be assumed at first sight. While there are more ICO projects, the number of projects reaching their funding targets is decreasing. In November 2017, less than 25% of token sales events reached their funding targets, while in June 2017, more than 90% still achieved their goals. This is partly a result of the increase in funding targets, which regularly exceed USD 10 million (EY 2017). A different explanation for this trend is the decline in investor optimism following the ban on ICOs in countries such as China and India. According to Rapoza (2018), this development and the rise in government action on ICOs appears to be a professionalisation of the market for digital tokens. Nevertheless, according to EY (2017), approximately 10% of ICO funding capital is still lost because of coding errors or stolen in hacker attacks. The anonymity of blockchain, the irreversible transactions, and the lack of control by a central authority make blockchain particularly attractive for cyber attacks.

The most frequent form of cyber attack is phishing. Phishing is a form of online identity theft. Fraudsters either demand a token transfer into their wallets or cheat private keys into the investor's wallet (EY 2017).

The capital raised by ICOs is not equally distributed around the world. More than 50% of this capital is funded in the top five ICO countries (Kops 2018). As Figure 4 indicates, the largest focus is on the USA (ICO Watch List n.d. b). Along with Singapore, Switzerland is one of the global hubs for this form of start-up and corporate financing, and is currently growing strongly. While approximately 70 ICOs were conducted in Switzerland in 2017, and approximately CHF 1 billion was raised, up to 120 ICOs are expected in 2018 (Hody 2018).

Figure 4: Top 15 ICO Countries and their share in ICOs in 2017

This figure lists the geographical distribution of ICOs in percentage terms. It indicates the frequency distribution in the top 15 countries for ICOs in 2017. This period was chosen for purposes of consistency, as ICO Watch List (n.d. b) fully recorded the year 2017.



According to Interviewee III (2018), the geographical distribution of ICOs will continue to change over the next few years. Interviewee I (2018) believes that small countries with liberal financial centres, such as Switzerland, Singapore and Gibraltar, will be particularly attractive for issuing tokens in future years. Getting regulation right is crucial to the success of ICOs and the underlying business they support (Interviewee I 2018). Around the globe, governments are experimenting with different approaches to deal with this phenomenon in the hope of realising the potential of the blockchain technology, without destroying it (Larkin 2018).

4 Regulation of ICOs

After chapter 3 highlighted the current state and developments of ICOs and the importance of regulation, the following chapter presents the different approaches of ICO regulation.

According to Trudex (2018), the outlook for stronger regulation is perceived negatively by a significant number of the members of the blockchain ecosystem. This can be explained by the fact that the original concept of a decentralised network was intended to oppose centralised authorities and regulation (Trudex 2018). Nevertheless, according to Interviewee III (2018), unregulated market environments will no longer be preferred. Instead, regulated markets will be attractive for all serious ICO projects in the future (Interviewee III). Transparent policies and clear regulations legitimise crypto activities and reduce the problem of scams in the crypto ecosystem (Trudex 2018). As Interviewee III (2018) explains, such legitimacy could lead to new funds flowing into this sector from institutional investors. As a result of higher investments, innovation can speed up even more (Interviewee III 2018).

After their summit in March 2018, the global regulator G20, which carried out a series of banking and market reforms after the financial crisis, stated, that they would focus more on reviewing existing rules than developing new ones for cryptocurrencies and ICOs. The Financial Stability Board (FSB), which directs financial supervision for the G20 economies, also rejected the request of some G20 members to globally regulate cryptographic currencies and tokens (G20 2018). In a statement published on 18 March 2018, the Chairman of the FSB, Mark Carney explained that crypto assets currently pose no risks to global financial stability. This is mainly due to the fact that crypto assets are small and therefore insignificant compared to the global financial system. Even at the current all-time high, their combined global market value does not exceed 1% of global GDP. Due to their small size and the fact that they are not a universal substitute for currencies and are only used to a limited extent for financial and economic transactions, their connection with the financial system is restricted (FSB 2018).

At national level there are more efforts concerning ICO regulation. There are several approaches on how to deal with the phenomenon of cryptocurrencies and their issuance. According to EY (2017), different countries handle the issuance of tokens differently. While some jurisdictions try to regulate ICOs with already existing laws, other countries issue new ICO specific guidelines and actively support ICOs and blockchain. Depending on the country, there either exist active discussions and warnings or no active position at all. While there is no area in the world where the regulator fully exempts ICO from regulation, there are areas where ICOs are completely banned (EY 2017).

However, according to Interviewee I (2018), it is not only countries and authorities that are keen to provide regulation on ICOs; the ICO industry and the issuing companies themselves are interested in clear regulations. This has led to the founding of various non-profit

organisations³, such as the Crypto Valley Association (CVA) in Switzerland (Interviewee I 2018). CVA was founded in early 2017 with the intention of supporting the development and dissemination of cryptographic technologies, blockchain, and other DLTs through the support of start-ups and other companies in Switzerland and internationally. The CVA consists of different members from the crypto asset industry. In January 2018, the CVA launched a code of conduct for ICOs with the aim of creating a framework for ICOs in Switzerland. Businesses will be assisted in their proper conduct and in complying with all legal, moral, and safety obligations (Becker 2018). According to Interviewee I (2018), such efforts can be observed in many countries. In the UK, a cryptocurrency trading company called CryptoUK was created from seven of the largest crypto companies. The ambition of CryptoUK is to promote best practices and to collaborate with regulators to achieve self-regulation in the sector. All members commit themselves to a code of conduct, which obliges companies to comply with ethical principles and greater due diligence in order to prevent illegal activities more effectively (Murphy 2018).

According to Interviewee II (2018), legal certainty and the safety of knowing how regulators handle tokens are more important than ICO-friendly regulation. Legal uncertainties regarding cryptocurrencies also include ICOs and are one of the biggest challenges for token developers (Interviewee II 2018). According to Hacker and Thomale (2017), the collected funds can be qualified in different ways, depending on the specific structure of the ICOs. The crowdfunding rules do not apply unambiguously to ICOs, because investors do not always grant loans to the emitter of a digital currency. Purchasing ICO-related tokens may also be considered as purchases of commodities or rights, or as purchases of securities, which may eventually result in ICOs and white papers being subject to a prospectus or other disclosure requirements (Hacker and Thomale 2017). The different classification in the regulatory environment creates great uncertainty for an ICO project. ICOs are furthermore vulnerable to money laundering and terrorist financing because of the anonymity of transactions and the possibility of collecting large sums in a short period of time (Emtseva and Morozov 2018).

The following chapters present the regulatory approaches of Switzerland, the USA, UK, Gibraltar, and Singapore. According to Interviewee I (2018), the crypto asset industry is still young and not yet fully mature, and the situation can therefore change quickly. The following study is a point-in-time analysis from the first quarter of 2018. The analysis is structured according to the most important regulatory bodies of the respective countries and the most relevant regulatory issues. The analysis of the individual countries is concluded with an evaluation of the strengths and weaknesses and an outlook on future regulatory efforts, including opportunities and risks.

³ Another such organisation is the “Blockchain Taskforce Switzerland”, founded in late 2017 (Blockchain Taskforce 2018).

4.1 Switzerland

In 2017, Switzerland made certain adjustments to its legislation to support fintech companies in general and to promote Switzerland as a fintech hub. On 1 August 2017, the Banking Ordinance (BankO) and the Banking Act (BA) were eased for companies that carry out certain activities of a bank but do not represent a typical banking activity (Swiss Federal Council 2017a). The period for the settlement of funds was changed from seven to sixty days in the BankO. The longer settlement period increases the likelihood that projects and companies can be successfully financed. Moreover, deposits up to CHF one million are no longer classified as operating on a commercial basis, and companies may therefore permanently accept more than 20 deposits without cost-intensive approval. The expansion of activities without a licence offers companies the opportunity for the development of future business models, products, and services in a so-called regulatory sandbox (Swiss Federal Council 2017a).

4.1.1 Financial Market Supervisory Authority

The Swiss Financial Market Supervisory Authority (FINMA) has the authority to regulate financial affairs within Switzerland. FINMA first published guidance for ICOs in September 2017, stating that there are no ICO-specific regulations or relevant case laws for dealing with ICOs in Switzerland (Kaal 2018). However, there are still various possibilities to cover ICOs through existing financial market regulations (FINMA 2017). The Swiss financial market law is principle-based and complies with the principle of technology neutrality. Raising money for own purposes, without the intermediation of a platform or an issuing house, is generally not regulated under supervisory law if there is no repayment obligation, if no payment instruments are issued and if no secondary trading takes place (FINMA 2017). In order to assess future ICOs in detail, as well as assigning them to the right laws and creating clarity for market participants, FINMA specified the handling of ICOs in February 2018 by issuing ICO specific guidelines (FINMA 2018a). Considering the variety of different types of tokens and the different ICO configurations, it is not possible to generalise in the case of FINMA. The circumstances must be considered comprehensively in each individual case. FINMA requires the issuers of tokens to provide a minimum level of information⁴ to evaluate the cases. Given this information and the underlying economic purpose, FINMA decides on the regulatory framework for the different token issuances (FINMA 2018b). In its ICO guidelines, FINMA places the tokens into different categories, based on their underlying economic function, but not as detailed as the approach of MME (2018b).

⁴ The minimum requirements include general information on the persons involved, a detailed description of the project and the issuing of tokens, as well as details on the transfer and tradability in secondary markets (FINMA 2018a).

FINMA differentiates between:

- **Payment tokens** – also called cryptocurrencies. These tokens are used as a means of payment for goods or services and can also be held as a store of value. The most famous payment token is the digital currency Bitcoin. The regulatory focus of payment tokens is the anti-money laundering (AML) regulation and the know-your-customer (KYC) requirements (FINMA 2018b).
- **Utility tokens** – also called app tokens, because they provide users some functional utility such as access to an application, service, or platform that is already available or still in development. These tokens are created primarily by using a standard for smart contracts on the Ethereum platform and contain a certain utility component. Utility tokens are generally outside of the regulatory scope, with some exemptions. The FINMA (2018b) stated that utility tokens might also qualify as asset tokens if the token already exists but the related application has not yet been developed.
- **Asset tokens** – include tokens that represent an investment component. This component can be participation in a company, a cash flow or an actual physical underlying (FINMA 2018b). The economic functions of an asset token are similar to shares, bonds, or other financial products. Asset tokens may qualify as uncertified securities under Swiss law, but only on public offerings by third parties and secondary market trading (FINMA 2018b).

The ICO guideline (FINMA 2018b) states that the various token categories are not mutually exclusive. Tokens can be classified in more than one category and are then called hybrid tokens. A token can be, for example, both a security and a means of payment at the same time. In this case, the requirement for securities and means of payment can be applied. Furthermore, FINMA clarifies that the function of a token may change over time, and therefore also its classification (FINMA 2018b).

In addition to the classification of the token based on the underlying economic function, FINMA also distinguishes between the following different phases of development:

- In the phase of **pre-financing** ICOs, no tradable token exists yet, and the underlying blockchain has to be developed first (FINMA 2018b).
- Another phase of ICOs is the pre-sale or **voucher** phase. In this phase, a token is issued, which can be converted into a final token at a later date (MME 2018c).
- A fully functional token already exists in the **pre-operational** phase, but no application has been developed yet (FINMA 2018b).
- In the final **operational** phase a fully functional application already exists, and also the tokens have already been developed (MME 2018c).

Table 2: Overview of the FINMA Guidelines

This table summarises the ICO guidelines published by FINMA in February 2018. It indicates which regulations are relevant for each token in each phase. A dash indicates that there is no regulation in general. Own representation based on MME (2018c).

| | Payment token | Utility token | Asset token |
|---------------------------------|-----------------------------|-----------------------------|-----------------------------|
| Pre-financing | – / Securities ⁵ | – / Securities ⁵ | – / Securities ⁵ |
| Pre-sale / Voucher phase | – / Securities ⁵ | – / Securities ⁵ | – / Securities ⁵ |
| Pre-operational phase | AML / KYC | – / Securities ⁶ | Securities |
| Operational phase | AML / KYC | – / Securities ⁶ | Securities |

4.1.2 Securities & Deposits Regulation in Switzerland

The purpose of securities regulation in Switzerland is to guarantee that investors can base their investment decisions on reliable and well-defined information. In addition, trade must be fair, trustworthy and provide efficient pricing (MME 2018b). FINMA classifies tokens as securities in accordance with the Financial Market Infrastructure Act (FMIA) (FINMA 2018b). The definition of securities in terms of FMIA Article 2b includes standardised certificated and uncertificated securities, derivatives, and intermediated securities, which are suitable for mass trading. Mass trading is furthermore specified in terms of Article 2 paragraph 1, if securities with the same structure and denomination are offered for sale to the public or placed with more than 20 clients, unless they have been specifically created for individual counterparties (Swiss Federal Council 2017b). The general assessment of the categories has revealed that payment tokens are not comparable with traditional securities, because they are conceived as a means of payment and are therefore not treated as securities. Similarly, utility tokens are not classified as securities if their sole intention is to provide digital access rights to an application or service, and if the utility tokens can actually already be used in this way at the time of issue. In most cases of utility tokens, the underlying function is simply to guarantee access rights without a typical connection to the capital market, as it is the case with securities. However, if there exists an investment purpose at the time of issue, FINMA will treat utility tokens as securities (FINMA 2018b). Most asset tokens meet the requirements for securities as defined by the FMIA, and are therefore treated as securities by FINMA. If the pre-financing or pre-sale of an ICO grants claims to buy future tokens, these claims are also be considered as securities if they are standardised and suitable for mass trading. The same applies if the value of the token depends on an underlying and the token hence represents a derivative (FINMA 2018a).

⁵ In the pre-financing and pre-sale phase ICOs can constitute securities if the token does not yet exist but the claims are already tradable (FINMA 2018b).

⁶ Utility tokens can constitute securities if they additionally or only include an investment function (FINMA 2018b).

If FINMA assesses tokens of an ICO as securities in accordance with the FMIA definition, the legal consequences result from the financial market laws. In particular, the Financial Market Supervision Act (FINMASA), the Stock Exchange Act (SESTA), the Banking Act (BA) and their corresponding implementing provisions form the regulatory framework for supervision (FINMA n.d.). Nevertheless, according to the Stock Exchange Act (SESTA), the booking of self-issued securities is generally not regulated, even if they are uncertificated securities as defined by FMIA. This also applies to securities if they are publicly offered to third parties. However, article 3, paragraph 3 of the SESTA, regulates the creation and issue of derivative products in the sense of the FMIA to the public on the primary market. If tokens in the sense of third party securities are transferred or offered to the public for the first time on the primary market, conducted in a professional capacity, then this might constitute a licensed activity according to article 3, paragraph 2 of the SESTA (Swiss Federal Council 2016a).

In Switzerland, deposits are regulated in the Banking Act (BA). The major purpose of the BA is to protect the public – in particular bank customers and their deposits (Swiss Federal Council 2016c). The issuance of most tokens is typically not connected with repayment claims against the ICO organiser, and tokens do therefore not qualify as deposits. In this sense, firms that issue tokens do not require a licence under the Banking Act. However, if a token sale provides liabilities with a debt nature – such as buy-back promises with guaranteed return – the raised capital will qualify as deposits and an expensive licence is required under the BA, unless legal exceptions apply (FINMA 2018b).

The issuance of asset tokens or coins similar to shares or other securities needs to meet the prospectus requirement according to the Swiss Code of Obligation. FINMA has no direct control over this regulation, but expects ICO developers to meet these requirements themselves. In addition, if a third party manages the collected funds of an ICO, the terms of the Collective Investment Scheme Act are applicable (FINMA 2018b). The objective of the Collective Investment Schemes Act is to protect investors and ensure the transparency and functioning of the market for collective investment schemes, such as investment fund products (Swiss Federal Council 2016d).

4.1.3 Anti-Money Laundering in Switzerland

The Anti-Money Laundering Act (AMLA) exists in order to protect the Swiss financial system from money laundering and to prevent terrorist financing. According to article 2, paragraph 3 of the AMLA, all providers who offer services for payment transactions and especially issue or manage means of payment as financial intermediaries are thus subject to the AMLA (Swiss Federal Council 2016b). An ICO of payment tokens represents the issuance of a means of payment in the sense of the AMLA if the tokens can be technically transmitted on a blockchain-based infrastructure. This might be true at the pre-operational and operational phase of an ICO (FINMA 2018b). The ICO of utility tokens does not fall under the scope of

the AMLA, as long as the principal purpose of the tokens is the provision of access to non-financial applications. Asset tokens do not fall within the scope of the AMLA either (FINMA 2018b). According to article 14 of the AMLA, companies that are subject to the AMLA, need to be affiliated to a self-regulatory organisation (SRO) or report directly to FINMA, and comply with the due diligence requirements of article 3. This obligation can already be considered as met when the received funds are accepted via a financial intermediary who is subject to the AMLA in Switzerland and who fulfils the necessary due diligence requirements (Swiss Federal Council 2016b). Given this situation, an ICO developer neither has to be affiliated to an SRO nor apply for a FINMA licence (FINMA 2018b). The exchange of cryptocurrencies for fiat currencies or for other cryptocurrencies qualifies as a financial intermediary activity in accordance with existing FINMA practice, as defined in article 2, paragraph 3 of the AMLA (Swiss Federal Council 2016b). Therefore, DCEs are also subject to the requirements of the AMLA (FINMA 2018b).

4.1.4 SWOT and Future Outlook

According to Interviewee I (2018), Switzerland's regulatory strengths lie particularly in the open exchange, contact and collaboration within the industry. Interviewee II (2018) underlines that many companies are settling in Switzerland as a result of the open dialogues, and thus are creating a network effect. Both Interviewees I (2018) and II (2018) consider the categorisation in the ICO guidelines positive, although Interviewee I (2018) criticises the qualification as not detailed enough. Interviewee I (2018) further emphasises the high educational level of the FINMA employees as a major strength of the Swiss regulator. As FINMA is leaving open the possibility of constantly adapting existing projects and the existing regulatory approach, a certain degree of uncertainty exists in the market. This uncertainty also relates to the fact that FINMA has not yet commented on all ICO activities (Interviewee I 2018). According to Interviewee II (2018), however, legal certainty is created by requests that are made to FINMA and the corresponding feedback. In order to receive feedback on a submitted request for regulatory treatment, a fee needs to be paid. According to Interviewee II (2018), it may take several months before this feedback is received, depending on FINMA's workload. In a digital world where time also plays an important role, this is not always optimal (Interviewee II 2018). Thus the feedback shows where ICOs have points of contact with the regulation in Switzerland. If FINMA agrees with the submitted request, they create a No-Enforcement-Action letter, which creates legal certainty for the issuing company (Interviewee II 2018). According to Interviewee III (2018), the most difficult aspect is opening a bank account. Currently, most banks do not generally accept funds from companies operating with the DLT or in the blockchain sector. It will take a few years before the banking environment has entered into crypto business. Until then, ICOs will have to use small foreign banks (Interviewee III 2018).

In January 2018, the State Secretariat for International Financial Matters (SIF) set up a working group on blockchain and ICOs with the intention of evaluating the legal framework for financial sector-specific applications of blockchain technology, with particular reference to ICOs. It identifies potential needs and options for action. Further, the objective of this effort is to improve legal certainty, protect the integrity of the financial centre and ensure technology-neutral regulation. This evaluation of the regulatory framework is intended to help strengthen Switzerland's attractiveness in this field. The working group will submit a report to the Federal Council by the end of 2018 (SIF 2018).

The introduction of the new Financial Services Act (FinSA) in 2019 will generalise prospectus requirements in Switzerland and integrate such requirements as part of the supervisory law. This could result in ICOs being classified as financial products. Therefore, certain ICOs that could previously issue formless white papers might have to meet prospectus requirements in the future (Interviewee II 2018). Furthermore, the FINMA reserves the right to decide on further consolidation of its supervisory practice with regard to ICOs. They will also decide on changes in financial market legislation, if necessary (FINMA 2018b).

Table 3: SWOT Analysis of Swiss ICO Regulation

The table summarises the strengths, weaknesses, opportunities, and threats of the Swiss regulatory approach concerning ICOs. The key findings of the interviews with experts and the literature analysis are listed as bullet points.

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4.2 United States of America

Regulation in the USA is complex due to the various supervisory and regulatory authorities involved. Compliance with the different standards, reporting directives and other requirements of the various regulators results in costs and effort for fintech companies (KPMG 2018). ICOs are also subject to several laws and regulations in the USA. Various factors are decisive for the application of the law – for example, the issuing location, the people and entities to which the ICO is marketed, as well as the types of services provided or proposed to be provided (SEC n.d. a).

4.2.1 Securities and Exchange Commission

In general, the offer and sale of coins may be subject to US securities laws and the jurisdiction of the US Securities and Exchange Commission (SEC) if a money investment is made with the intention of making profits from a common enterprise that depends exclusively on the efforts of others. The SEC determines whether the tokens are considered as securities on the basis of the Howey Test (Clifford Change 2017). The Howey Test is an assessment developed by the Supreme Court in 1946 to determine whether certain transactions meet the qualifications of investment contracts.⁷ If this is the case, the classification as a security applies and certain disclosure and registration requirements under the Securities Act of 1933 and the Securities Exchange Act of 1934 must be fulfilled. According to these laws, a security covers a wide range of common-known investment instruments such as bonds, equities, and investment contracts – and, in many cases, also tokens (Thomson Reuters n.d.).

In July 2017, the SEC published an investigation report on the ICO of a token called DAO, in which they classified the tokens as securities under the federal securities law (SEC 2017). The DAO is a virtual decentralised autonomous organisation that is built on the Ethereum blockchain and works through smart contracts technology. The DAO did not carry out any active business activities and did not manage any operating assets (Clifford Change 2017). The DAO itself was only a tool to channel the revenues from token sales into the financing of real products and services (Clifford Change 2017). The ICO of the DAO raised nearly USD 150 million and was ultimately hacked, losing approximately one third of its assets (Becker and McAvoy 2017). Given the report about the DAO, the SEC concluded that the offer of tokens connected with an ICO, will be categorised and treated as securities if the token sale is presented to investors as an investment opportunity (SEC 2017). As a result, tokens may not be legally issued without SEC registration or an exemption from SEC registration.⁸ In

⁷ In the Howey test, an instrument is a security if: (1) there has been an investment of money, (2) in a common enterprise, (3) with the reasonable expectation of profits and (4) resulting from the managerial efforts of others (Thomson Reuters n.d.).

⁸ Such as "Regulation S", for example, which is only available for securities offers and sales outside of the United States and requires a registration itself (Becker and McAvoy 2017).

order to be exempted from registration, an ICO must meet certain conditions for a private placement.⁹ Meeting these requirements can be time-consuming and costly. However, non-compliance with the requirements may result in criminal prosecution, a ban on participation of future securities offerings and a personal obligation to return the invested funds to the investors (Becker and McAvoy 2017).

Furthermore, public offerings of tokens classified as securities require an approved catalogue to be in compliance with US securities laws (Wöckener et al. 2017). In addition, the SEC annotated that the DCEs who are trading tokens qualified as securities in the secondary market have to be registered as national securities exchanges according to the Securities Exchange Act of 1934 (Becker and McAvoy 2017). However, the SEC has taken into consideration that the analysis of whether a token or a different virtual asset qualifies as a security is dependent on a careful examination of the specific facts and circumstances, including the financial conditions of the transaction (SEC n.d. a). According to Clifford Change (2017), this is particularly interesting, because not all tokens have the same characteristics as the DAO token. Some tokens might therefore avoid the classification as securities. For example, tokens that provide real functionality within a software application or platform are probably held primarily with a personal consumption purpose to benefit from the tokens functionality, rather than for purposes of investment. If these utility tokens are commonly owned to utilise the functionality of the token and not to generate profits from the investment, it would seem that the expectation of a profit does not depend exclusively on the efforts of others. Rather the expectation of profit originates more from the active efforts taken by the owner of the token and therefore does not apply to the Howey Test. Nevertheless, the interpretation that utility tokens do not represent securities, according to the Howey Test, has not been countenanced by the SEC and there are currently no applicable regulatory guidelines on this matter (Clifford Change 2017). Issuers should note that in addition to federal requirements, state regulations must also be complied with. Several states apply tests other than the Howey Test to determine whether an instrument is a security (Becker and McAvoy 2017).

4.2.2 Commodity Futures Trading Commission

Another regulator, the US Commodity Futures Trading Commission (CFTC) classified Bitcoin, the most famous cryptocurrency, as a commodity in 2015. (CFTC 2015) However, this classification applies only to the Bitcoin currency and not to all cryptocurrencies or tokens in general (Pierson 2018). The CFTC stated that the applicability of federal securities laws must be analysed individually for all cryptocurrencies and tokens, due to their individual

⁹ Depending on the respective exemption, these requirements include restrictions on the total amount that can be raised by the offer, certain rights to be granted to investors, restrictions on the transferability of securities, and more (SEC 2017).

structure and properties (Wöckener et al. 2017). Furthermore, in October 2017, the CFTC published a guideline for digital currencies called Primer on Virtual Currencies. This guideline states that both cryptocurrencies and token sales can represent commodities and therefore be supervised by the CFTC – even utility tokens which are not classified as securities (CFTC 2017).

According to Wöckener et al. (2017), ICOs and white papers must additionally comply with anti-fraud and information requirements independent of the classification as securities. Information requirements can exist not only for the issuer of tokens, but also for all parties involved in the sale or marketing of the tokens. The ICO white paper must contain all the important information to enable a private investor to make an objective and sensible investment decision (Wöckener et al. 2017). Therefore the documentation provided must be precise, complete, unambiguous and not misleading, and must include all possible risk factors. Furthermore, it must describe the specifics of the token and the business of the issuing party. Propositions for future development must be adequate, and information about the use of revenues is required (Clifford Change 2017). According to Wöckener et al. (2017), many ICOs did not meet these standards in the past. Despite this fact, the US regulators did not investigate either the transparency or integrity of white papers. There is no current case law relating to inaccurate, incomplete or misleading ICO documentation (Wöckener et al. 2017). According to Pierson (2018), the regulation of digital tokens and virtual currencies is still in its infancy, and the US Congress has not enacted any new laws that directly affect them. Both the CFTC and the SEC have repeatedly published warnings about the necessity of combating fraud in the virtual token market (Pierson 2018).

4.2.3 Anti-Money Laundering

The Financial Crimes Enforcement Network (FinCEN) is an agency of the US Department of the Treasury that tracks and evaluates data and information on financial operations in order to fight money laundering at domestic and foreign level, and in order to combat the financing of terrorism and other financial crimes (FinCEN n.d.). The FinCEN published a letter in March 2018, which the Deputy Secretary for Legislative Affairs sent to a US Senator. In the letter, the FinCEN commented on the extent to which ICOs are in line with the current legal situation, and how the FinCEN interprets and assesses them (Maloney 2018). According to the FinCEN (Maloney 2018), all operators of ICOs are providers of money transfers and are therefore subject to banking secrecy. As a result, ICOs must register with the government and follow other guidelines. ICOs must collect information about their customers and take measures to prevent money laundering and terrorist financing. However, a already SEC-registered ICO is not regarded as a provider of money transfers by the FinCEN (Maloney 2018). Nevertheless, according to SEC Chairman Clayton (2018), none of the ICOs conducted last year have registered with the SEC yet.

4.2.4 SWOT and Future Outlook

Most ICOs are still carried out in the USA (ICO Watch List n.d. b). According to Interviewee II (2018), this is partly due to the more risk-taking investors in the USA than in many other parts of the world. In addition, Interviewee I (2018) regards the open-minded approach to innovation as one of the great strengths of the American market. Nevertheless, the regulatory uncertainty in America – together with the clear statements of the SEC that they are watching this development closely – has led to the conclusion that selling to US investors is highly risky (Alois 2018). It is possible – even likely – that this strict and complex regulatory framework will have a deterrent effect on ICOs in 2018 (Interviewee II 2018). Since secondary market exchanges also have to be registered with the SEC as national stock exchanges or alternative trading markets, regulatory compliance requirements increase the costs for issuers and investors (Pierson 2018).

According to Becker and McAvoy (2017), organisations interested in conducting an ICO can structure their offer in two different ways in order to be successful in the USA. First, they can register as an offer of securities under the Securities Act by the SEC. Alternatively, they can be securities offerings exempt from registration, but comply with the provisions and regulations of the private placement¹⁰. However, the most ICO-friendly variant would be if not all tokens are classified as securities, and the SEC would accept this categorisation (Becker and McAvoy 2018). However, according to Interviewee I (2018), regulation in the USA does not seem to be becoming slacker, nor will the current approach be changed in the near future. This treatment of ICOs and tokens causes issuing companies to seek jurisdictions in which ICO-friendlier conditions and more legal security prevail (Interviewee I 2018).

According to Drew Maloney, Assistant Secretary for Legislative Affairs at the Department of Treasury, US regulators are going to take stricter action against unregistered ICOs, and employees and investors in ICO projects may be prosecuted (Maloney 2018). The unregistered sale of ICO coins or tokens to Americans can result in a prison sentence of up to five years. Numerous subpoenas have already been sent to ICO projects during the course of 2018 (Clayton 2018). Under federal law and the laws of most states, an illegal offer is also subject to a right of rescission or the holder's right to receive his money back from the issuer in addition to the statutory interest (Becker and McAvoy 2018).

¹⁰ Depending on the exemption, these requirements include restrictions on the total amount that can be raised, certain rights to be granted to investors, restrictions on the transferability of securities and many more (SEC 2017).

Table 4: SWOT Analysis of ICO Regulation in the USA

The table summarises the strengths, weaknesses, opportunities and threats of the American regulatory approach concerning ICOs. The key findings of the interviews with experts and the literature analysis are listed as bullet points.

| Strengths | Weaknesses |
|--|---|
| <ul style="list-style-type: none">• Biggest market for ICOs with risk taking investors• High level of investor protection since every ICO needs to comply with securities regulations | <ul style="list-style-type: none">• No token classification – high securities regulation for every token• High level of legal uncertainty for non-securities ICOs• Complex state and federal requirements that need to be met |
| Opportunities | Threats |
| <ul style="list-style-type: none">• Open mindset for innovation can keep investors in the country• Risk-taking investors strengthen innovations in hubs such as Silicon Valley | <ul style="list-style-type: none">• Prosecution for ICO projects• Migration to ICO-friendlier countries and related loss of relevance• Generalisation of tokens hinders prosperous market |

4.3 United Kingdom

The British financial centre is one of the leading promoters of financial innovation and new financial technologies (WEF 2015). Project Innovate – which was launched in October 2014 and has been continuously expanded since then – is undertaking various regulatory efforts to create an attractive environment for innovative financial service providers (FCA 2014). In addition to an advice unit and direct request support, this project includes a regulatory sandbox, which was introduced in Great Britain in 2016 and has since been copied in many other countries. This innovation space allows start-ups to test their business plan, services, and products in the current market environment for a period of three to six months without complying with the existing regulatory requirements (FCA 2015).

4.3.1 Financial Conduct Authority

The Financial Conduct Authority (FCA) regulates financial markets in the UK (FCA 2016). According to the consumer warning (2017a) published in September 2017, many ICOs operate outside of the regulated space. However, depending on their structures, some ICOs may contain regulated investments, and companies that are participating in an ICO may conduct regulated activities. Some ICOs – mainly token sale events of asset-related tokens - possess the same characteristics as IPOs, crowdfunding, or collective investment schemes. Therefore, tokens may be classified as transferable securities. They are therefore subject to the prospectus regime and must publish a prospectus approved by the FCA (FCA 2017a). However, in the published consumer warning (FCA 2017a) about the risks of ICOs, the FCA explained that determining whether or not an ICO is within the regulatory framework of the FCA can only be decided on a case-by-case analysis (FCA 2017a).

The UK is one of the very few countries that intends to regulate not only ICOs and cryptocurrencies, but also the underlying DLT. The FCA initiative on DLT is a further development of its Project Innovate (Kaal 2018). In April 2017, the FCA started consultation on the DLT. While the FCA declares that their goal is to regulate the result rather than the process, the FCA has recognised that DLT has unique properties that can operate beyond the existing regulations (FCA 2017b). However, as a result of the consultation, the FCA declared in their feedback statement in December 2017 (FCA 2017c) that the existing laws were flexible enough to cover DLT processes. The FCA therefore concludes that at this stage there is no need to recommend or make any changes to the FCA regulations with regard to the use of DLT. However, the FCA will continue to monitor the situation. The FCA's feedback statement (FCA 2017c) points out additional elements relating to ICO regulation. The respondents to the statement positively assess the FCA's technology-neutral regulatory approach and its open and proactive approach to new technologies. Furthermore the FCA mentioned that virtual currencies might fall within the regulatory scope, depending on the individual structure of each cryptocurrency (FCA 2017c). According to Wöckener et al.

(2017), an ICO can be considered as a deposit, contract for difference, derivative or collective investment in the UK. The FCA also stated that ICOs could be regulated as securities, depending on the different characteristics and rights that the token holder receives by holding the coin (FCA 2017).

In addition, the FCA declared in a statement that financial instruments with underlying cryptocurrencies represent financial instruments within the meaning of the Markets in Financial Instruments Directive II (MiFID II) of the European Union (EU) (FCA 2018a). This directive applies although cryptocurrencies will neither be regarded as currencies nor as raw materials for regulatory purposes within the meaning of MiFID II. Companies carrying out regulated activities with cryptocurrency derivatives¹¹ must therefore comply with the FCA rules and with all relevant provisions of the applicable EU regulations (FCA 2018a). The FCA (2017a) has confirmed that it will gather further knowledge on the ICO market to determine whether further regulatory steps are necessary. In the meantime, the FCA has confirmed its position that the risks for consumers and the legal and regulatory position of each ICO project should be assessed individually (FCA 2018a).

4.3.2 Bank of England

The Bank of England (BoE) launched the Fintech Accelerator programme in 2016 in order to find solutions to the challenges of central banks in cooperation with fintech companies (BoE n.d.). For this purpose, the British central bank has already collaborated with large crypto companies such as Ripple (BoE n.d.). According to the BoE (2018), digital currencies do not currently represent a significant risk to monetary or financial stability in the UK due to their small size. They currently have no significant role as money in society. Because when they are used as money, they act in parallel with traditional currencies. This could possibly change, but only if the volume of cryptocurrencies grew significantly (BoE 2018). The BoE continuously monitors digital currencies and their associated risks (Ali et al. 2014). Nevertheless, the governor of the bank, Mark Carney, pointed out the disadvantages of the digital currencies in a speech in March 2018. These include low consumer and investor protection, money laundering, terrorism financing, tax evasion, circumvention of capital controls, and international sanctions (Carney 2018). According to Carney (2018), these concerns will continue to attract political and regulatory attention in the UK and in Europe.

The UK Treasury announced in December 2017 that it would extend the applicability of anti-money laundering regulations to cryptocurrencies in 2018. This leads to a reduction of the anonymity of market participants in the area of cryptocurrencies (Barclay 2017). The European Commission intends to adapt the fourth money-laundering directive and to include

¹¹ Cryptocurrency-based contracts for difference, cryptocurrency futures, and cryptocurrency options are examples of such products that are regulated by the FCA (FCA 2018a).

virtual money exchange platforms and custodian wallet providers in the scope of anti-money laundering legislation (Carney 2018). However, the revised money-laundering directive is not expected to come into force until mid 2019 and it remains uncertain how the UK will deal with the EU legislation after Brexit (Kvitkin and Singh Mann 2018).

4.3.3 SWOT and Future Outlook

The open exchange and the collection of feedback from various sides of the industry for the elaboration of the framework are strengths of the regulation in the UK (Interviewee II 2018). According to Interviewee I (2018), the FCA's regulatory efforts have followed the typical principle-based and technology-neutral approach that has already proved successful in the past. Nevertheless, the UK regulator remains very vague in its statements and thus generates a certain degree of uncertainty (Interviewee II 2018).

The regulator has announced that the government and parliament remain free to intervene and include cryptocurrencies and ICOs into the UK regulatory framework (FCA 2017a). The FCA will continue to monitor the developments in the DLT market and review its regulations and guidelines with respect to these developments (FCA 2017c). In March 2018, the HM Treasury published a strategy paper designed to secure the future of UK fintech (FCA 2018a). The new British fintech strategy provides cooperation with Australia. The recently signed agreement allows British companies to sell products and services in Australia and to help UK firms to expand internationally. The so-called Fintech Bridge also intends to intensify cooperation in the field of regulation in the fintech sector (HM Treasury 2018a). The strategy paper (HM Treasury 2018b) also introduced a new task force – including the BoE and the FCA – with a view to facilitating the complex regulation for fintech companies. This task force is also designed to manage risks concerning crypto assets (HM Treasury 2018b). According to Goldsmith (2018), the task force is expected to provide an overview of the crypto market in the third quarter of 2018.

According to Smith (2018), the British regulatory authority has initiated 24 investigations since the beginning of 2018 against companies from the cryptocurrency industry. The FCA wants to verify whether the legal regulations have been complied with and whether the issuers carry out regulated activities that require FCA approval. The FCA did not exactly specify which companies were affected. Possible measures that could be taken by the FCA range from a warning against a certain person, activity, or company via the FCA website, to the suspension of business activities and freezing of assets (Smith 2018). The attractiveness of the UK for future sales of tokens depends largely on the structure of the Brexit contracts. On the one hand, the UK could create a more liberal approach than the EU for ICO projects and thus become more attractive. On the other hand, access to the European mainland could be endangered (Kvitkin and Singh Mann 2018).

Table 5: SWOT Analysis of ICO Regulation in the UK

The table summarises the strengths, weaknesses, opportunities and threats of the British regulatory approach concerning ICOs. The key findings of the interviews with experts and the literature analysis are listed as bullet points.

| Strengths | Weaknesses |
|--|---|
| <ul style="list-style-type: none">• Open and proactive approach to new technologies• Fintech-friendly environment through the efforts of the FCA and the BoE | <ul style="list-style-type: none">• No clear categorisation of tokens leads to uncertainty of regulatory treatment• Strict prospectus requirements of the EU |
| Opportunities | Threats |
| <ul style="list-style-type: none">• Fintech Bridge promotes international cooperation• Further liberalisation for fintech companies by exiting the EU• Task force to manage risks concerning crypto-assets | <ul style="list-style-type: none">• Uncertainty about future regulation as a result of Brexit negotiations• Potential loss of access to investors on the European mainland• Upcoming investigations |

4.4 Gibraltar

As a British overseas territory, Gibraltar is a pioneer in the promotion of blockchain and ICOs (Kaal 2018). Together with the Crypto Working Group (CWG), Gibraltar Finance – as department of HM Government of Gibraltar – published several proposals for virtual currencies and a statement on a DLT regulatory framework. The CWG is a private network of members from the global crypto community (CWG n.d.). In these proposals, the government of Gibraltar states that there are several different financial and non-financial applications for DLT, which can also be applied to the public sector. Furthermore, the strategy paper (Gibraltar Finance 2017) recognises the status of Gibraltar within the EU, while taking into account the likely impact of Brexit and the related outcome scenarios.

4.4.1 DLT Regulatory Framework

The published DLT framework (GFSC 2017b) is designed to be both beneficial and secure for Gibraltar. The DLT framework is considered result-oriented and principle-based, and is described by HM Treasury (2018b) as a flexible and adaptable approach. Since DLT projects and their activities can vary individually, the DLT legal framework must be based on principles and not on rigid rules in order to be flexible enough to adapt to the specifics of different companies and their use of the DLT (Gibraltar Finance 2017). The DLT framework is based on the following nine principles (GFSC 2017b):

- **Honesty and integrity** – every provider of DLT must conduct its business with honesty and integrity.
- **Customer care** – DLT providers must adequately represent the interests and needs of each individual consumer, and must communicate fairly and in a manner that is not misleading.
- **Resources** – providers need to maintain adequate financial and non-financial resources to ensure safe and orderly business operations.
- **Risk management** – DLT providers must follow good, forward-looking risk management practices.
- **Protection of client assets** – providers are responsible for taking all reasonable precautions to protect client assets in the custody of the provider from unexpected events and threats.
- **Corporate governance** – DLT providers are required to establish and maintain effective corporate governance that is in compliance with these principles.
- **Cyber security** – The provider must ensure that all systems and security access protocols meet appropriate high requirements.

- **Financial crime** – DLT providers are responsible for setting up systems to prevent, detect and disclose financial crime risks such as money laundering and terrorist financing.
- **Resilience** – Providers of DLT need appropriate concepts for business continuity, disaster recovery and crisis management.

In January 2018, Gibraltar became the first country to have an authorisation requirement for providers of DLT (Hassans Fintech Team 2018). HM Government of Gibraltar therefore published the Financial Services (DLT Providers) Regulation, together with a bill for an act to modify the Financial Services (Investment and Fiduciary Services) Act. As a result, the regulatory authority must approve any company that offers DLT to store or transfer values belonging to others. This applies both to companies operating in Gibraltar and to companies operating out of Gibraltar (GFSC 2017b). The application fee due upon submission of a full application depends on the complexity of the DLT project and lies between GBP 10'000 and GBP 30'000. In addition, there are annual costs of the same amount (GFSC n.d. b).

4.4.2 Gibraltar Financial Services Commission

The financial services industry in Gibraltar is regulated by the Gibraltar Financial Services Commission (GFSC), which aims to protect consumers, to facilitate good business and to promote Gibraltar's reputation as a financial services centre (GFSC n.d. a). The GFSC (2017a) issued a public statement on ICOs in September 2017, warning consumers that ICO projects are unregulated, extremely volatile, highly speculative, and risky and should be undertaken only by experienced investors (GFSC 2017a).

In December 2017, HM Government of Gibraltar issued a discussion paper to the members of the finance centre council in Gibraltar. Feedback from the finance centre council and the GFSC was published in the February 2018 strategy paper (Gibraltar Finance 2018), announcing the government's intention to regulate tokens. In some cases the token may fall under the applicable financial services legislation¹², depending on the purpose and structure of the token issue (GFSC 2017b). Although HM Government of Gibraltar does not categorise tokens, it does distinguish between the different uses of virtual tokens (Gibraltar Finance 2018). The strategy paper (Gibraltar Finance 2018) emphasises the general EU approach that if tokens are not classified as security, neither their sale nor the token itself will be regulated. According to Gibraltar Finance (2018), the sale of tokens often constitutes a pre-sale of products that only gives access to future networks or the use of future services. These tokens therefore represent commercial products, depending on future utility and availability, and are therefore not covered by the existing securities regulations in Gibraltar.

¹² Tokens can, for example, be deemed as a collective investment scheme or alternative investment fund (Gibraltar Finance 2018).

Certain tokens are generated with the characteristics of a virtual currency. The token is mainly used as a means of exchange within an ecosystem or marketplace of consumers and service providers. In general, ICOs or token sales events are not subject to the 2018 established DLT framework. However, the operator of the DLT system may fall within the scope of the DLT regulations, but the sale of tokens and trading on the secondary market remain unregulated. In the strategy paper on the regulation of tokens (Gibraltar Finance 2018) it is further proposed that the GFSC will regulate authorised sponsors of public token offerings and operators of secondary market activities. In addition, the provision of investment and ancillary services relating to tokens are also intended to be subject to regulation. It is further proposed that companies receiving proceeds from the sale of tokens should be subject to anti-money laundering and combating the financing of terrorism (CFT). For this reason, the GFSC will be designated as the competent supervisory authority for AML/CFT purposes (GFSC 2018).

4.4.3 SWOT and Future Outlook

The specialisation on blockchain-based projects, together with a clear and principle-based DLT-provider regulation, constitutes the key strengths of regulation in Gibraltar (Interviewee I 2018). According to Interviewee III (2018), Gibraltar has taken advantage and positioned itself very favourably for blockchain-based projects at an early stage. However, Interviewee III (2018) also believes that Gibraltar will lose its importance for blockchain-related businesses if larger countries create a higher level of legal certainty.

Gibraltar is prepared to exit the EU. Several different scenarios have been developed for this case (Gibraltar Finance 2017). According to Interviewee I (2018), Brexit could be a further step towards liberal regulation in Gibraltar. As a result of the exit, for example, the EU's strict prospectus requirements would no longer apply (Interviewee II 2018).

According to the strategy paper (GFSC 2017b), Gibraltar intends to complete its token regulatory measures by the end of 2018. A draft of the Financial Services Act was presented at the end of March 2018. The regulation of distribution of tokens will be finalised by the end of October 2018. With these adjustments, Gibraltar wants to provide even more support for regulatory certainty relating to tokens (HM Finance 2018).

Table 6: SWOT Analysis of ICO Regulation in Gibraltar

The table summarises the strengths, weaknesses, opportunities and threats of the Gibraltar regulatory approach concerning ICOs. The key findings of the interviews with experts and the literature analysis are listed as bullet points.

| Strengths | Weaknesses |
|--|--|
| <ul style="list-style-type: none">• Early efforts to create ICO-friendly laws• DLT-provider regulation ensure regulatory certainty and attracts substantial funds• Cooperation and active approach with industry | <ul style="list-style-type: none">• No clear token categorisation despite specific DLT regulation• High prospectus requirements of the EU |
| Opportunities | Threats |
| <ul style="list-style-type: none">• Maintain strong ICO position through the publication of clear regulations• Creating an even more DLT-friendly environment after Brexit | <ul style="list-style-type: none">• Loss of importance when larger countries create a more ICO-friendly environment |

4.5 Singapore

According to the Global Financial Centres Index, Singapore is the fourth largest innovative and future-oriented economy in the world, supporting people and companies to drive innovation, providing quality infrastructure, and promoting innovation, growth, and profitability (Global Financial Centres Index 2018). Together with Hong Kong, Singapore is ranked as one of the largest hubs for the execution of ICOs in Asia and throughout the world. This development was further intensified by the ban on ICOs in China in November 2017, as Singapore is considered as an attractive alternative (PwC Strategy& 2018).

4.5.1 Monetary Authority of Singapore

The Monetary Authority of Singapore (MAS) is Singapore's central bank and financial regulatory authority. It is responsible for the supervision of all financial institutions and thus also for the regulation of digital currencies and ICOs in Singapore (MAS n.d. a). According to Clifford Change (2017), the MAS stated as early as March 2014 that there is no regulation for virtual currencies such as payment tokens. The MAS has made it clear that virtual currency used as a means of exchange or value storage is only a particular type of digital token (Clifford Change 2017). It published guidelines in August 2017 (MAS 2017a) on how the issuance and offer of digital tokens will be regulated in Singapore. There is no direct regulation under the Securities and Future Act (SFA), unless the token is connected with an ownership or security right of the emitter's asset. Therefore, if digital tokens represent, for example, an ownership right or a claim to the assets or property of an issuer, tokens may be regarded as an offer of shares or units in a collective investment scheme as part of the SFA (MAS 2017a). In November 2017, the MAS published an additional guideline (MAS 2017b) on the implementation of Singapore's securities laws on emissions and offers of digital tokens with an analysis of six exemplary cases. The guideline (MAS 2017b) states that the offering of tokens in Singapore is subject to securities regulation when digital tokens qualify as capital market products within the scope of the Securities and Futures Act. Capital markets products include securities, futures contracts, and foreign-exchange trading agreements. Digital tokens that constitute capital markets products can also be shares if they grant an interest in a company, and if they represent the liability of the token holder in the company with mutual obligations with other token-holders. A token can also qualify as a debenture bond and therefore count as a capital markets product. This is the case if the token represents or proves a debt lent by the issuer. According to the MAS (2017b), units in a collective investment scheme (CIS) can also qualify as digital tokens if they constitute a right or a participation in a CIS or an option to acquire a right or participation in a CIS. The offer of digital tokens that offer securities or shares in a collective investment scheme must be published in a prospectus approved by the SFA and registered by the MAS (MAS 2017b).

The MAS (2015) also lists the following exceptions for which no prospectus has to be prepared (MAS 2015):

- If it is a **small offer**¹³ of securities of a company or shares in a CIS that does not exceed SGD 5 million within any 12-month period.
- If the offer is a **private placement**¹³ offer and is offered to no more than 50 persons within a period of 12 months.
- If the offer is made exclusively to **institutional investors**.
- If the offer is submitted to **accredited investors**¹³.

The regulations for providers do not only apply to persons and companies in Singapore (MAS 2017b). If a person resident abroad is engaged in an activity, which could lead the public or part of the public to seek financial advice from him or her, the person must be classified as a financial adviser in Singapore. The MAS also comments on intermediaries and persons facilitating the issuance of virtual tokens, such as operators of platforms for primary offerings of cryptocurrencies or operators of trading platforms for tokens and consultants for crypto activities. According to the guide to digital tokens, they must hold a capital market licence for regulated activities under the SFA (MAS 2017b).

In November 2016 the MAS announced the creation of a regulatory sandbox (MAS n.d. b). The goal of this regulatory sandbox is to promote innovation and experimentation with novel fintech products, and it is therefore similar to the sandbox in the UK. The regulator agrees to relax certain regulatory requirements to which a company would otherwise be subject for a certain period of time (MAS n.d. b). Any company, including token-offering organisations that wants to apply technology in an innovative way to offer new financial services can apply for the regulatory sandbox (MAS 2017b). PolicyPal, an insurance technology start-up from Singapore was the first company from the regulatory sandbox to carry out an ICO, and raised around approximately USD 20 million in the token sale event (Fintechnews Singapore 2018).

4.5.2 Anti-Money Laundering / Countering the Financing of Terrorism

According to the MAS (n.d. c), financial institutions that are based in and operate out of Singapore must implement strict controls to detect and prevent the flow of illegal funds through the financial system of Singapore. These controls require financial institutions to identify and know their customers, carry out regular account checks, and monitor and report potential suspicious activities (MAS n.d. c). According to the MAS guide to digital token offerings published in November 2017, the relevant notices on prevention of money laundering and countering the financing of terrorism may be applicable (MAS 2017b). The

¹³ The exemptions for small offers, private placement offers and offers to accredited investors are subject to certain conditions, including advertising restrictions (MAS 2015).

MAS (2017b) also clarifies that not only virtual currencies but also other forms of digital tokens might be subject to AML regulation. Financial institutions that do not meet or refuse to meet the requirements of the applied AML/CFT notices will commit a felony under the MAS Act and will be liable to a fine of a maximum of SGD 1 million in the event of a conviction (MAS n.d. c). According to MAS (2017b), even digital tokens performing functions outside of the scope of MAS may be subject to legislation to combat money laundering and the financing of terrorism. These legislations include the requirements under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act or the Terrorism (Suppression of Financing) Act (MAS 2017b). The MAS (2017c) is currently creating a new framework for payment services, known as the Payment Services Bill, which contains rules to prevent money laundering and terrorist financing risks related to the trading and exchange of virtual currencies for fiat or other virtual currencies. The new activity-based regulatory framework will simplify and streamline the regulation of payment services under a single law and increase the applicability of regulated payment operations to virtual monetary services and other innovations. It furthermore aligns the regulation with the risks of these activities. With the introduction of the new law, payment services providers will only be required to hold one licence under a single legal framework to perform one or all payment transactions. The new directive will presumably be passed by parliament and submitted to the president for his assent in 2018 (MAS 2017c).

4.5.3 SWOT and Future Outlook

According to Liu (2018), the Singaporean supervisory authorities reported at an early stage on cryptocurrencies. This clarity has been crucial in establishing a strong framework that can support ICO investment in a sustainable way (Liu 2018). The MAS (2017b) issued many guidelines to emphasise its regulatory position on potential AML/CFT risks. With further notices the MAS (2017c) attempts to streamline the AML/KYC regulation. Even digital tokens operating outside of the scope of the MAS may be subject to legislation to combat money laundering and the financing of terrorism (MAS 2017b). According to Leong (2017), such strong regulations are beneficial for real ICOs and an attraction for technically competent developers. Leong (2017) states that the MAS prefers to apply existing regulations to new fintech models. Therefore, if a digital token has the characteristics of a security, it is regulated as such (Leong 2017). The regulatory treatment of tokens associated with ICO should be carefully analysed on the basis of the conditions and characteristics of the token. The MAS has issued six small case studies to clarify whether a token is considered a security (MAS 2017b).

Singapore currently regulates neither cryptocurrencies nor their derivatives, but the MAS regulates activities that affect them when they pose specific risks. However, the Central Bank of Singapore is now considering the introduction of specific rules and is currently considering the need for additional investor protection rules (Aravindan and Geddie 2018).

In May 2018, the MAS requested an ICO issuer to stop offering digital tokens to Singaporean investors. The MAS concluded that the issuer violated the SFA, since the tokens represented an ownership interest in a company and were thus classified as securities within the meaning of the SFA. The Tokens were offered without a MAS-registered prospectus, which is a SFA requirement (MAS 2018).

Table 7: SWOT Analysis of ICO Regulation in Singapore

The table summarises the strengths, weaknesses, opportunities and threats of the Singaporean regulatory approach concerning ICOs. The key findings of the interviews with experts and the literature analysis are listed as bullet points.

| Strengths | Weaknesses |
|---|---|
| <ul style="list-style-type: none"> • Strong protection against money laundering and financing of terrorism • Case studies to clarify classification under the Securities Act • Development of blockchain-based companies is promoted by the regulatory sandbox | <ul style="list-style-type: none"> • High AML requirements for all types of tokens • Strong competition from the Hong Kong financial centre |
| Opportunities | Threats |
| <ul style="list-style-type: none"> • International cooperation promotes appropriate regulation • High AML/KYC requirements prevent scams and attract trustworthy projects | <ul style="list-style-type: none"> • Potential loss of importance when China relaxes its ICO ban |

5 International Comparison

As shown in the previous chapters, not all countries in the world provide the same regulatory framework for the development of new tokens. Consequently, not every country is equally attractive for the implementation of an ICO. According to Interviewee II (2018), there are many relevant factors such as the access to investor funds or a beneficial taxation system determining the attractiveness of a country for ICO projects. However, regulatory treatment is one of the most central criteria for an attractive environment (Interviewee II 2018).

Table 8: Regulatory Overview

This table summarises the most relevant statements and publications of the various regulatory authorities on ICO regulation in the respective countries since 2017.

| | | |
|--------------------|--------|--|
| Switzerland | FINMA | <p>September 2017 – FINMA issued an ICO guideline document indicating that certain ICOs may be subject to the BA, the AMLA and the securities laws.</p> <p>February 2018 – FINMA published ICO-specific guidelines for the application of ICO authorisation. It divides tokens into payment tokens which are only AML/KYC regulated, asset tokens which can be considered securities, and utility tokens which would not be regulated if the platforms behind it are already functional and do not contain an investment component.</p> |
| | | |
| USA | SEC | <p>July 2017 – The SEC published an investigation report on the DAO token and concluded that the issuing company should have been registered, as well as all ICOs with the same characteristics. The SEC explains in the report that existing federal laws apply to all parties involved in ICO projects.</p> <p>Spring 2018 – The SEC initiates a broad crackdown on ICOs. The regulatory authority issues several subpoenas to various ICO companies and their advisors.</p> |
| | CFTC | <p>October 2017 – In an information sheet, the CFTC recalled that the commission had already recognised cryptographic currencies as commodities in 2015 and therefore be supervised by the CFTC.</p> |
| | FinCEN | <p>March 2018 – The FinCEN published a letter in which it states that operators of ICOs are providers of money transfers and therefore are subject to banking secrecy. As a result, ICOs have to register with the government and follow AML and KYC regulations.</p> |
| UK | FCA | <p>April 2017 – The FCA published a consultation paper on the use of blockchain technology. The paper indicates that ICOs could constitute IPOs or private placements of securities.</p> <p>December 2017 – The FCA states in their feedback statement that an ICO could be considered as a deposit, e-money issue, CFD, derivative or collective investment. The FCA also states that ICOs could be regulated as securities depending on the different characteristics and rights that the token-holder received by holding the coin.</p> |

| | | |
|------------------|------|---|
| Gibraltar | GFSC | <p>December 2017 – Gibraltar is the first country to have an authorisation requirement for providers of DLT. The regulatory authority must approve any company that offers the DLT to store or transfer values belonging to others.</p> <p>February 2018 – The GFSC, together with the government of Gibraltar, announced a new token regulation. It proposes that the GFSC would regulate authorised sponsors of public token offerings, operators of secondary market activities and the provision of investment advice related to tokens, both outside and within Gibraltar.</p> |
| Singapore | MAS | <p>August 2017 – The MAS issued a press release indicating that some ICOs may be subject to national securities laws and that decisions should be based on the issue characteristics, such as whether there are claims to future profits, rights to certain actions and property rights on common assets.</p> <p>November 2017 – The MAS published a guide on the implementation of ICOs, including an analysis of six exemplary cases. The guide explains when ICOs are classified as securities and when not.</p> |

As indicated in Table 8, the various countries express different positions on the subject of ICOs. However, it is not only existing laws and publications of regulators that result in an ICO-friendly environment. The following section compares the legal systems described in the previous chapters on the basis of six criteria. The following criteria were identified in interviews with the experts about an ICO-friendly framework: token differentiation and categorisation, regulatory certainty, DLT-specific framework, prospectus requirements, active involvement and discussion, and future developments of ICO regulation.

5.1 Token Differentiation and Categorisation

In Switzerland, the FINMA classifies three types of token in its guidelines for ICOs (2018b). A distinction is made between payment tokens, utility tokens, and securities tokens. While payment tokens are subject to AML requirements, utility tokens are exempt from regulation if their sole purpose is to provide digital access rights to an application or service and if the utility tokens can already be used at the time of issue (FINMA 2018b). Utility tokens in a pre-operational phase can be considered as securities and are then regulated in the same way as securities tokens. The FINMA also advises that there are hybrid tokens that can fall into more than one category, or can change their function over time (MME 2018c). While Interviewee I (2018) would like an even more detailed categorisation, since the guideline does not yet clearly state its position on hybrid tokens and ownership tokens, Interviewee II (2018) is satisfied with the categorisation made, especially in the international comparison with other countries. The Swiss classification is one of the world's most detailed classifications published by a regulatory authority.

The position of Singapore is similar to that of Switzerland. The MAS regulates tokens as securities, when the tokens are classified as capital market products under the SFA (MAS 2017b). In the guidelines on digital tokens, the MAS provides six examples of such tokens that are classified as capital market products and thus regulated as securities. These examples can be divided into credit tokens, token shares, and token units of collective investment schemes (MAS 2017b). In contrast to the position of Switzerland, the MAS interprets a token that provides access in the sense of a utility token to a preoperative platform, not as a security. Another difference is the application of AML and CFT regulations. While in Switzerland only payment tokens are subject to the AMLA, in Singapore all tokens must comply with AML and CFT guidelines.

In the USA, the chairman of the SEC explained in a public statement on cryptographic currencies and ICOs in December 2017, that all ICOs he observed were securities (SEC 2017). As a result, tokens sold as a currency or for a utility purpose must also comply with the strict securities laws in the USA. The supervisory authority CFTC also specifies a classification of tokens. According to the CFTC (2017), tokens represent commodities such as gold or silver that are traded with the expectation of generating a profit. Accordingly, the tokens must also be regulated by the CFTC.

In its consumer warning on the risks of ICOs in September 2017, the FCA spoke on the one hand of coins as a means of payment and on the other hand of tokens, which represent a company share, a prepayment voucher for future services, or in some cases represent no identifiable value at all (2017a). The UK authority states that it neither regulates nor considers cryptographic currencies as currencies or commodities, but that they may qualify as financial instruments and therefore fall within the regulatory framework (FCA 2017b). The position of the FCA with regard to tokens held for a utility purpose is not quite clear either. Whether the token represents a transferable security and is therefore subject to the Securities Act can only be examined individually (FCA 2017a). The UK Treasury announced in December 2017 that it would extend the applicability of anti-money laundering rules to cryptocurrencies in 2018. Which tokens will be included has not yet been defined (Barclay 2017). The regulatory framework in Gibraltar does not set out an explicit classification in the guidelines, but distinguishes between tokens that are securities and tokens that are not covered by the Securities Act. The strategy paper of the government of Gibraltar emphasises the general EU approach that if tokens are not classified as securities, neither their sale nor the token itself will be regulated (Gibraltar Finance 2018). According to Gibraltar Finance (2018), the sale of tokens often constitutes a pre-sale of products that only give access to future networks or future services. These tokens therefore represent commercial products depending on future utility and availability, and are therefore not covered by the existing securities regulations in Gibraltar.

5.2 Regulatory Certainty

Regulatory certainty in a jurisdiction is at least as important as ICO-friendly regulation (Interviewee II 2018). According to Interviewee I (2018), Switzerland is much further advanced than other countries with regard to providing legal security and certainty. Switzerland has no strict restrictions regarding ICOs and technology-neutral laws and directives, which are also applicable to ICOs. These set the framework for financial market activity in Switzerland. According to Interviewee II (2018), an enormous advantage is the so-called No-Enforcement-Action letter, which the FINMA can issue when they receive enquiries about an ICO. A planned ICO may submit the white paper and other information to the FINMA, which confirms compliance with the regulatory requirements or imposes certain adjustment criteria in order to meet the requirements. This creates a level of legal certainty that has not yet been achieved in many other countries (Interviewee II 2018).

The subcommittee on capital markets, securities, and investment in the US House of Representatives held a hearing on March 14, 2018 in Washington examining cryptocurrencies and ICO markets. The chief legal and risk officer of the wallet service-provider Coinbase, Mike Lempres, spoke about the regulatory uncertainty in the USA (Financial Services Committee 2018). Lempres (2018) stated that the SEC, the authority responsible for securities transactions, regarded cryptographic tokens as securities. The CFTC, which entirely controls commodity derivatives transactions, argues that tokens qualify as commodities. The FinCEN, responsible for the compliance with AML/KYC, regards tokens as money. There is an extreme lack of coordination, which represents a high level of legal uncertainty in the US (Lempres 2018).

The FCA clarifies its position on cryptocurrencies by stating that they are regarded as a financial instrument but not as a currency. In this respect, cryptocurrencies are not regulated by the FCA, but every company participating in an ICO must register (FCA 2017a). The FCA states that whether or not an ICO is within the regulatory framework of the FCA could only be decided on a case-by-case analysis. Similar to the approach in Switzerland, regulatory certainty can therefore only be obtained by clarification with the regulatory authority (FCA 2017b). With its proposals for the regulation of token sales, the government of Gibraltar clarifies that tokens generally are commercial products and do not constitute securities (Gibraltar Finance 2018). The obligation to obtain a licence for every company operating in the DLT sector ensures a comparatively high level of legal certainty, since no DLT business may be operated without a relevant licence (GFSC 2017b).

The guide on tokens published in Singapore at the end of 2017 states that the MAS can regulate digital tokens if the digital tokens are capital market products within the framework of the SFA. With the help of six case studies, the MAS wants to illustrate its guidelines and thus improve regulatory certainty (MAS 2017b). Nevertheless, according to Interviewee I (2018), there may always be some level of uncertainty without the possibility of clarification.

5.3 DLT-specific Framework

Gibraltar was the first and only country in the world to publish a DLT-specific regulation, which came into effect on January 1, 2018 (GFSC 2017). The UK, which also intends to regulate DLT, concluded in its feedback statement that no DLT-specific laws are necessary and that DLT is well covered by existing laws (FCA 2017c). However, the FCA will continue to monitor the situation and, if necessary, propose appropriate legal action and modifications to the law (FCA 2017c.). In the other countries analysed, there are no specific regulations on DLT. Singapore and Switzerland, in particular, emphasize their technology-neutral approach. However, according to Interviewee I (2018), the future will not only consist of cryptocurrencies or blockchain-based projects, but rather it will be much more about a regulatory embedding of entire decentralised ecosystems. Therefore, the approach of a DLT-specific regulation is highly attractive and could also be well combined with the current technology-neutral approach of Switzerland (Interviewee I 2018).

5.4 Prospectus Requirements

According to Interviewee I (2018), a white paper can be issued completely form-free in Switzerland as long as the token does not qualify as security. The prospectus requirements will be harmonised with the new FinSA, which is expected to come into effect in mid-2019. It contains new prospectus requirements that apply to all financial instruments. Tokens that are currently not considered as securities could be classified as financial products under the new regulation, and must therefore comply with the prospectus requirements (Interviewee II 2018). Even if a token qualifies as a financial instrument in terms of the new FinSA, the prospectus requirements in Switzerland are, according to Interviewee II (2018), rather light in comparison to EU countries.

The UK and Gibraltar, which are still members of the EU, are subject to the EU prospectus directive. The prospectus must contain sufficient and detailed information¹⁴ to enable investors to make a sound investment decision (GFSC n.d. b). In the UK, the FCA must also approve the prospectus, in its role as UK listing authority. The prospectus in the UK must furthermore be issued or approved by an authorised person if the purpose of the prospectus is to induce people to invest. Otherwise, it constitutes an illegal financial promotion under the Financial Services and Markets Act of 2000 (FCA 2013). In connection with an offer of securities in the USA, a prospectus must be submitted to the SEC as part of the registration statement (SEC 2017). However, not all securities offers must be registered with the SEC. Private offers to a limited number of persons or institutions and offers of limited size do not have to be registered and therefore do not have to issue a prospectus. By exempting smaller

¹⁴ This information includes, among other aspects, the rights and risks associated with the offerings, information on the major shareholders, and a financial analysis of the company's financial position (GFSC n.d. b).

offers from the registration process, the SEC aims to encourage investment by reducing the cost of the public offering of securities (SEC n.d. b). In Singapore, if a token is classified as a capital markets product, or if a token is offered as shares in a collective investment scheme, a prospectus must be prepared in accordance with the SFA and registered with the MAS (MAS 2015). Similar to the USA, certain offers of tokens do not require a prospectus to be issued. The MAS exempts small offers, private placement offers, and offers to accredited investors from the prospectus requirements. However, these exceptions are linked to certain conditions, including advertising restrictions to protect investors (MAS 2017b).

5.5 Active Involvement and Discussion

According to Interviewee I (2018), the employees of the FINMA are highly trained, which is a major advantage of Switzerland. The FINMA is willing to talk to all parties involved in the crypto community. ICO projects, consultants or lawyers can actively contact the FINMA with suggestions for legal improvement. The FINMA has accompanied the ICO market since day one. This has resulted in the development of a prosperous market in Switzerland and the Crypto Valley in the canton of Zug (Interviewee I 2018). This open approach is emphasised when considering how the ICO guidelines were published. The FINMA presented the guidelines in three interactive roundtable discussions in cooperation with the non-profit organisation CVA (FINMA 2018c).

The UK is also known for its open discussions on fintech. As part of Project Innovate, the FCA has an advice unit that provides feedback to companies developing automated consulting and advisory models (FCA 2015). The FCA also discussed the regulation of tokens, ICOs and DLT. In April 2017, the FCA published a discussion paper to assess the potential and future development of DLT with the crypto industry (FCA 2017b). The received inputs were published in the feedback statement in December 2017, which sets out the regulatory treatment of tokens (FCA 2017c). The government of Gibraltar has also issued various discussion papers on cryptocurrencies, DLT and ICOs in cooperation with the crypto industry. The DLT regulation that became effective January 2018 was developed together with the CWG, a private network of members from the global crypto community (GFSC 2017). According to Leong (2018), the MAS believes that regulation must not front-run innovation, since an early introduction of regulation can kill innovation and hinder the growth of beneficial technologies. At the same time, the MAS is monitoring the development and impact of digital token offerings in Singapore and other parts of the world. Through international cooperation with other jurisdictions and industry associations, the MAS monitors the regulatory approaches of other countries and develops its own approaches (Leong 2018). While in the majority of the observed countries the dialogue occurs between the regulatory authority and the industry, in the USA the discussion takes place mainly between different regulatory authorities. The exchange between the industry and the regulators is very limited in the USA (Interviewee I 2018).

5.6 Future Developments of ICO Regulation

According to Interviewee III (2018), the open dialogue of the FINMA and positive statements of political leaders on crypto assets clearly demonstrate the intention to maintain and further strengthen a prosperous market. The Swiss confederation has set up a blockchain/ICO task force to consider what steps are necessary to further promote Switzerland as a location for crypto activities (Interviewee II 2018). The task force consists of members of the Federal Office of Justice and the FINMA, and cooperates closely with the industry. The aim of this task force is furthermore to improve legal certainty, ensure the stability of the financial centre, and provide technology-neutral regulation. It will submit its report to the Federal Council by the end of 2018 (FDF 2018).

According to Interviewee I (2018), Gibraltar's DLT regulation is already attracting new businesses. Crypto companies such as Xapo, which manage Bitcoins worth approximately USD 10 billion for their customers, intend to carry out their future activities in Gibraltar. According to Gibraltar's commerce minister, Albert Isola, approximately 30 foreign companies are currently going through the DLT provider registration process in Gibraltar (Faridi 2018). HM Government of Gibraltar plans further draft regulations for the promotion, sale, and distribution of tokens. It expects to finalise these regulations by the end of 2018 (Gibraltar Finance 2018). Nevertheless, according to Interviewee III (2018), Gibraltar could lose its importance for blockchain-related businesses if larger countries create a higher level of legal certainty.

Singapore benefits from the reluctance of other Asian countries to introduce regulations for digital tokens. As a result of China's ban on cryptocurrencies and South Korea's cautiousness in this regard, Singapore has become one of the top destinations for Asian crypto funds and token-issuing companies. More than 10 of the 100 most successful ICOs are currently based in Singapore (Keshian 2018). The MAS continues to monitor the market (2017b). In May 2018, the regulatory authority warned eight digital token exchanges in Singapore that they were trading digital tokens representing securities or futures contracts without MAS approval. With this step the MAS was demonstrating its desire to professionalise the ICO market in Singapore (MAS 2018a). Furthermore, the MAS has recently entered into several international collaborations to support the development of fintech ecosystems – with the Bank of Lithuania, the Polish Financial Supervision Authority, the State Bank of Vietnam, and the Autoriti Monetari of Brunei. These agreements allow the regulatory authorities to examine joint innovation projects and promote the exchange of information on new market trends (MAS 2018b).

The British regulatory authority has also established such an enhanced cooperation agreement. The FCA has strengthened its collaboration with the Australian regulator. The agreement focuses on mutual access to the regulatory sandbox environments and enables

the exchange of innovative financial services companies between the respective innovation centres (FCA 2018b). How the UK's attractiveness for ICOs will develop in the future also depends on the outcome of the Brexit negotiations. While Interviewee I (2018) believes that ICOs in the UK will benefit from a more liberal financial centre, Interviewee II (2018) regards the access to European investors on the mainland as being at risk. Nevertheless, according to Interviewee III (2018), this will not play a crucial and decisive role, as everything in the world of digital tokens is global.

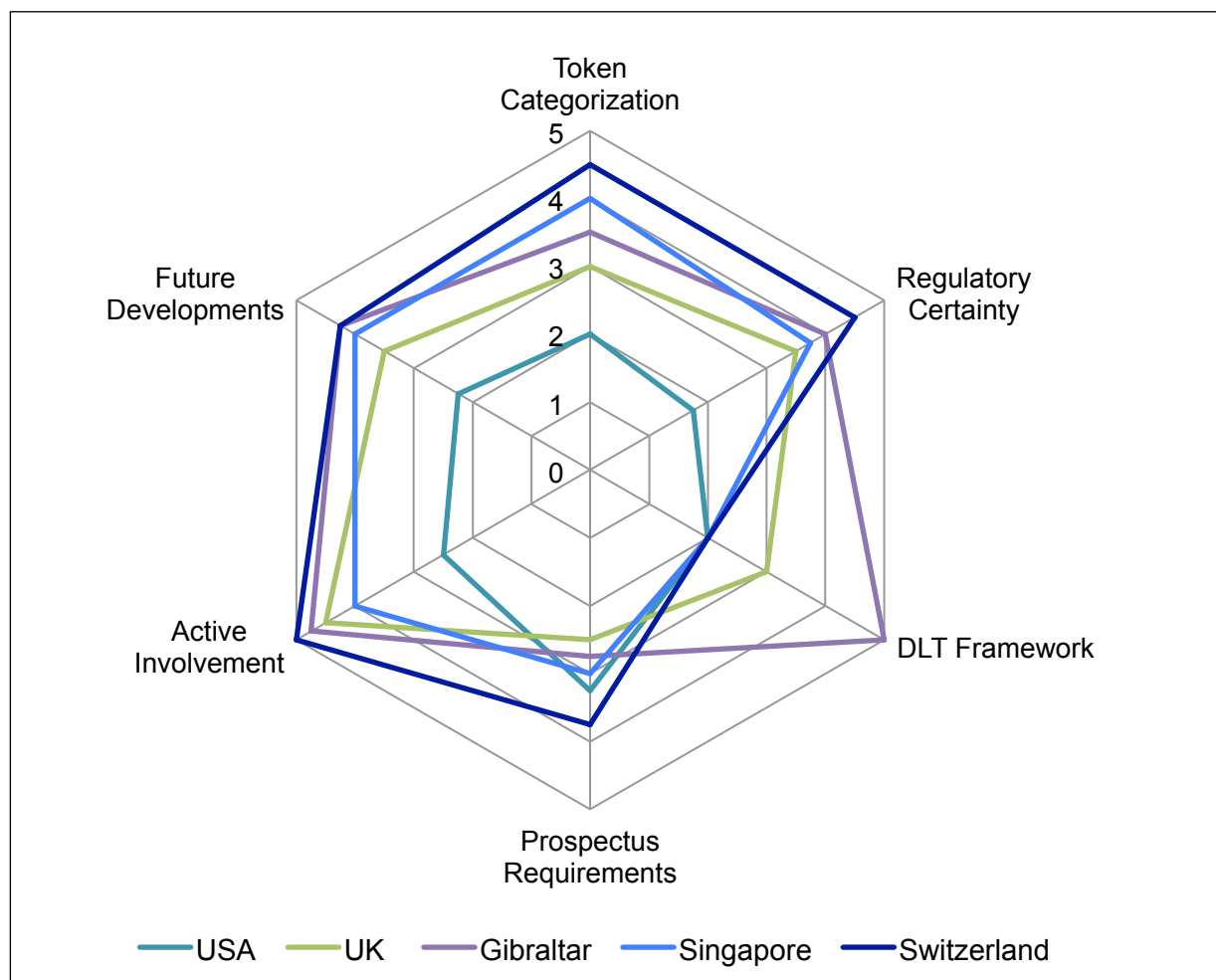
According to CNBC (2018), the SEC has already subpoenaed 80 cryptocurrency companies in 2018. SEC investigations together, with a high level of regulatory uncertainty, have driven many crypto activities overseas (CNBC 2018). In addition, according to Interviewee III (2018), almost 95% of current ICOs exclude American investors, as this involves too many legal risks. Furthermore, Interviewee II (2018) assumes that the USA will continue to lose importance as an ICO hub.

5.7 Rating of the Regulatory Frameworks

This section rates the attractiveness of the countries analysed in relation to the six previously investigated categories. The rating is illustrated using a spider chart. The evaluations of the interviews with experts reveal that in practice there is no unified opinion on how an ICO-friendly and attractive regulation should be designed. While Interviewee III (2018) does not find DLT-specific regulation particularly attractive, Interviewee I and II (2018) consider such regulation to be a major advantage. Since, according to Interviewee II (2018), the example of a DLT-specific regulation in Gibraltar goes around the world as positive news such regulation is interpreted as a positive configuration of regulation in this thesis. Experts also disagree on the level of detail regarding the categorisation of tokens. Interviewee I (2018) believes that a highly detailed regulation is most beneficial for ICO companies. Interviewee II & III (2018) also agree that a differentiation of the tokens is necessary, but they also see disadvantages in a too detailed classification. In this thesis, a detailed categorization of tokens is perceived as an attractive environment for token issuers. The reason for this is that in future the correct representation of ownership rights will be particularly relevant, as DLT offers potential for many other areas in addition to finance. The experts mainly agree on the remaining criteria. While all the experts see the prospectus requirements as an important part of regulation, according to Interviewee II (2018), it is not a decisive criterion. All experts consider an open exchange and a high level of legal certainty as desirable. There is also agreement on future developments. The clarification of all legal ambiguities and the dismantling of barriers is an important step forward in the development of an ICO-friendly regulation.

Figure 5: Rating of the Regulatory Frameworks

This figure presents a graphical rating of the international comparison based on the six criteria. The coloured lines indicate the characteristics in the five analysed countries. Higher values represent more favourable conditions with regard to a particular criterion.



The assigned points in Figure 5 represent the attractiveness of the countries for token-issuing companies from the author's perspective based on the interviews with experts. Switzerland's regulatory approach is perceived as beneficial for ICOs, in particular thanks to efforts through active involvement and the provision of regulatory certainty. Gibraltar is also highly beneficial to conduct ICOs, mainly due to DLT-specific legislation. Further, Singapore is recognized as an attractive location thanks to a moderate but clear classification of tokens and several exemptions for the prospectus requirements. The UK is fairly attractive due to the open dialogue, but based on the high prospectus requirements and vague classification of tokens it does not offer an equally favourable regulatory environment as the countries mentioned above. The USA shows no signs of an attractive environment for ICOs. In particular, the high level of regulatory uncertainty and the lack of exchange between the authorities and industry make the country unattractive for token-issuing companies. Nevertheless, most ICOs are still conducted in the USA.

6 Conclusion

Based on the analysed regulation, the international comparison and the interviews with experts, this chapter summarizes the regulatory positions of the countries presented. Finally, the most important regulatory points that must be considered for a token-issuing company in Switzerland are listed and described in chapter 6.2.

6.1 Summary

The issuance of digital tokens based on a DLT called blockchain simplifies and democratizes the raising of capital for companies, as almost everyone can participate as an investor via the internet. The process of funding capital without intermediaries offers cost advantages and allows a faster execution. However, ICOs are not always a suitable way of raising capital for every kind of business. Large companies might still need more sophisticated and complex contracts, depending on their requirements. Blockchain also carries risks concerning cyber security for both issuers and investors, which must always be taken into account. While the blockchain itself is extremely forgery-proof, the most vulnerable points for criminal activities lie in the input and output interfaces.

Nevertheless, the number of ICOs conducted and the amounts of money collected per ICO and in total have increased significantly since mid-2016. This trend has also been confirmed in the first quarter of 2018. The ideology of a decentralised world, the coverage of this topic in the mass media, investors' fears of missing-out an excessive return, and the lack of regulatory frameworks have been identified as the main reasons for this ICO boom. While uncertain or non-existent regulation is partly responsible for the boom, clear regulatory treatment of tokens will be crucial for the success of token-issuing companies in the future. Unregulated market environments will no longer be preferred. Instead, regulated markets will be attractive for all serious ICO projects in the future. A clear regulation of tokens could reduce the number of scams and professionalise the market. This can lead to more investors investing in the market and to an increase in the number of institutional investors. If more funds are available, the start-up success rate and the speed of innovation increase.

In addition to a high level of legal certainty, ICO-friendly regulation and an open and active discussion between the regulator and the industry are important criteria for promoting this method of financing. Around the globe, governments are experimenting with different approaches to deal with this phenomenon in the hope of realising the potential of blockchain technology, without ignoring the high risks of token sales. The international comparison of the countries examined reveals different approaches regarding the ICO phenomenon. The USA generally classifies all tokens as securities. With this restrictive approach the US regulators try to counteract the boom. US regulators are reducing the attractiveness of the largest ICO location due the different treatment of tokens by the various regulatory

authorities. The SEC classifies tokens as securities, the CFTC as commodities, and the FinCEN as money. Although the USA is the largest ICO nation thanks to its risk-taking and innovation-promoting investors, it is nevertheless becoming decreasingly important in terms of token issuance. The criminal prosecution of ICO projects has led to a substantial migration to ICO-friendly countries in Europe and Asia. Singapore, as an ICO hub in Asia, additionally benefits from a ban on ICOs in China. While the high AML/CFT requirements for all types of tokens can be perceived as a market barrier, this nevertheless makes the country unfavourable for fraud and attracts more trustworthy projects. The MAS believes that regulation must not front-run innovation, since an early introduction of regulation can kill innovation and hinder the development of sophisticated technologies. At the same time, the MAS is monitoring the development and impact of digital token offerings in Singapore and other parts of the world. Singapore has also established many international collaborations with regulators from other countries to support the development of an ICO-friendly ecosystem. Such international cooperation promotes appropriate regulation and can also be observed in other countries. The regulatory body of the UK has recently started cooperating with Australia to give domestic companies access to the innovation platform of Australia. The FCA, as a promoter of financial technologies, has not yet made clear and unambiguous statements on the regulatory handling of ICOs. The regulator has stated that whether or not an ICO is within the regulatory framework of the FCA can only be decided on the basis of a case-by-case analysis. How the exit from the EU will affect the regulation of ICOs in the UK is still uncertain. The UK could lose access to investors on the European mainland, but as ICOs take place digitally, the UK could become more attractive as a location for ICOs thanks to a more liberal legislation. The FCA has decided to monitor DLT, but the British regulator concluded in a feedback statement that the existing laws are currently sufficient to cover DLT. The regulatory authority in the British overseas territory of Gibraltar did, however, create a DLT-specific regulation. This improved Gibraltar's attractive position regarding ICOs and has already attracted new businesses. The government of Gibraltar plans further draft regulations for the promotion, sale and distribution of tokens. It expects to finalise these regulations by the end of 2018.

The international comparison carried out in this thesis reveals that Switzerland is also a highly attractive location for ICOs. The regulatory and tax environment is open and friendly for new market participants, and the authorities have a generally positive attitude towards blockchain technology. Clarity on how to deal with tokens due to the publication of ICO guidelines and the possibility of receiving feedback from the FINMA provides a high degree of legal certainty. Active dialogue, openness and a well-informed regulatory authority and employees constitute great strengths of the Swiss ICO regulation. As a result of the open dialogue and exchange, a network effect is created that further promotes and accelerates innovation. However, the most serious problem for token-issuing companies is to open a

bank account and thus ensure access to the financial market. By setting up a task force to identify and improve critical points, the efforts of the Swiss government to remain attractive as a crypto and ICO nation can clearly be seen. Moreover, the financial and political environment in Switzerland is both stable and decentralised, and decentralisation is a fundamental underlying principle of blockchain. However, it is not only regulation that is decisive for the attractiveness of a location. Many other aspects such as access to investors, the risk appetite of investors and the data protection requirements are also relevant factors.

6.2 Practical Implications / Regulatory Guidelines for Switzerland

The following guidelines are naturally incomplete and do not replace thorough legal analysis and advice in a real project. They do not represent a step-by-step procedure that could be applied in practice, but rather a listing of important regulatory points identified in the interviews with the experts. This list contains partial repetitions of the previous text with the intention that these guidelines could also be used separately from this thesis.

Table 9: Regulatory Guidelines for an ICO in Switzerland

The guidelines list the most important regulatory points and topic, together with a short description. The mentioned elements should always be considered for the issuance of an ICO in Switzerland.

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|--|
| Draft of a white paper & prospectus requirements |
| <p>The white paper not only presents the project to potential investors, but also to the regulatory authorities. In Switzerland, white papers can basically be drafted form-free. However, it must be remembered that the issue of tokens that are similar to shares or bonds may also lead to prospectus requirements under the Swiss Code of Obligations. The legal interpretation of the prospectus requirements under the new FinSA law, which is expected to come into effect in 2019, must also be observed, as further types of tokens may be subject to the prospectus requirement. The new law will provide a detailed regulation on the offer of financial instruments and impose various documentation, behavioural and information obligations on the issuance and sale of financial instruments.</p> |
| Legal form for an ICO launch |
| <p>The execution of an ICO is not bound to a specific corporate legal form. However, ICOs are often set up as a foundation. The legal form of the foundation offers a certain advantage, particularly through the independence of the operation from the ownership. In addition, foundations can also offer tax advantages. However, foundations also have certain restrictions on the distribution of funds, and it might therefore be more suitable to use a different form of company in some cases. The limited liability company has a greater advantage compared to the public limited company due to the lower minimum capital requirement. However, the shareholders of a public limited company are not publicly known, which is not the case with a limited liability company registered in the commercial register.</p> |

FINMA enquiries regarding the regulatory framework for an ICO

Before the launch of an ICO, it is especially advisable to request a No-Enforcement-Action letter from the FINMA to guarantee that any emission is in compliance with the relevant Swiss regulations. Minimum information requirements for ICO enquiries include general information, a description of the project, details about the tokens issue and information about the transfer and secondary market. Based on this information, the FINMA categorises the ICO and decides on the applicable laws. It must be taken into consideration that a request to the FINMA is associated with certain costs and that it can take up to several months until a response is received. Due to the high workload of the FINMA caused by DLT- and ICO-specific enquiries, it is important to calculate sufficient time for a FINMA clarification. After receiving FINMA's feedback, the white paper may need to be adjusted.

Token categorisation of the FINMA & securities regulation

The FINMA classifies the tokens of ICO projects as follows:

Payment Token – Tokens that are developed as a means of payment, are not functionally comparable with securities and are therefore not treated as securities by the FINMA.

Utility Token – Similar to payment tokens, utility tokens are not classified as securities, if their sole intention is to provide digital access rights to an application or service and if the utility tokens can actually already be used in this way at the time of issue. However, if an investment purpose exists at the time of issue, the FINMA will treat utility tokens as securities.

Asset Token – Asset tokens are treated as securities by the FINMA. Asset tokens are securities if they represent an uncertified security and if the tokens are standardised and suitable for mass trading. An asset token also qualifies as a security if it represents a derivative financial instrument, which means that the value of the transferred claim depends on an underlying. In the case where the FINMA regards tokens as securities, these tokens are subject to securities regulation.

Pre-financing and pre-sale of tokens – If the token does not yet exist but the claims are already tradable, the FINMA considers any types of tokens as securities.

Hybrid tokens – These tokens represent more than one type of token and must therefore comply with regulations of the types represented. For example, a hybrid token can be both a security and a means of payment and therefore comply with securities regulation and AML/KYC requirements.

Triggering the need for a banking or securities dealer licence

If the participants in an ICO receive their invested capital back in return by handing over the tokens to the issuer, there is usually a public custody account in accordance with the Banking Act, and thus the obligation to obtain a banking licence. For liabilities with the characteristics of debt capital – such as promises to return funds with a guaranteed return – the funds are regarded as deposits and an authorisation requirement exists under the Banking Act if no exceptions apply. Accepting public deposits with a value of less than CHF 1 million is not considered as commercial and will therefore not be subject to authorisation.

Regulation of collective investment schemes

FINMA's ICO guidelines confirm that the requirements of collective investment schemes to protect investors and ensure the proper functioning of the market for investment fund products will only be applied if ICO funds are managed by a third party.

Opening a bank account

Opening a bank account and thus ensuring access to the financial market infrastructure is one of the biggest challenges when it comes to ICOs in Switzerland. This is partly the result of unanswered questions about the origin of the funds. Swiss blockchain and crypto companies are currently not accepted to open accounts with banks in Switzerland. Worse still, existing accounts are increasingly being closed when banks detect a connection to blockchain or DLT. As a result, many Swiss companies are moving to Liechtenstein or even further abroad to open business accounts and gain access to the financial market. Without a bank account, it is almost impossible to carry out operational activities.

Anti-money laundering & know your customer requirements

If a token of an ICO can be used as a payment instrument, compliance with AML and KYC requirements must be met. The anti-money laundering regulation is generally not applicable to utility tokens as long as their purpose is to grant access rights to a non-financial application of blockchain technology. The AML and KYC regulations do not apply to asset tokens either. However, it is highly recommended to comply with the AML and KYC regulations for all forms of ICO, regardless of the token type issued. This massively increases the possibility that a bank will accept the funds from cryptographic-activity in the future and will not cancel existing accounts.

Cross-border regulation

The structure of the ICO and the markets to which tokens are offered may also influence cross-border financial regulations. The laws of the countries to which the tokens are offered must be observed and considered just as closely as those in Switzerland. The large majority of all ICO projects conclude to exclude investors from the USA, as this would pose an excessive number of legal risks.

Regulated exchange platform

Securing liquidity is essential for maintaining the value of a newly created token. The tradability of a token can be decisive for the value of the token, depending on its intended use. It is therefore important that the tokens can be traded on an exchange that has placed itself under the supervision of an SRO, or is directly supervised by the FINMA.

Taxation

Although this thesis has ignored the international analysis of taxation, the consideration of taxes is an issue that must not be ignored. The Swiss tax authorities have not yet issued any ICO-specific guidelines for token issuers. Proceeds from a token sale event are generally regarded as taxable income within the meaning of corporate tax. It is therefore advisable to consider the corporate tax aspects in advance in order to reduce the tax burden. The tax rate depends on the particular canton of domicile.

Asset tokens can constitute financial assets that grant the holder a financial claim against the issuer. Depending on their nature, these tokens can be equity certificates, debt instruments, or derivative instruments in the form of a contractual agreement between the emitter and the owner of an underlying. The effects on the taxation of the issuer and the holder of a token are based on the tax rules applicable to the financial instrument with which the token is most closely comparable. In this way, an equity-like token would be equivalent to the tax treatment of an equity instrument for both the issuer and the token owner.

Companies issuing utility tokens also realise income from ICO revenues, which are usually taxable. However, due to its obligation to provide a service to the owners of tokens, the issuer may set up a provision for the expected future expenditure for the development or provision of this service, thus reducing its tax burden.

Therefore, the difficulty of an ICO project also lies in the different tax consequences that have to be taken into account depending on the token design and cross-border issues. An accurate Swiss tax analysis is therefore essential before starting an ICO investment or blockchain-related project. The possibility of tax rulings in Switzerland allows an individual clarification of the tax treatment of an ICO and its tokens, and should always be considered.

Value-added tax

If a token is not considered as a digital means of payment, the Swiss VAT may be payable if no other exemption applies. Depending on the specificity of an ICO, an issued token can be regarded as a service and therefore subject to Swiss VAT. If an ICO creates a right to a future service or delivery of a product, the corresponding VAT may be payable on the sale of the token to Swiss investors. Depending on the type of token issued, the token may also be exempt from Swiss VAT. If the token qualifies as a security, the output of the token may be subject to a VAT exemption. Regardless of the type of token, it is essential to consult a tax expert with regards to the issuance of tokens.

Social insurance & withholding tax

In connection with the issuance of tokens to employees, there is also a risk for the issuer in terms of the aspects of withholding tax and social security contributions on employees' working income. Employees resident in Switzerland who do not have a settlement permit and employees resident abroad are subject to withholding tax on earned income. The issuer of tokens is liable for withholding tax and social security contributions, and must deduct these at the time of payment and deliver them to the cantonal tax administration. If a token makes a periodic payment to the holder, the question also arises as to whether the withholding tax of 35% would have to be paid on these payments. A tax expert should always provide advice on the issuance of tokens to employees.

Request professional legal advice

Although ICOs can be carried out in Switzerland without intermediaries of any kind in Switzerland, it is extremely useful to request legal advice from an expert. In order to meet all regulatory requirements, potential token issuers should always consult a professional legal adviser in order to finally analyse the applicable framework conditions, as the FINMA can retrospectively examine and supervise ICOs that have already been carried out.

References

- Ali, R. Barrdear, J. and Clews, R. (2014): The economics of digital currencies. Quarterly Bulletin 2014 Q3, Volume 54 No. 3. Bank of England, pp. 276 -278. Available at <<https://www.bankofengland.co.uk/-/media/boe/files/quarterly-bulletin/2014/quarterly-bulletin-2014-q3.pdf>> [Accessed 20 May 2018].
- Alois, JD. (2018): With Regulators Clamping Down on ICOs in the US. Should Issuers Consider Off-Shoring Their Crowdsales? Available at <<https://www.crowdfundinsider.com/2018/02/128982-regulators-clamping-icos-us-issuers-consider-off-shoring-crowdsales/>> [Accessed 27 April 2018].
- Aravindan, A. and Geddie, J. (2018): Singapore explores rules to protect investors in cryptocurrencies. Available at <<https://www.reuters.com/article/us-singapore-cryptocurrency/singapore-explores-rules-to-protect-investors-in-cryptocurrencies-idUSKCN1GD3OL>> [Accessed 15 April 2018].
- Bank of England BoE (n.d.): Fintech. Available at <<https://www.bankofengland.co.uk/research/fintech>> [Accessed 28 May 2018].
- Bank of England BoE (2018): Digital Currencies. Available at <<https://www.bankofengland.co.uk/research/digital-currencies>> [Accessed 28 May 2018].
- Barclay, S. (2017): Cryptocurrencies: Regulation: Written question – 110111. Available at <<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-10-27/110111>> [Accessed 29 May 2018].
- Becker, B. and McAvoy, D. (2017): Initial Coin Offerings: A look to 2018. Available at <<https://www.nixonpeabody.com/-/media/Files/Alerts/December-2017/initial-coin-offerings-ICOs.ashx>> [Accessed 29 April 2018].
- Becker, V. (2018): Crypto Valley Association Announces Switzerland's First ICO Code of Conduct. Available at <<https://cryptovalley.swiss/crypto-valley-association-announces-switzerlands-first-ico-code-of-conduct/>> [Accessed 15 May 2018].
- Bitcoin Exchange Guide (2018): ICO Stats – Track & Monitor Initial Coin Offering Cryptocurrencies? Available at <<https://bitcoinexchangeguide.com/ico-stats/>> [Accessed 21 April 2018].
- Blockchain Taskforce (2018): Stärkung des Blockchain-Standorts Schweiz – White Paper der Blockchain Taskforce. Available at <<https://blockchaintaskforce.ch/>> [Accessed 15 May 2018].
- Carney, M. (2018): The Future of Money. Speech given by Mark Carney, Governor of the Bank of England. Available at <<https://www.bankofengland.co.uk/-/media/boe/files/speech/2018/the-future-of-money-speech-by-mark-carney.pdf>> [Accessed 21 May 2018].
- Clayton, J. (2017): SEC Chairman: Statement on Cryptocurrencies and Initial Coin Offerings. Available at <<https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11>> [Accessed 24 April 2018].

- Clayton, J. (2018): SEC Chairman: Chairman's Testimony on Virtual Currencies: The Roles of the SEC and CFTC. Available at <<https://www.sec.gov/news/testimony/testimony-virtual-currencies-oversight-role-us-securities-and-exchange-commission>> [Accessed 26 April 2018].
- Clifford Change (2017): Initial Coin Offerings – Asking the right regulatory questions. Available at <https://www.cliffordchance.com/briefings/2018/05/initial_coin_offeringsaskingtherigh.html> [Accessed 11 April 2018].
- Coin schedule (n.d. a): Coin schedule - The original ICO tracker with upcoming and on-going Initial Coin Offerings, Events Calendar and more. Available at <<https://www.coinschedule.com/about.html>> [Accessed 29 April 2018].
- Coin schedule (n.d b): Cryptocurrency ICO Stats. Available at <<https://www.coinschedule.com/stats.html>> [Accessed 02 May 2018].
- Commodity Futures Trading Commission CFTC (2015): Order Instituting Proceedings Pursuant to Section 6(c) and 6(d) of the Commodity Exchange Act. Making Findings and Imposing Remedial Sanctions. Available at <<https://www.cftc.gov/sites/default/files/idc/groups/public/@Irenforcementactions/documents/legalpleading/enfcoinfliprorder09172015.pdf>> [Accessed 25 April 2018].
- Commodity Futures Trading Commission CFTC (2017): A CFTC Primer on Virtual Currencies. Available at <https://www.cftc.gov/sites/default/files/idc/groups/public/%40customerprotection/documents/file/labcftc_primercurrencies100417.pdf> [Accessed 23 April 2018].
- Crypto Working Group CWG (n.d.): What is the CWG? Available at <<https://www.cryptoworkinggroup.com/about/>> [Accessed 04 June 2018].
- Emtseva, S. S. and Morozov, N. V. (2018), Comparative Analysis of Legal Regulation of ICO in Selected Countries in III Network AML/CFT Institute International Scientific and Research Conference Fintech and Regtech: Possibilities, Threats and Risks of Financial Technologies, KnE Social Sciences, pp 77–84. Available at: <<https://www.knepublishing.com/index.php/Kne-Social/article/view/1527/3621>> [Accessed 19 April 2018].
- Ernest and Young EY (2017): EY research: initial coin offerings (ICOs) – December 2017. Available at <[http://www.ey.com/Publication/vwLUAssets/ey-research-initial-coin-offerings-icos/\\$File/ey-research-initial-coin-offerings-icos.pdf](http://www.ey.com/Publication/vwLUAssets/ey-research-initial-coin-offerings-icos/$File/ey-research-initial-coin-offerings-icos.pdf)> [Accessed 04 May 2018].
- Faridi, O. (2018): Xapo Among 30 Cryptocurrency Firms Expanding to Crypto-Friendly Gibraltar. Available at <<https://www.cryptoglobe.com/latest/2018/05/xapo-among-30-cryptocurrency-firms-expanding-to-crypto-friendly-gibraltar/>> [Accessed 01 June 2018].
- Federal Department of Finance FDF (2018): Blockchain/ICO working group established. Available at <<https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-69539.html>> [Accessed 15 May 2018].

Financial Conduct Authority FCA (2013): Requirement for a prospectus and exemptions. Available at <<https://www.handbook.fca.org.uk/handbook/PR/1/2.html?date=2018-01-01>> [Accessed 23 May 2018].

Financial Conduct Authority FCA (2014): Policy Statement. The FCA's regulatory approach to crowdfunding over the internet, and the promotion of non-readily realisable securities by other media. Feedback to CP13/13 and final rules. Available at <<https://www.fca.org.uk/publication/policy/ps14-04.pdf>> [Accessed 20 May 2018].

Financial Conduct Authority FCA (2015): Regulatory sandbox. Available at <<https://www.fca.org.uk/firms/innovate-innovation-hub/regulatory-sandbox>> [Accessed 20 May 2016].

Financial Conduct Authority FCA (2016): About the FCA. Available at <<https://www.fca.org.uk/about/the-fca>> [Accessed 21 May 2018].

Financial Conduct Authority FCA (2017a): Initial Coin Offerings. Available at <<https://www.fca.org.uk/news/statements/initial-coin-offerings>> [Accessed 18 May 2018].

Financial Conduct Authority FCA (2017b): Discussion Paper on distributed ledger technology. Available at <<https://www.fca.org.uk/publication/discussion/dp17-03.pdf>> [Accessed 21 May 2018].

Financial Conduct Authority FCA (2017c): FCA publishes Feedback Statement on Distributed Ledger Technology. Available at <<https://www.fca.org.uk/publication/feedback/fs17-04.pdf>> [Accessed 22 May 2018].

Financial Conduct Authority FCA (2018a): Cryptocurrency derivatives. Available at <<https://www.fca.org.uk/news/statements/cryptocurrency-derivatives>> [Accessed 30 May 2018].

Financial Conduct Authority FCA (2018b): British and Australian regulators strengthen cooperation on Fintech through Enhanced Cooperation Agreement. Available at <<https://www.fca.org.uk/news/press-releases/british-and-australian-regulators-strengthen-cooperation-fintech-through-enhanced-cooperation>> [Accessed 20 April 2018].

Financial Crimes Enforcement Network FinCEN (n.d.): Mission. Available at <<https://www.fincen.gov/about/mission>> [Accessed 30 April 2018].

Financial Services Committee (2018): Hearing entitled "Examining the Cryptocurrencies and ICO Markets". Available at <<https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=403178>> [Accessed 21 May 2018].

Financial Stability Board FSB (2018): FSB Chair's Letter to G20 Ministers and Governors March 2018. Available at <<http://www.fsb.org/wp-content/uploads/P180318.pdf>> [Accessed 06 May 2018].

Fintechnews (2018): Schweizer Krypto-Firma holt 36 Millionen Dollar in einer Minute. Available at <<https://www.finews.ch/news/banken/30158-ico-singularity-net-token-ben-goertzel-bicoin-suisse-hanson-robotics>> [Accessed 19 April 2018].

- Fintechnews Singapore (2018): Fintech ICOs In Singapore – a short Overview. Available at <<http://fintechnews.sg/18006/blockchain/fintech-ico-in-singapore-overview/>> [Accessed 20 May 2018].
- Gibraltar Financial Services Commission GFSC (n.d. a): About Us. Available at <<http://www.fsc.gi/fsc/regops>> [Accessed 24 May 2018].
- Gibraltar Financial Services Commission GFSC (n.d. b): Apply for a licence. Prospectus. Available at <<http://www.fsc.gi/FSC/Prospectus>> [Accessed 30 May 2018].
- Gibraltar Financial Services Commission GFSC (2017a): Statement on Initial Coin Offerings. Available at <<http://www.fsc.gi/news/statement-on-initial-coin-offerings-250>> [Accessed 24 May 2018].
- Gibraltar Financial Service Commission GFSC (2017b): Distributed Ledger Technology Regulatory Framework (DLT framework). Available at <<http://www.gfsc.gi/dlt>> [Accessed 25 May 2018].
- Gibraltar Finance (2017): Proposals for a DLT Regulatory Framework. Available at <http://www.gibraltarfinance.gi/downloads/20170508-dlt-consultation-published-version.pdf?dc_%3D1494312876> [Accessed 25 May 2018].
- Gibraltar Finance (2018): Token Regulation. Proposals for the regulation of token sales, secondary token market platforms, and investment services relating to tokens. Available at <<http://gibraltarfinance.gi/20180309-token-regulation---policy-document-v2.1-final.pdf>> [Accessed 25 May 2018].
- Global Financial Centres Index (2018): The Global Financial Centres Index 23. Available at <<http://www.longfinance.net/Publications/GFCI23.pdf>> [Accessed 21 May 2018].
- Goldsmith, C. (2018): The FCA will publish its cryptocurrency review later this year. Available at <<http://www.cityam.com/283629/fca-publish-its-cryptocurrency-review-later-year>> [Accessed 30 May 2018]
- Group of 20 G20 (2018): Communiqué of the First G20 Meeting of Finance Ministers and Central Bank Governors of 2018. Available at <<https://www.g20.org/en/news/communique-first-g20-meeting-finance-ministers-and-central-bank-governors-2018>> [Accessed 06 May 2018].
- Hacker, P. and Thomale, C. (2017): Crypto-Securities Regulation: ICOs, Token Sales and Cryptocurrencies under EU Financial Law. Available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=307582> [Accessed 14 April 2018].
- HM Treasury (2018a): Fintech Sector Strategy launched at International Fintech Conference. Available at <<https://www.gov.uk/government/news/fintech-sector-strategy-launched-at-international-fintech-conference>> [Accessed 23 May 2018].
- HM Treasury (2018b): Fintech Sector Strategy. Policy Paper. Available at <<https://www.gov.uk/government/publications/fintech-sector-strategy>> [Accessed 23 May 2018].

- Hassans Fintech Team (2018): DLT Regulation in Gibraltar – The Nine Principals. Available at <<http://www.gibraltarlaw.com/dlt-regulation-gibraltar/>> [Accessed 25 May 2018].
- Hody, P. (2018): Anwaltskanzleien: Die Strippenzieher im ICO-Boom. Available at <<https://www.finews.ch/news/finanzplatz/30932-ico-token-anwaltskanzleien-bezahlung-startup>> [Accessed 23 April 2018].
- ICO Stats (n.d. a): ICO Performance Tracker – ROI since ICO. Available at: <<https://icostats.com/roi-since-ico>> [Accessed 05 May 2018].
- ICO Stats (n.d. b): ICO Performance Traker – ROI over time. Available at <<https://icostats.com/roi-over-time>> [Accessed 05 May 2018].
- ICO Watch List (n.d. a): About the ICO Watch List. Available at <<https://icowatchlist.com/about>> [Accessed 04 May 2018].
- ICO Watch List (n.d. b): ICO Statistics. Available at <<https://icowatchlist.com/statistics/>> [Accessed 05 May 2018].
- Investopedia (n.d): Digital Currency Exchanger – DCE. Available at <<https://www.investopedia.com/terms/d/digital-currency-exchanger-dce.asp>> [Accessed 14 April 2018].
- Iurina, A. (2017): Initial Coin Offering in Gibraltar – Case Study: Calidumcoin. Karelia University of applied science. Available at <<https://www.theseus.fi/handle/10024/138654>> [Accessed 11 April 2018].
- Iyer, G. (2017): Cointelegraph. Cryptocurrency Market Cap Can Exceed \$200 Bln by the End of 2017. Available at ><https://cointelegraph.com/news/cryptocurrency-market-cap-can-exceed-200-bln-by-the-end-of-2017>> [Accessed 05 April 2018].
- Kaal, W. A. (2018): Initial Coin Offerings: The top 25 jurisdictions and their comparative regulatory responses. Available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3117224> [Accessed at 04 April 2018].
- Karavaev, I. (2018): The Current State of ICO Markets (Initial Coin Offerings and Token Sale). Available at <<https://www.newsbtc.com/2018/04/04/current-state-ico-market-initial-coin-offering-token-sale/>> [Accessed 05 April 2018].
- Keshian, C. (2018): Changes must be made if Singapore is to stay ahead of the curve in cryptocurrencies. Available at <<https://sbr.com.sg/financial-services/commentary/changes-must-be-made-if-singapore-stay-ahead-curve-in-cryptocurrencies>> [Accessed 02 June 2018]
- Khan, I. (2017): Blockgeeks. What is Blockchain Technology? A Step-by-Step Guide For Beginners. An in-depth guide by BlockGeeks. Available at <<https://blockgeeks.com/guides/what-is-blockchain-technology/>> [Accessed 03 April 2018].

- Kops, M. (2018): The current state of ICOs - A concise overview of ICO overall developments, regions, raised capital and the biggest projects. Available at <<https://maxkops.de/wp-content/uploads/2018/03/current-state-of-icos-1.pdf>> [Accessed 03 April 2018].
- KPMG International Cooperative (2018): The Pulse of Fintech Q4 2017. Global analysis of investment in fintech. Available at <https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2018/02/pulse_of_fintech_q4_2017.pdf> [Accessed 11 May 2018].
- Kvitkin, S. and Singh Mann, A. (2018): Cryptocurrency in Small Bytes: Regulation of Cryptocurrencies in the U.K. Crowell & Moring LLP. Available at <<https://www.crowell.com/NewsEvents/Alerts/Newsletters/all/Cryptocurrency-in-Small-Bytes-Regulation-of-Cryptocurrencies-in-the-UK>> [Accessed 21 May 2018]
- Larkin, K. (2018): How we regulate cryptocurrencies and ICOs is key to their success. South China Morning Post. URL: <http://www.scmp.com/business/companies/article/2136527/how-we-regulate-cryptocurrencies-and-icos-key-their-success> [Accessed 08 April 2018].
- Lempres, M. (2018): Written Testimony of Mike Lempres before the House Committee on Financial Services. Subcommittee on Capital Markets, Securities and Investment. Hearing on: "Examining the Cryptocurrencies and ICO Markets". Available at <<https://financialservices.house.gov/uploadedfiles/hhrg-115-ba16-wstate-mlempres-20180314.pdf>> [Accessed 20. May 2018].
- Leong, G. (2017): The good, the bad and the ugly side of Initial Coin Offerings. Available at <<https://www.straitstimes.com/business/companies-markets/the-good-the-bad-and-the-ugly-side-of-initial-coin-offerings>> [Accessed 04 June 2018].
- Liu, D. (2018): Cryptocurrency in APAC: Opportunity, Challenge, and Risk. Available at <<https://www.regulationasia.com/cryptocurrency-in-apac-opportunity-challenge-and-risk/>> [Accessed 30 May 2018].
- Maloney, D. (2018): Department of the Treasury. Letter to Senator Wyden. Available at <<https://coincenter.org/files/2018-03/fincen-ico-letter-march-2018-coin-center.pdf>> [Accessed 14 May 2018].
- MME (2018a): BCP Framework for Assessment of Crypto Tokens. Available at <https://www.mme.ch/de/magazin/bcp_framework_for_assessment_of_crypto_tokens/> [Accessed 05 May 2018].
- MME (2018b): FINMA publishes ICO Guidelines. Available at <https://www.mme.ch/en/magazine/magazine-detail/url_magazine/finma_publishes_ico_guidelines/> [Accessed 30 April].
- MME (2018c): Swiss Financial Regulator clears the Path for ICOs. Available at <https://www.mme.ch/de/magazin/swiss_financial_regulator_clears_the_path_for_icos/> [Accessed 01 May 2018].
- Monetary Authority of Singapore MAS (n.d. a): Overview. Available at <<http://www.mas.gov.sg/about-mas/overview.aspx>> [Accessed 19 May 2018].

Monetary Authority of Singapore MAS (n.d. b): Fintech Regulatory Sandbox. Available at <<http://www.mas.gov.sg/Singapore-Financial-Centre/Smart-Financial-Centre/FinTech-Regulatory-Sandbox.aspx>> [Accessed 19 May 2018].

Monetary Authority of Singapore MAS (n.d. c): Anti-Money Laundering / Countering the Financing of Terrorism. Available at <<http://www.mas.gov.sg/Regulations-and-Financial-Stability/Anti-Money-Laundering-Countering-The-Financing-Of-Terrorism-And-Targeted-Financial-Sanctions/Anti-Money-Laundering-and-Countering-the-Financing-of-Terrorism.aspx>> [Accessed 19 May 2018].

Monetary Authority of Singapore MAS (2006): Securities and Futures Act. Available at <<https://sso.agc.gov.sg/Act/SFA2001>> [Accessed 19 May 2018].

Monetary Authority of Singapore MAS (2015): Securities and Futures Act (CAP. 289) – Guidelines on good Drafting Practices for Prospectuses. Available at <<http://www.mas.gov.sg/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Funds-Management/Guidelines/2015/Guidelines-on-Good-Drafting-Practices-for-Prospectuses.aspx>> [Accessed 23 May 2018].

Monetary Authority of Singapore MAS (2017a): MAS clarifies regulatory position on the offer of digital tokens in Singapore. Available at <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-clarifies-regulatory-position-on-the-offer-of-digital-tokens-in-Singapore.aspx>> [Accessed 19 May 2018].

Monetary Authority of Singapore MAS (2017b): A Guide to digital Token Offerings <<http://www.mas.gov.sg/News-and-Publications/Monographs-and-Information-Papers/2017/Guidance-on-Digital-Token-Offerings.aspx>> [Accessed 19 May 2018].

Monetary Authority of Singapore MAS (2017c): Proposed Payment Services Bill – Consultation Paper - P021 – 2017. Available at <<http://www.mas.gov.sg/News-and-Publications/Consultation-Paper/2017/Consultation-Paper-on-Proposed-Payment-Services-Bill.aspx>> [Accessed 19 May 2018].

Monetary Authority of Singapore MAS (2018a): MAS warns Digital Token Exchanges and ICO Issuer. Available at <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2018/MAS-warns-Digital-Token-Exchanges-and-ICO-Issuer.aspx>> [Accessed 25 May 2018].

Monetary Authority of Singapore MAS (2018b): MAS and Bank of Lithuania Strengthen Cooperation in Fintech. Available at <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2018/MAS-and-Bank-of-Lithuania-Strengthen-Cooperation-in-Fintech.aspx>> [Accessed 02 June 2018].

Murphy (2018): UK crypto companies link up for self-regulation. Financial Times. Available at <<https://www.ft.com/content/d6db427c-10c1-11e8-940e-08320fc2a277>> [Accessed 28 May 2018].

Pierson, B. (2018): Virtual currencies are commodities, U.S. judge rules. Reuters. Available at <<https://www.reuters.com/article/us-usa-cftc-bitcoin/virtual-currencies-are-commodities-u-s-judge-rules-idUSKCN1GI32C>> [Accessed 02 May 2018].

- PwC Strategy& (2018): Initial Coin Offerings. A strategic perspective: Global and Switzerland. Available at <https://cryptovalley.swiss/wp-content/uploads/20171221_PwC-S-CVA-ICO-Report_December_final.pdf> [Accessed 17 May 2018].
- Rapoza, K. (2018): Is It too late to make your Fortune in Cryptocurrency ICOs? Forbes Magazine Online. Available at <<https://www.forbes.com/sites/kenrapoza/2018/02/08/is-it-too-late-to-make-your-fortune-in-cryptocurrency-icos/#421f068fa5f4>> [Accessed 27 April 2018].
- Robinson, R. (2018): The New Digital Wild West: Regulating the Explosion of Initial Coin Offerings. Working Paper No. 18-01. University of Denver Sturm College of Law. Available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3087541> [Accessed 05 April 2018].
- Satoshi Nakamoto. (2008): Bitcoin: A Peer-to-Peer Electronic Cash System. Available at <<https://bitcoin.org/bitcoin.pdf>> [Accessed 03 May 2018].
- Sherry, B. (2018): What Is An ICO? Available at <<https://www.investopedia.com/news/what-ico/>> [Accessed 14 April 2018].
- Smith, E. (2018): FCA launches 24 investigations into cryptocurrency firms. Available at <<http://citywire.co.uk/new-model-adviser/news/fca-launches-24-investigations-into-cryptocurrency-firms/a1123111>> [Accessed 28 May 2018].
- State Secretariat for International Finance SIF (2018): Blockchain/ICO working group established. Available at <<https://www.sif.admin.ch/sif/en/home/dokumentation/medienmitteilungen/medienmitteilungen.msg-id-69539.html>> [Accessed 02 May 2018].
- Swiss Federal Council (2016a): Börsengesetz, BEHG (SESTA). Available at <<https://www.admin.ch/opc/de/classified-compilation/19950081/index.html>> [Accessed 30 April 2018].
- Swiss Federal Council (2016b): Anti-Money Laundering Act, AMLA. Available at <<https://www.admin.ch/opc/en/classified-compilation/19970427/index.html>> [Accessed 29 April 2018].
- Swiss Federal Council (2016c): Bankengesetz, BankG. Available at <<https://www.admin.ch/opc/de/classified-compilation/19340083/index.html>> [Accessed 29 April 2018].
- Swiss Federal Council (2016d): Collective Investment Schemes Act, CISA. Available at <<https://www.admin.ch/opc/en/classified-compilation/20052154/index.html>> [Accessed 30 April 2018].
- Swiss Federal Council (2017a): Federal Council puts new fintech rules into force. Available at <<https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-67436.html>> [Accessed 27 April 2018].
- Swiss Federal Council (2017b): Financial Market Infrastructure Act, FMIA. Available at <<https://www.admin.ch/opc/en/classified-compilation/20141779/index.html>> [Accessed 30 April 2018].

- Swiss Financial Market Supervisory Authority FINMA (n.d.): Banking supervision. Available at <<https://www.finma.ch/en/supervision/banks-and-securities-dealers/>> [Accessed 28 April 2018].
- Swiss Financial Market Supervisory Authority FINMA (2017): FINMA trifft Abklärungen bei ICOs. Press Release. Available at <<https://www.finma.ch/de/news/2017/09/20170929-mm-ico/>> [Accessed 29 April 2018].
- Swiss Financial Market Supervisory Authority FINMA (2018a): FINMA publishes ICO guidelines. Press Release. Available at <<https://www.finma.ch/en/news/2018/02/20180216-mm-ico-wegleitung/>> [Accessed 29 April 2018].
- Swiss Financial Market Supervisory Authority FINMA (2018b): Guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs). Available at <<https://www.finma.ch/en/~media/finma/dokumente/dokumentcenter/myfinma/1bewilligung/fintech/wegleitung-ico.pdf?la=en>> [Accessed 29 April 2018].
- Swiss Financial Market Supervisory Authority FINMA (2018c): FINMA roundtable: presentation of the ICO guidelines. Available at <<https://www.finma.ch/en/authorisation/fintech/ico-roundtable/>> [Accessed 02 May 2018].
- Thomson Reuters (n.d.): Findlaw.com - What is the Howey Test? Available at <<https://consumer.findlaw.com/securities-law/what-is-the-howey-test.html>> [Accessed 03 May 2018].
- Trudex.io (2018): Cryptocurrency Regulation: Advantages and Disadvantages. Available at <<https://www.trudex.io/cryptocurrency-regulation-pros-cons/>> [Accessed 23 April 2018].
- Wöckener, K. Lösing, C. Diehl, T. and Kutzbach, A. (2017): Regulation of Initial Coin Offerings. Available at <<https://www.whitecase.com/publications/alert/regulation-initial-coin-offerings>> [Accessed 05 April 2018].
- World Economic Forum WEF (2015b): The Future of Fintech. A Paradigm Shift in Small Business Finance. Available at <http://www3.weforum.org/docs/IP/2015/FS/GAC15_The_Future_of_Fintech_Paradigm_Shift_Small_Business_Finance_report_2015.pdf> [Accessed 18 April 2018].
- U.S. Securities and Exchange Commission SEC (n.d. a): Initial Coin Offerings (ICOs). Available at <<https://www.sec.gov/ICO>> [Accessed 03 May 2018].
- U.S. Securities and Exchange Commission SEC (n.d. b): Registration under the Securities Act of 1933. Available at <<https://www.sec.gov/fast-answers/answersregis33htm.html>> [Accessed 24 April 2018].
- U.S. Securities and Exchange Commission SEC (2017): SEC Issues Investigative Report Concluding DAO Tokens, a Digital Asset, Were Securities. Available at <<https://www.sec.gov/news/press-release/2017-131>> [Accessed 03 May 2018].

Appendix A

Interviewee I: Junior Associate at a Consulting Company for Law, Taxes and Compliance

1. ICO gilt als neue und innovative Finanzierungsquelle für Start-ups. Wie schätzen Sie das Potenzial von Initial Coin Offerings ein?

Also ich glaube, das Potenzial ist grundsätzlich sehr, sehr gross, ich würde aber nicht sagen, dass es auf einen Schlag die herkömmlichen Finanzierungsformen verdrängen wird. Aber wahrscheinlich ist es schon so, dass es je länger je mehr den Raum einnimmt und momentan schon sehr wichtig ist. Ich glaube die grossen Vorteile liegen darin, dass sehr wenige regulatorische und gesetzliche Anforderungen zurzeit bestehen. Dies gilt zum Beispiel, wenn man einen Prospekt schreiben muss, dann muss man sich an sehr viele Auflagen halten – hingegen das Whitepaper ist absolut formfrei aufzusetzen. Dies ist sehr attraktiv für Start-ups und Unternehmen, die schnell an Kapital kommen wollen. Natürlich ist auch die grosse Reichweite ein sehr attraktiver Pluspunkt – es können nicht nur institutionelle Anleger und Anleger vor Ort erreicht werden, sondern wirklich die ganze Welt durchs Internet. Durchs Internet vernetzt kann jeder Bauer theoretisch investieren und das ist natürlich vollkommen neu. Das ist etwas das in einer globalen Welt extrem grosses Potenzial birgt. Die Kostenoptimierung ist auch sehr wichtig – die ganzen Banken und anderen Intermediären, die früher benötigt worden sind und immer noch für IPOs klassischerweise benötigt werden, braucht man eigentlich nicht mehr – vielleicht Anwälte um sich beraten zu lassen. Theoretisch ist es aber möglich, einen ICO ohne Intermediäre durchzuführen und somit kostet es viel, viel weniger. Des Weiteren ist es viel schneller – ich denke, einen ICOs kann man doch in wenigen Monaten durchführen, während einem komplexen IPO ein sehr langer Weg vorangeht. Dies ist natürlich auch etwas, dass die Welt verändern wird oder auch schon bereits verändert hat. Dabei muss man natürlich auch bedenken, dass es nicht für jede Art von Geschäft möglich ist oder auch nicht wünschenswert ist, da wahrscheinlich ein sehr grosses Unternehmen möglicherweise etwas mehr Seriosität verlangt und etwas komplexere Vertragswerke benötigt und dies nicht so einfach in einem ICO durchführen kann. Wichtig ist zudem die Trust-Machine – wir sagen immer ein ICO ist eine Form einer Trust-Machine - der Grundgedanke gerade beim Beispiel der Ethereum Foundaton war es, die grosse Intermediäre, wie Banken als Leading Managers eliminieren wollte und dass quasi das Geld, wie auch die Managing Funktion an und für sich verteilt ist auf die Leute, die einen ICO etablieren. Ich glaube, dies ist der Kernpunkt weswegen ICOs für viele auch schon rein von der Idee her, so attraktiv sind.

2. Wie weit können ICOs klassische Formen der Finanzierung (wie Bsp. VC oder IPO) ersetzen oder ergänzen?

Meines Erachtens trifft ergänzen eher zu als ersetzen. Weil, wie gesagt, für sehr komplexe oder sehr, sehr grosse Unternehmen, denke ich, ist es keine oder noch keine Form, die geeignet ist. Vor allem auch deswegen, weil die Investoren, vielleicht auch bereits existierende Investoren gerade die regulatorische Sicherheit wünschen. Ich denke, absolut ohne gesetzliche Grundlage oder mit sehr wenigen gesetzlichen Grundlagen und sehr wenigen Regulierungen ist es sehr schwierig – gerade auch daher, weil wir nicht wissen, ob die FINMA weitere Gesetze oder viel, viel präzisere Regulierungen herausbringen wird. Wir wissen also eigentlich nicht, was uns noch erwartet. Deswegen denke ich schon, dass weiterhin andere Formen bestehen werden. Ich weiss natürlich nicht, was in 100 Jahren sein wird, aber ich glaube, zurzeit sagen wir, die nächsten 10 Jahre wird es sicherlich ein Parallelweg sein.

3. Wer wird Ihrer Meinung nach in Zukunft in ICOs partizipieren? Eher private Kleinanleger oder institutionelle Anleger durch Anlagefonds?

Ich muss es so sagen: Basierend auf der Erfahrung die wir hier in unserem Unternehmen, machen, ist es schon so, dass viele Privatanleger investieren, aber auch immer mehr die

Idee aufkommt Funds zu bilden. Das Problem dabei liegt natürlich in der regulatorischen Umwelt und daher ist es sehr schwierig zurzeit, zumindest in der Schweiz. Wir haben viel Zusammenarbeiten mit Malta oder Gibraltar wo dies bereits viel besser möglich ist. Aber ich denke, es ist wirklich zum ersten Mal etwas, das für sämtliche Anlagentypen geeignet ist. Wir haben ein sehr durchmischtes Ergebnis der Analyse von Investoren, die wir wirklich belegen können. Vom Kleinanleger irgendwo aus dem Engadin bis hin zum Grossanleger oder institutionellen Anlegern. Wir werden auch häufig von Banken angefragt, ob wir Marktausblicke geben können für Ihre grössten Kunden oder auch Seminare für institutionelle Kunden anbieten können. Dies ist aber schwierig, da wir eine Anwaltskanzlei und keine Investment-Consultants sind.

4. Worauf ist der letztjährige und auch derzeitige anhaltende ICO Boom zurückzuführen?

Ich würde sagen, der Kernpunkt ist sicherlich, dass es am Anfang extrem angerissen hat. Und dann stieg es quasi von selbst immer weiter hinauf, weil viele Leute gelesen hatten – und dies entspricht auch unseren Erfahrungen, die wir gemacht hatten – dass man mit ICOs gut und schnell viel Geld verdienen kann. Das heisst es gibt auch sehr viele qualitativ schlechte Projekte. Man muss sich vorstellen, wir erhalten jeden Tag etwa zwei Dutzend Anfragen von potenziellen Neukunden, das ist extrem. Darum haben wir auch den Luxus, dass wir eigentlich auswählen können, welche Kunden wir überhaupt annehmen. Beim Aussortieren merkt man, dass Einiges dabei ist, das absoluter Humbug ist. Viele Anfragende haben das Gefühl, sie müssen auch noch auf den Zug aufspringen und jede einzelne Kaffeekapsel tokenisieren. Das wird immer weiter angekurbelt, weil man so viel in den Medien liest, wie Millionen über Nacht geraised worden sind. Nichtsdestotrotz denke ich schon, dass es auch berechtigterweise ein Boom ist. Weil es eben relativ formfrei und einfach zustande kommen kann. Es ist halt gerade Mode – wir haben vielmals den Fall, dass ein Start-up kommt und sich überlegt, wie es an Kapital kommen kann und weil sie dann zum Bsp. ein Blockchain basiertes Projekt in Planung haben, denken sie, um Marketing zu betreiben wäre es gut, wenn sie auch noch schnell einen ICO machen würden. Das bietet sich dann schon an, aber ansonsten denke ich, dass das geringe Mass an regulatorischem Framework wahrscheinlich der Hauptgrund ist, weshalb immer noch ein derartiger ICO Boom besteht.

5. Wie wichtig ist eine klare regulatorische Behandlung für die zukünftige Entwicklung von digitalen Tokens?

Ich würde sagen, dass die regulatorische Behandlung oder Regelung schlussendlich enorm wichtig ist, gerade auch um Finanzkriminalität und Geldwäscherei vorzubeugen. Ich persönlich möchte hier noch einfügen, dass nicht nur das regulatorische Setting für ICOs extrem wichtig ist, sondern auch grundsätzlich die Klassifizierung von Token. Dies ist meines Erachtens einer der Kernpunkte. Wir betreuen in unserem Unternehmen so viele Blockchain-Projekte die eigentlich gar nichts mit einem ICO zu tun haben aber dennoch vielleicht in die regulatorische Schienen kommen, die man beachten muss. Dies kann zum Bsp. eine Krypto-Fiat-Exchange sein oder ein Fund-Projekt. Zudem gibt es viele Versicherung- und Logistik-Projekte. Da zeigt sich immer wieder das Problem, dass eine Regulierung weitgehend fehlt. Ich denke, es ist enorm wichtig, dass der Regulator auch tätig wird um auch globalen Meinungen vorzubeugen. Man hört ja immer wieder, dass Krypto-Gelder dazu da sind, terroristische Finanzierungen zu verdunkeln, wobei es eigentlich nicht unbedingt dafür geeignet ist. In der Blockchain wird ja alles gespeichert. Man muss nur beim Input und Output aufpassen. Ansonsten eignet es sich überhaupt nicht, Gelder zu verstecken und zu waschen. Ich glaube, deswegen sind viele Gedanken der regulatorischen Umsetzung, die momentan im Gange sind, sehr wichtig.

6. Was spielt Ihrer Meinung nach aus Sicht der herausgebenden Unternehmen eine wichtigere Rolle? Die regulatorische Sicherheit oder eine ICO-freundliche Regulierung? Weshalb?

Das ist eine gute Frage. Primär ist es wichtig, dass man überhaupt eine regulatorische Sicherheit bietet. Wie detailliert, ist dann noch eine andere Frage. Aber ich glaube, dass sich

diese Punkte überhaupt nicht ausschliessen. Wir haben in einem Joint-Venture eine Krypto-Share kreiert - also eine Aktie auf der Blockchain. Dies ist ein unheimlich spannendes und bahnbrechendes Projekt - also kein klassischer ICO, sondern ein ICO 2.0. Normalerweise kann ein KMU nicht so einfach Aktien herausgeben, da sie kein Zugang zum OTC-Markt haben und es daher sehr schwierig ist, Kapital zu beschaffen und Investoren zu finden. Wir haben jetzt lediglich eine Aktiendruckmaschine kreiert, also eigentlich wie eine Gelddruckmaschine, die Aktien auf die Blockchain druckt. Wir haben also nur eine technische Plattform erstellt und sind keine Investment Bank, die Aktien herausgibt. Das KMU selbst kann seine Aktien über diese Plattform drucken und dann so verkaufen. Das ist natürlich revolutionär. Jedes Kleinunternehmen kann jetzt im Prinzip selbst Aktien herausgeben und verwalten und dann sogar die Generalversammlung mit allen Rechten, die der Aktie angehängt sind auch über die Blockchain abwickeln. Deshalb denke ich, ICO-freundlich ist sicher wichtig, aber in erster Linie die regulatorische Tragfähigkeit. Eine Kombination wäre natürlich ideal. Zudem ist es für mich spannend, wenn man die bestehenden gesetzlichen Grundlagen und die bestehenden Finanzierungsformen beibehält aber wie eine Art Blockchain Layer drüber legt.

7. Wie beurteilen Sie den Schweizer Ansatz zur ICO Regulierung durch die Herausgabe einer ICO Guideline?

Ich finde grundsätzlich den Ansatz sehr gut. Also sagen wir mal so, es ist sicher gut, dass die FINMA überhaupt bereit ist irgendetwas zu machen. Es ist sicherlich von Vorteil, dass wir Guidelines in dem Sinne erhalten haben. Qualitativ hätten wir uns ehrlich gesagt etwas mehr gewünscht. Aber der Ansatz ist auf jeden Fall gut. Ich würde von einem guten Anfang sprechen, aber mit noch viel Luft nach oben.

8. Was sind Ihrer Meinung nach die Stärken der FINMA Guidelines bezüglich ICOs?

Die grösste Stärke ist meines Erachtens die Klassifizierung nach Tokens und nicht die Unterteilung nach ICO und nicht ICO. Ich glaube, häufig wird dies in anderen Jurisdiktionen unterschätzt, sodass man wie beispielsweise in den USA alles was irgendwie ein Token ist, als Security einstuft. Und hier hat die FINMA begriffen, dass man wie einen Schritt tiefer gehen muss und eine Aufteilung machen muss. Die drei Kategorien finde ich eigentlich gut – nur sind die sogenannten Hybrid-Konstruktionen, die sie ja auch ansprechen in den Guidelines, zu wenig ausformuliert. Es ist nicht auf Anhieb klar, was jetzt was ist. Wenn ein Projekt zu uns kommt, dann müssen wir unter Umständen relativ lange analysieren, ob es sich nun um ein Asset-Token oder Utility-Token handelt. Bei einem Payment Token ist es relativ schnell klar, was es ist. Auch die wandelbaren Token, die nach einer gewissen Zeit eine andere Funktion erhalten, sind relativ unklar. Wir hätten uns schon erhofft, dass diese Tokens etwas mehr ausformuliert oder besser reguliert werden. Man muss zudem sagen, dass es sich nur um Guidelines handelt und nicht um ein Gesetz. Deswegen ist es meiner Meinung auch okay. Beim ersten Mal durchlesen habe ich gedacht, dass es sich eigentlich um nichts Neues handelt. Beim vertieften Betrachten bringt es für uns Anwälte aber natürlich schon etwas.

9. Was sind Ihrer Meinung nach die Schwächen der FINMA Guidelines bezüglich ICOs?

Ich finde die Kategorisierung zu wenig genau. Wir haben ein Paper über die Klassifizierung von Blockchain und Krypto-Property geschrieben und auch eine Token-Klassifizierung gemacht. Dabei sieht man, dass wir viel genauer unterscheiden. Es sind letztendlich 12 Kategorien, die wir unterscheiden und es ist etwas anders als bei der FINMA. Ich sage nicht, dass wir recht haben und die FINMA falsch liegt – natürlich nicht – aber ich denke zumindest, dass so ein Ansatz, der viel weiter ins Detail geht, sicherlich auch für die FINMA gut wäre. Wenn sie unser Paper lesen, werden sie sich vielleicht noch mehr besinnen oder noch genauere Guidelines schreiben. Das wäre meiner Meinung nach der richtige Ansatz. Aber man muss sagen, dass die FINMA in Gegensatz zu vielen anderen Jurisdiktionen in Europa aber auch ausserhalb extrem viel weiter ist. Die Mitarbeiter der FINMA sind wirklich gut ausgebildet und, was ein sehr grosser Vorteil in der Schweiz ist bezüglich der FINMA – sie sind alle bereit, mit uns zu sprechen - es ist unglaublich, wenn man dies mit anderen

Ländern vergleicht. Dort gibt es einen oder mehrere Regulatoren und die entscheiden. Wir können aktiv auf die FINMA zugehen und ich glaube, dass dadurch auch das Krypto-Valley in der Schweiz entstanden ist. Wir konnten zuerst einfach mal machen – die FINMA hat alles beobachtet und wollte auch immer wissen, was Sache ist. Sie haben gelernt und nicht geschlafen. Sie sind immer mitgekommen aber mit einer gewissen Freiheit – um wirklich einen prosperierenden Markt sich entwickeln zu lassen.

10. Wie hat sich das Marktumfeld in der Schweiz durch die Herausgabe der ICO Guidelines verändert?

Grundsätzlich sehen wir für unsere Arbeit keinen wirklich grossen Unterschied. Ich muss so sagen, dass wir grundsätzlich eher vorsichtig sind – sprich die Projekte, die wir von den vielen Anfragen herauspicken, müssen „Legal sound“ sein. Wir gehen proaktiv auf die FINMA zu. Zurzeit haben wir etwa 30 pending requests bei der FINMA und die FINMA kommt eigentlich nicht nach. Es ist einfach besser, wenn man vorgängig abklärt, ob ein gewisses Projekt so in Ordnung ist oder, ob es zu grosse Steine im Weg hat. Wir sind grundsätzlich vorsichtig. Wir haben unsere Klassifizierung schon gemacht und stimmen im Grossen und Ganzen auch mit der FINMA-Klassifizierung überein. Deswegen ändert sich für uns persönlich, respektive für unsere Kunden, nicht viel. Wir beraten weiterhin und machen im selben Modus weiter. Das klappt eigentlich am besten. Deswegen sind wir auch etwas enttäuscht, weil wir uns schon mehr Klarheit erhofft haben. Vielleicht wären uns dann viele FINMA Rulings auch für die Zukunft erspart geblieben. Die FINMA schreibt auch in Ihren ICO-Guidelines, dass jedes Projekt individuell betrachtet werden muss. Gerade da muss bei den Hybrid-Konstruktionen analysiert werden, ob es sich um eine Security handelt. Deswegen geht es eigentlich genau gleich weiter.

11. Welche Stellung nimmt die Schweiz aus Sicht von potenziellen Token Herausgebern gemäss Ihren Erfahrungen ein?

Aufgrund der sehr flexiblen und offenen Diskussionsweise der FINMA gegenüber Anwälten und anderen Experten in diesem Bereich, würde ich sagen, dass die FINMA und die Schweiz ein absolutes Paradevorzeigebeispiel sind. Wir beraten auch andere Jurisdiktionen bezüglich FinTech- und ICO-Regulierungen und wir sehen da einen ganz klaren Vorteil bei der FINMA, vor allem was die Ausbildung und das Wissen der FINMA-Angestellten angeht. Das ist ein enormer Unterschied. Wenn man sich erst jetzt als Financial Authority im Land XY mit diesem Thema auseinandersetzt, dann hat man die letzten wichtigen Jahre verpasst. Wenn man sich das Wissen jetzt erst aneignen möchte, kann man es gleich vergessen. Das ist ein extremer Unterschied und deswegen denke ich, dass diese Flexibilität und diese Agilität der schweizerischen Gesetzgeber und Finanzmarktregulatoren der ausschlaggebende Punkt dafür ist, dass das Krypto-Valley in der Schweiz entstanden ist und, dass es weiterhin attractive sein wird, ICO-Projekte durchzuführen.

12. Welche Token Art wird durch die ICO Regulierung der FINMA am stärksten gefördert?

Ich denke gerade deshalb, weil jedes Projekt individuell betrachtet werden muss, kann man nicht sagen für welchen Token die Regulierung in der Schweiz am förderlichsten ist. Ich glaube, es kommt wirklich auf das Projekt an – natürlich, sobald etwas als Security eingestuft wird, ist der Prozess länger. Auch wenn für etwas eine Lizenz benötigt wird, wie beispielsweise bei einer Krypto-Exchange, oder der Anschluss an eine SRO macht schon einen Unterschied. Ich denke, solange man sich nicht im Bereich einer etwaigen Banklizenz befindet, ist alles machbar. Ich glaube, hier kommt es vielleicht weniger auf die Klassifizierung der FINMA an, als wirklich auf das gesamthafte Projekt. Ich glaube nicht, dass man sagen kann, dass die FINMA ein Token gegenüber einem anderen bevorzugt.

13. Für welche Token Typ ist die Schweiz am unattraktivsten?

Ich denke nicht, dass die Schweiz grundsätzlich für einen Token Typ unattraktiv ist.

14. Neben verschiedenen anderen Themen hat sich die FINMA auch noch nicht zum Thema Stable Coin geäussert

Ich denke, dass die FINMA langfristig nicht darum kommen wird, sich zu äussern. Es ist dasselbe wie bei den bereits kommentierten Tokens – es wird nicht reichen, was sie bisher gesagt oder geschrieben haben. Das betrifft nicht nur Stable Coins. Wer weiss schon was noch kommen wird. Es kann noch so viel kommen. Auch diese Krypto-Aktie, die wir kreiert haben, ist jetzt schon FINMA-konform aber letztendlich ist es unser Ziel und das Ziel der Community, dass man einen Picasso tokenisieren kann. Und wie die FINMA das dann sieht, wissen wir natürlich auch noch nicht. Grundsätzlich würde ich schon sagen, dass wir noch einiges von der FINMA erwarten, aber dass gezwungenermassen auch noch einiges kommen wird. Es geht nicht anders.

15. Wie beurteilen Sie den Ansatz der USA, faktisch alle ICOs als Securities einzustufen?

Ich denke, es hat sicher seine nachvollziehbare Begründung, aber ich finde es nicht gut. Gerade aus der Schweizer Perspektive, die ICOs so anders handhaben, finde ich das hoch problematisch. Es ist einfach nicht fördernd für einen prosperierenden Markt. Dabei muss ich anmerken, dass wir immer mehr amerikanische Klienten oder Anfragen aus den USA erhalten – eine andere Frage ist dann nur, ob wir sie annehmen, da es schwierig wird mit dem Bank Account – aber weil diese Kunden auch merken, dass es ein sehr grosses Hindernis ist und eigentlich nur noch weg aus den USA wollen, um irgendwo sonst den ICO durchzuführen. Gerade weil man von den USA kennt, dass es das Land aller Möglichkeiten ist, haben viele Leute diese Denver-Company-Struktur im Kopf, bei der man mehr oder weniger anonym eine ganze Gesellschaft aufsetzen kann. Das ist halt schon noch sehr verankert. Ich persönlich finde den Ansatz schlecht – die Regulatoren machen es sich zu einfach, wenn sie einfach grundsätzlich mal alles als Securities klassifizieren und dementsprechend vieles verhindern. Sehr viele Projekte können so gar nicht durchgeführt werden, weil die Hürden viel zu gross sind. Deshalb denke ich, dass es der falsche Ansatz ist.

16. Wie wird sich die Regulierung in den USA in Ihren Augen weiter entwickeln?

Eine Freundin von mir ist vor etwa einem Monat aus den USA zurückgekehrt und hat mir von einer sehr spannenden Konferenz erzählt. Dabei wurde genau über dieses Thema gesprochen. So wie es aussieht, ist es relativ ernüchternd und es schaut offenbar nicht danach aus, dass man eine Lockerung in näherer Zukunft erwartet. Aber wir sind hier in der Schweiz und wir advisen unter Schweizer Recht und wir können nicht wirklich beurteilen, was in den USA noch vorgehen wird. Das sind reine Vermutungen. Wir denken aber nicht, dass es allzu bald Veränderungen geben wird.

17. Was halten Sie von Bemühungen wie zum Bsp. der Ansatz von UK, auch die Distributed Ledger Technology zu regulieren?

Gerade auch deswegen, weil wir ja nicht nur von Krypto-Währungen oder Blockchain-Projekten ausgehen können, sondern weil es viel mehr um eine regulatorische Einbettung von ganzen dezentralen Ökosystemen geht, ist dies der Ansatz, den auch wir verfolgen. Deswegen wird das von uns als sehr, sehr positiv wahrgenommen. Wir haben als Teil der Crypto Valley Association einen neuen Code of Conduct ausgegeben, um diese dezentralen Ökosysteme erstmals als mehr oder weniger self-regulated Organisation zu regulieren. Es soll viel weiter gehen als nur Blockchain. Es geht um DLT und um sämtliche möglichen dezentralisierten Netzwerke und Ökosysteme und nicht bloss um verschiedene Technologien.

18. Gibt es Ihrer Meinung nach Bereiche, die von anderen Regulierungen besser gemacht werden, als von der Schweizer Regulationsbehörde?

Also wie bereits gesagt, ist die Schweiz für mich schon ein sehr gutes Vorzeigebispiel. Dieser Ansatz von UK finde ich aber auch sehr, sehr attraktiv und würde meines Erachtens auch behaupten, dass dies sehr gut kombinierbar wäre mit dem Schweizer Ansatzmodell. Malta ist ein gutes Beispiel. Vielleicht sind die Malteser noch etwas experimentierfreudiger oder wagemutiger als die Schweizer. Gleichzeitig denke ich, dass Sie ein bisschen weniger

gut verstehen, was der Unterschied zwischen den Technologien und eigentlichen Krypto-Währungen ist. Die Terminologie zeigt mir, dass sie vielleicht nicht ganz den gleichen Ansatz haben oder nicht ganz das gleiche Wissen wie die FINMA oder wir Schweizer. Vielleicht ist es aber auch nur eine unterschiedliche Betrachtungsweise. Vom Approach her sind sie sehr liberal und möchten ICOs unbedingt regulieren. Sie haben sehr grosse Bestrebungen, ICOs wirklich in ein Gesetz zu giessen. Dies ist ebenfalls sehr vorbildlich.

19. Sehen Sie den Brexit als Chance oder Gefahr für ICOs in Grossbritannien?

Dies ist wirklich schwierig zu sagen. Ich persönlich würde sagen, dass das ganze System in dieser ICO Welt dezentralisiert ist und somit kann eigentlich jeder Investor in das ICO-Projekt investieren, in das er möchte und ein ICO grundsätzlich überall durchführen, ausser es sei in einer Jurisdiktion verboten. Deshalb denke ich nicht, dass es einen grossen Impact haben wird. Dies kann ich mir nicht gut vorstellen.

20. Was sind die wichtigsten regulatorischen Punkte, die bei einem ICO in der Schweiz berücksichtigt werden müssen?

Ich würde sagen, dass die Einhaltung der wenigen vorhandenen regulatorischen Voraussetzungen wichtig ist - wie Bsp. die ICO-Guideline durchzulesen und bereits im Whitepaper versuchen zu Kategorisieren, wie es die Schweizerische Gesetzgebung vorsieht, also die Einhaltung von dem was vorgeschrieben ist oder auch bei anderen Blockchain-Projekten, wie Exchanges, die KYC und AML-Regulierungen einzuhalten. Dies sind Grundvoraussetzungen - dass man gegebenenfalls Lizenzen einholt ist sicherlich sehr wichtig. Es gibt einige Projekte, die das nicht machen - entweder weil sie es nicht wissen oder weil sie es einfach ohne Lizenz probieren oder gar keine Anwaltskanzlei einschalten. Die seriöse Abklärung der regulatorischen Rahmenbedingungen um die aktuelle Einschätzung der FINMA zu kennen, ist auf jeden Fall crucial. Viel regulatorisches gibt es momentan nicht zu beachten. Aber deswegen würde ich trotzdem immer empfehlen, mit einem spezialisierten Beratungsunternehmen zusammenarbeitet – und dies nicht um Werbung zu machen.

21. Was sind Ihrer Meinung nach die grössten Risiken und Gründe weshalb ein ICO scheitert?

Wir haben vielfach gelesen, dass die Leute zu „pushy“ waren und schneller gehandelt haben, als vorbereitet wurde. Was wir auch sehen, sind Projekte die sehr viel kommunizieren obschon die Technologie oder die regulatorischen Hürden überhaupt nicht „ready“ sind – also die Technologie steht nicht, aber es wird bereits kommuniziert, dass dies oder jenes möglich ist. Zudem gilt im Technologiebereich, wenn es irgendwo ein Sicherheits-Leck hat, ist das Projekt zerstört. Hat ein Projekt nur einmal eine Sicherheitslücke, oder etwas funktioniert nicht, ist das Projekt weg - für immer. Was wir auch schon gesehen haben, sind Betrugsfälle, die ein perfektes Whitepaper hatten - aber sobald sie im Besitz des Geldes waren, sind sie verschwunden. Das sind schon Gefahrenpunkte, die man nicht unterschätzen darf, und deswegen finde ich es auch so wichtig, dass ein regulatorisches Umfeld über Gesetze geschaffen wird. Der Input, bei dem man Fiat Gelder in die Blockchain rein schießt oder wo man sie am Schluss wieder rausnimmt - also quasi die Nadelöhre - sind am gefährlichsten. Das geschlossene System an und für sich – die Hashes die gespeichert werden, sind sicher. Nur das Rein und das Raus aus dem System sind sehr gefährlich. Ich glaube, ich sehe mehr Potenzial für einen Fehler eines Projektes auf der technologischen, als auf der regulatorischen Seite.

22. Wie sieht Ihrer Meinung nach die Regulierung von Digital Currencies Exchanges in der Schweiz aus, da sich die FINMA bis anhin noch nicht dazu geäussert hat?

Wir haben in der Schweiz Exchange Plattformen die einer SRO angeschlossen sind. Die Lizenzierungsfrage ist immer etwas schwieriger zu beantworten. Grundsätzlich ist es nicht so ein Problem, eine Exchange in der Schweiz aufzusetzen. Nichtsdestotrotz, weil eben genau die Meinung der FINMA aussteht und weil wir zu wenig Input von der FINMA haben, kommt es sehr oft vor, dass wir Projekte nach Malta oder Liechtenstein - in unsere Partnerkanzleien

verschieben. Es ist wirklich schwierig. Wir halten alle regulatorischen Anforderungen ein, die wir kennen und die es momentan gibt und lassen die Klienten einfach mal machen, bis es potenzieller Weise einmal einen Stopp geben wird – also eine Restriktion, oder ein Strich durch die Rechnung gemacht wird – aber das ist ein Business Risk und nicht mehr unser Problem in dem Sinne. Wir weisen unsere Kunden natürlich auf diese Risiken hin, aber man handelt ja nicht oder noch nicht illegal, wenn man einen Exchange macht. Ein weiteres Problem ist, eine Bank zu finden, bei der man einen Bank Account machen kann - das ist die grösste Herausforderung zurzeit. Gerade mit ausländischen Kunden - bei Exchanges ist dies sehr schwierig. Aufgrund der physical Presence, die man in der Schweiz und in Liechtenstein benötigt ist dies etwas problematisch. Wobei dann meistens eine Person angestellt wird, die physical Presence zeigt und gewisse operationelle Tätigkeiten ausübt für diese Plattformen in der Schweiz. Das ist aber wirklich noch etwas unreguliert und dies ist uns absolut bewusst.

23. Hat die Schweiz die Voraussetzungen die starke Position im weltweiten Krypto-Vergleich zu halten oder sogar auszubauen?

Wahrscheinlich ist es schon klar geworden, dass ich absolut dieser Meinung bin. Ich glaube aufgrund der Offenheit und Diskussionsbereitschaft der FINMA wird das weiterhin der Fall sein. Auch wenn wir zum Bsp. Zug betrachten, wo gewisse Gebühren bereits in Bitcoin oder anderen Krypto-Währungen bezahlt werden können. Diese Meldung ging natürlich um die Welt und ist ein unglaubliches Statement - ich glaube, diese Bereitschaft wird auch nicht so schnell wieder zurückgezogen, weil wir uns sonst auch selbst lächerlich machen würden. Wenn wir mit der FINMA sprechen und uns direkt austauschen, zeigt dies, dass es absolut ihr Wunsch und ihre Einstellung ist, dass der Markt weiter prosperieren kann. Ich bin überzeugt, dass dies weiterhin sehr gut laufen wird.

24. Wie läuft eine Betreuung eines ICOs durch Ihr Unternehmen ab?

Aufgrund der vielen Anfragen haben wir eine Krypto-Projekt-Managerin angestellt, die nichts anderes macht, als die Anfragen zu koordinieren und in eine universalisierte Form zu giessen. Das heisst, wenn eine Anfrage reinkommt, gibt es einen Standard-Onboarding-Prozess. Die Kunden müssen KYC-Formulare ausfüllen, müssen einen Engagement Letter unterzeichnen und einen Retailer bezahlen. Es ist schon ein Problem, dass viele Kunden versuchen Informationen von uns zu erhalten oder ein erstes Meeting oder Call zu bekommen und wir 30 bis 60 Minuten gratis vorbereiten. Dies ist nicht fair gegenüber anderen Kunden und ist auch nicht in unserem Interesse, weil dann diese Kunden schon so viele Informationen haben, um dann zu sagen, dass sie den Rest selber machen würden. Wir brauchen deshalb eine vorgängige Zahlung. Und dann wird meist in einem vierstündigen physical Workshop das Projekt in allen Details auseinander genommen. Wir bereiten uns mit dem Whitepaper und verschiedenen Unterlagen vor, die uns die Klienten zustellen. Ein gewisses Mass an Ausgereiftheit muss vorhanden sein, damit wir mit dem Kunden zusammenarbeiten. In diesem Workshop wird sehr viel Brainstorming betrieben und dann kommt es stark auf den Kunden an oder auf das Projekt, was genau benötigt wird. Entweder ein FINMA Ruling, also ein Request an die FINMA oder die Initiierung eines Lizenzierungsverfahrens, oder wir machen eine SRO-Membership oder wir schreiben Verträge. Dies kommt häufig vor genau so wie Memos schreiben, einfach der ganze Prozess, der in einer Beratung stattfindet und dann die rechtliche Analyse und Beratung. Zudem ist in einem Workshop auch immer ein Tax- und Compliance-Experte dabei. Wir beleuchten von Anfang an das Projekt von drei Seiten. Dies ist ein absoluter USP von uns. Es spart dem Kunden einerseits Kosten, da er nicht zu verschiedenen Unternehmen gehen muss und andererseits vor allem Zeit. Die Leute kommen aus der ganzen Welt zu uns und haben hier vier Stunden, in denen alles durchgesprochen wird. Die weitere Arbeit können wir dann alleine machen oder in Skype-Calls. Der Standardprozess ist aber eigentlich der gleiche. Dann kommt es darauf an, was in diesem Workshop herauskommt und dann plant man weiter.

Appendix B

Interviewee II: Attorney at law, Associate and Member of the Banking & Finance and Corporate M&A Practice Group at an International Law Firm

1. ICO gilt als neue und innovative Finanzierungsquelle für Start-ups. Wie schätzen Sie das Potenzial von Initial Coin Offerings ein?

Ich glaube, im Moment ist es ein Hype und das Potenzial wird vielleicht etwas überschätzt. Dennoch denke ich, ist es eine gute und neue Finanzierungsform, die auch den neusten technologischen Entwicklungen Rechnung trägt, gerade im Hinblick darauf, dass die bestehenden Finanzierungsformen eigentlich schon sehr alt sind. Es gibt sie schon sehr lange. Unser Aktienrecht ist bereits uralt und obwohl es immer Anpassungen gab, sind die Grundprinzipien immer noch die gleichen. Über diese ICOs gibt es jetzt eigentlich eine neue Möglichkeit, die nach meiner Einschätzung durchaus Potenzial hat. Die Frage wird meines Erachtens sein, wie die regulatorischen Entwicklungen sein werden - und davon abhängig auch das entsprechende grosse oder kleine Potenzial.

2. Wie weit können ICOs klassische Formen der Finanzierung (wie zum Bsp. VC oder IPO) ersetzen oder ergänzen?

Wenn man regulatorische oder gesetzgeberische Änderungen vornehmen wird, die beispielsweise die Übertragbarkeit der Anteile erleichtern, dann denke ich, ist es durchaus möglich, dass klassische Formen mehr oder weniger ersetzt werden können. Gerade bei IPO ist zentral, dass man Anteile einfach übertragen kann - wenn es jetzt noch einfacher über eine Blockchain anstatt über eine Börse geht, wird man es wohl über die Blockchain abwickeln. Solange die Übertragung mit diesen Schwierigkeiten oder Rechtsunsicherheiten verbunden ist, wird es schwierig sein, dass man Tokens wirklich „scalen“ kann.

3. Worauf ist der letztjährige und auch derzeitig anhaltende ICO Boom Ihrer Meinung nach zurückzuführen?

Also ich denke, es sind halt viele neue Schlagworte wie Blockchain und Bitcoin, die in und cool sind und die neue Leute als Investoren anlocken, die bisher vielleicht nicht die typischen Investoren waren. Dies führt dazu, dass man in diesem Bereich mehr oder weniger Geld im Überfluss hat. Wenn soviel Geld vorhanden ist, führt es einerseits natürlich dazu, dass neue Ideen auch wirklich eine Chance haben auf dem Markt, andererseits führt es auch dazu, dass Projekte die vielleicht in einem ausgeglichenen Markt nicht unbedingt eine Chance hätten, sich trotzdem durchsetzen ohne dass es vielleicht gerechtfertigt ist.

4. Ist der massive Anstieg von berühmten Krypto-Währungen wie Ether oder Bitcoin Ihrer Meinung nach auch für den Boom mitverantwortlich?

Das ist ein sehr guter Punkt. Ich denke die ICOs werden ja durch die Krypto-Währungen finanziert. Der Wechsel von Krypto-Währungen zu Fiat ist teilweise noch eines der grössten Probleme, würde ich sagen. Vor allem wenn es in grosser Menge vorkommt und wenn es in europäischen Ländern oder Amerika ist. Daher schauen sich diese Investoren jetzt eben bestimmt auch nach neuen Projekten um, wie sie ihre Krypto-Währungen möglichst sinnvoll anlegen und investieren können, weil das Rückwandeln des Kapitals nicht ganz einfach ist.

5. Wie wichtig ist eine klare regulatorische Behandlung für die zukünftige Entwicklung von digitalen Tokens?

Meines Erachtens ist Rechtssicherheit in diesem Bereich sehr wichtig. Für uns Anwälte ist es natürlich grundsätzlich interessant, wenn keine hohe Rechtssicherheit herrscht, weil umso mehr Beratung dann erfragt wird – dennoch, damit sich dieser Markt entwickeln kann und auf stabilen Beinen steht, ist die Rechtssicherheit sehr wichtig. Ich denke, in der Schweiz sind wir durchaus viel weiter als in anderen Ländern. Was wir als enormen Vorteil erachten - dass die FINMA sogenannte No-Action Letters ausstellt. Wenn ein ICO geplant wird, kann das Whitepaper und weitere Informationen an die FINMA eingereicht werden und diese bestätigt

oder eben auch nicht, dass die regulatorischen Anforderungen erfüllt sind. Dies ist ein enormer Vorteil - dadurch hat man wirklich Rechtssicherheit, auch wenn man keine ICO-spezifische Regulierung hat. Ich bin mir nicht bewusst, ob dies in anderen Ländern auch möglich ist. Das ist ein grosser Vorteil für den Finanz- und Wirtschaftsplatz Schweiz. Auch wenn keine vorherige Abklärung bei der FINMA gemacht und ein ICO durchgeführt wird, macht man nichts illegales, wenn man sich an alle Gesetze hält. Die FINMA kann dann aber zurückkommen und alle Unterlagen verlangen, um zu sehen, ob alles mit rechten Dingen abging. Die FINMA schaut durchaus, welche ICOs in der Schweiz durchgeführt werden. Wenn keine vorherigen Abklärungen gemacht wurden, dann schauen sie es sich nachträglich nochmals genauer an. Aber wenn man alles „compliant“ gemacht hat, hat man sich nichts zuschulden kommen lassen. Man darf es auch ohne Anfrage bei der FINMA machen, man muss dann halt einfach mit der Rechtsunsicherheit leben.

6. Was spielt Ihrer Meinung nach aus Sicht der herausgebenden Unternehmen eine wichtigere Rolle? Die regulatorische Sicherheit oder eine ICO-freundliche Regulierung? Weshalb?

Meiner Meinung nach, ist es vermutlich die Rechtssicherheit. Ich denke, wie wir es im Moment in der Schweiz haben, ist abgesehen von einigen Ausnahmen, die aber nicht unbedingt im Aufsichtsrecht, sondern eher im Privatrecht liegen, ziemlich ideal. Wir haben keine strikten Einschränkungen, wir haben aber diese technologie-neutralen Gesetze und Verordnungen, welche natürlich auch auf ICOs anwendbar sind und die den Rahmen für die Finanzmarktstätigkeit in der Schweiz setzen. Gleichzeitig haben wir diese FINMA No-Action Letters und dadurch auch die Rechtssicherheit. Meines Erachtens gibt es wirklich eine gute Mischung aus ICO-Freundlichkeit und gleichzeitig auch Rechtssicherheit in diesem Bezug.

7. Wie beurteilen Sie den Schweizer Ansatz zur ICO Regulierung durch die Herausgabe einer ICO Guideline?

Ich denke diese Guidelines helfen schlussendlich vor allem der FINMA, weil für sie die Arbeit erleichtert wird. Sie haben einen Fragebogen erstellt, und wenn man diesen ausfüllt, können sie ihre Kriterien anwenden. Es hilft natürlich auch uns Anwälten, es macht unsere Arbeit ein bisschen einfacher. Man muss sich einfach bewusst sein, dass diese Guidelines nicht das Gesetz oder irgendwelche Verordnungen sind. Es zeigt eigentlich einzig auf, wie die FINMA die Gesetzeslage interpretiert. Das heisst jedoch nicht, dass man diese nicht anders interpretieren kann. Ich denke, es gibt einzelne Punkte in diesen Guidelines, die man eigentlich liberaler sehen könnte als die FINMA - bei anderen Punkten finde ich den Ansatz von der FINMA durchaus liberal. Ich denke, sie haben sich da ein Raster zusammengestellt, das es für alle Player vereinfacht, und dies ist völlig legitim und auch hilfreich. Es ist jedoch nicht in Stein gemeisselt, was dort drin steht. Dennoch finde ich, es ist ein sinnvoller Approach, weil man den Markt nicht völlig abstellen will, aber dennoch eine gewisse Ordnung in den Markt bringen möchte. Es liegt auch nicht in der Kompetenz der FINMA, weit darüber hinaus zu gehen. Die FINMA ist ja nicht rechtssetzend, sondern kann nur umsetzen, was ihr vorgegeben wird. Ich denke, viel mehr als das kann die FINMA nicht tun, und es ist deshalb eine sinnvolle und vernünftige Reaktion auf die Entwicklungen auf dem Markt.

8. Wie wird sich Ihrer Meinung nach der Ansatz von der FINMA weiterentwickeln?

Ich denke, mit öffentlichen Mitteilungen kann die FINMA nicht viel weitergehen – es ist doch schon einigermaßen konkretisiert. Was dann sicherlich mit der Zeit kommen wird, sind erste Gerichtsurteile, die sich gegen Verfügungen der FINMA richten, sei es vom Bundesverwaltungsgericht oder dann auch vom Bundesgericht. Das zieht sich aber immer sehr lange hin. Es dauert vielleicht ein bis zwei Jahre, vielleicht auch mehr, bis die Gerichtsurteile vorliegen. Diese geben dann natürlich grundsätzlich verbindlichere Guidance, als die Guidelines der FINMA. Ich denke von Seite der FINMA muss und darf man nicht auch mehr erwarten, als sie bisher gemacht hat. Was es dann je nachdem noch gibt, ist die Beurteilung spezieller Fälle im Enforcement- und Jahresbericht der FINMA. Es ist gut möglich, dass im Enforcement-Bericht 2018, der etwa im April 2019 herauskommen wird,

noch etwas mehr Guidance angeboten wird. Aber auch das ist schlussendlich nicht rechtsverbindlich.

9. Was sind Ihrer Meinung nach die Stärken & Schwächen der FINMA Guidelines bezüglich ICOs?

Ich denke die FINMA geht ziemlich weit bei der Qualifikation als Effekten, also Securities. Dort ist es meiner Meinung nach eine sehr pauschale Qualifikation. Meines Erachtens gibt es dort kleine Unterschiede, die gewisse Tokens als Securities qualifizieren lassen und andere nicht. Gerade bei Fällen, bei denen die Plattform beim Zeitpunkt des ICOs nicht zur Verfügung steht - gilt gemäss diesen Guidelines immer - dass es sich um Securities handelt. Ich denke dies geht ziemlich weit. Die Definition von Effekten im Schweizer Recht ist doch ziemlich eng, und für mich ist nicht ganz klar, wie die FINMA auf diese pauschale Definition kommt. Im Gegenzug, denke ich - sind natürlich auch die pauschalen Ausschlüsse von gewissen Regulierungen grosszügig vonseiten der FINMA – also dass sie bei gewissen Arten von Token Geldwäschereipflichten ausschliesst oder eben auch bei gewissen Token-Arten die Securities-Qualifikation pauschal ausschliesst. Natürlich ist es eine Vereinfachung und ich verstehe das Vorgehen der FINMA – denke aber es lohnt sich wirklich, den Einzelfall anzuschauen und es allenfalls zu wagen, in einer Anfrage an die FINMA, eine kleine Abweichung von diesen Guidelines vorzuschlagen. Es ist eine Vereinfachung. Die Token-Welt ist extrem breit und eine Schematisierung ist sehr schwierig. Es gibt andere Schematisierungen mit viel mehr verschiedenen Kategorien – hier hat man es mit diesen drei Token-Arten eigentlich auf die unterste Ebene heruntergebrochen. Dies finde ich völlig legitim, aber dies führt auch dazu, dass es teilweise nicht ganz präzise ist.

10. Stellt die Kategorisierung in Ihren Augen eine Rechtsunsicherheit dar?

Ein Stück weit schon. Ob die Guidelines so enorm viel zur Rechtssicherheit beitragen, wage ich zu bezweifeln. Sie zeigen die Art und Weise, wie man auf die FINMA zugehen kann. Sie helfen somit auch bei der Kommunikation zwischen der FINMA und dem Klienten oder uns, weil wir so eine gemeinsame Gesprächsgrundlage haben. Besonders viel Rechtssicherheit bringt es meines Erachtens nicht. Die Rückmeldung der FINMA bringt dann erst die entsprechende Rechtssicherheit im Einzelfall.

11. Sind Veränderungen bezüglich Anfragen in Ihrer Firma erkennbar, seit die FINMA die Guidelines herausgebracht haben?

Marketingmässig ist es natürlich nicht schlecht - also Marketing mässig für den Finanzplatz Schweiz. In der ganzen Welt hat man dann in der Presse gelesen, dass die Schweiz jetzt Guidelines hat. Ich denke, es hat eher noch ein bisschen Öl ins Feuer geworfen – nicht im negativen Sinn, sondern es hat eher gezeigt, dass in der Schweiz genauer hingeschaut wird. Auch auf Investorenmässig hat es ein bisschen Sicherheit gegeben, da es den Eindruck gibt, dass der Regulator auch schaut, was tatsächlich läuft und dass es sich nicht um eine Wild-West Wirtschaft handelt, die in der Schweiz betrieben wird. Von dem her, finde ich es richtig, dass die FINMA dies gemacht hat. Ich finde auch den Detaillierungsgrad in Ordnung. Man muss sich einfach bewusst sein, dass dies nicht in Stein gemeisselt ist. Ich finde es trotzdem eine gute Guideline, und es hilft auch uns im täglichen Geschäft.

12. Welche Stellung nimmt die Schweiz aus Sicht von potenziellen Token Herausgebern gemäss Ihren Erfahrungen ein?

Meines Erachtens ist die Schweiz enorm attraktiv. Dies hat meiner Meinung nach verschiedene Gründe. Erstens, die hohe Rechtssicherheit aufseiten Projektteams, weil man diese FINMA Rückmeldung hat. Das ist etwas Einzigartiges, und ich finde es auch sehr begrüssenswert, dass die FINMA dies trotz erheblichem Zusatzaufwand anbietet. Natürlich muss man auf die Antwort etwas warten, und es geht nicht mehr ganz so schnell wie früher, aber dennoch, dass es überhaupt angeboten wird, finde ich sehr begrüssenswert. Zweitens, die Rechtssicherheit aufseiten der Investoren, weil sie wissen, dass es jemanden gibt, der das Ganze anschaut. Im Allgemeinen hat auch der Schweizer Finanzplatz grundsätzlich

einen guten Ruf. Die ganze politische Stabilität - auch die Stabilität des Schweizer Franken, auch wenn dies hier nicht direkt hineinspielt, trägt dennoch zum stabilen Gesamtsystem der Schweiz bei. Dies erhöht natürlich auch das Vertrauen vonseiten der Investoren. Auch die ganze Thematik des Bankgeheimnisses hat hier je nachdem sogar einen positiven Einfluss, weil man einfach Vertrauen hat in den Datenschutz in der Schweiz. Es muss jetzt nicht das Bankgeheimnis im ursprünglichen Sinn sein, aber man weiss, wenn man etwas in der Schweiz hat, dann ist es sicher. Zudem ist es auch steuerlich einigermassen attraktiv - nicht extrem, aber sicher im Vergleich zu anderen europäischen Ländern attraktiv. Wir haben hier zudem sehr gut ausgebildete Leute, die in diesen Gesellschaften arbeiten können. Wir haben eine ETH mit Spin-Offs und Leute die sich wirklich im Blockchain-Bereich sehr gut auskennen. Und dann handelt es sich auch um einen Netzwerkeffekt – wir haben Ethereum, einer der First-Mover in der Schweiz, und das zieht dann weitere Leute an. Man könnte, so wie ich das sehe, jeden Tag in Zürich an einen Event gehen zum Thema Blockchain, Bitcoin oder ICOs. Von dem her ist es auch eine Art Community, die hier heranwächst und weitere Leute anzieht, die in diesem Bereich tätig sein möchten. Und natürlich auch der ganze regulatorische Rahmen, der zumindest innovationsfreundlich ist und nicht einfach ein Verbot aufstellt. Das sind meiner Meinung nach, die wichtigsten Aspekte.

13. Wie attraktiv ist die Schweiz aus steuerlicher Sicht für Initial Coin Offerings?

Ich bin keine Steuerrechtlerin. Das macht mein Kollege jeweils. Dennoch denke ich, dass es in Zug sehr attraktiv ist. Da ist grundsätzlich die Unternehmenssteuer sehr attraktiv. Gelder die über ICOs eingeholt werden, können als Rückstellungen für die Investitionen verwendet werden, und müssen somit nicht als Gewinn versteuert werden. Ich bin nicht der Profi in diesem Bereich, aber da muss man es wirklich so aufsetzen damit es steuertechnisch optimiert ist – da gibt es aber durchaus Möglichkeiten. Zusätzlich gibt es natürlich noch die Möglichkeit einer Stiftung, was steuertechnisch ein bisschen attraktiver ist als die GmbH oder die AG. Allerdings ist es nicht so, dass eine Stiftung einfach steuerbefreit ist, nur falls sie gemeinnützig ist, kann sie die Steuerbefreiung beantragen. Die ICOs die wir sehen, sind aber prinzipiell nicht gemeinnützig. Es mag einzelne Ausnahmen geben - vielleicht im humanitären Bereich im Bezug auf Identity gibt es etwas, das man als rein gemeinnützig ansehen kann. Im Allgemeinen gehe ich aber davon aus, dass es nicht so ist. Dennoch sind die Besteuerungen von Stiftungen etwas attraktiver als bei GmbHs und AGs.

14. Wie wird sich die Regulierung in den USA in Ihren Augen weiter entwickeln?

Ich glaube, in den USA ist der Approach ein bisschen anders. In den USA ist es so, wenn etwas eine Security ist, dann spielt praktisch alles rein. Dann kommt die SEC und dann wird es kompliziert. Da haben wir in der Schweiz den Vorteil, dass selbst wenn etwas ein Effekt ist, geht die Welt noch nicht unter. Dass die USA so pauschal Urteile über alle ICOs gefällt hat, ist ein Stück weit nachvollziehbar, weil man sich vielleicht auch davor drücken möchte eine Einzelfallbeurteilung zu machen. In den USA sind es natürlich auch andere Dimensionen. Wenn man dies in den USA so machen würde wie in der Schweiz – ich weiss nicht, wie die Behörde dies überhaupt „handlen“ könnte. Daher verstehe ich diese Haltung auch, aber es ist natürlich im Hinblick auf einen wachsenden Markt nicht unbedingt förderlich. Ob rechtlich alles wasserdicht ist, was die SEC sagt, kann ich nicht beurteilen.

15. Was könnte Ihrer Meinung nach der Grund sein, weshalb die meisten ICOs trotz unfreundlicher ICO Regulierung in Amerika durchgeführt werden?

Ich denke, da gibt es vermutlich zwei oder auch mehr Punkte. Der erste Punkt ist sicher die Innovation, die insbesondere im Silicon Valley stattfindet. Zudem auch der Unternehmensgeist, der dort herrscht, gibt es vermutlich sonst nirgends auf der Welt. Von dem her ist der Druck vom Markt vonseiten des ICO-Projektteams sicher ein wichtiger Punkt. Andererseits auch vonseiten der Investoren. Wir Schweizer sind enorm konservativ in der Art und Weise wie wir investieren. Die Amerikaner sind hier viel risikofreudiger und gehen auch mal das Risiko ein, in einen ICO zu investieren, obwohl sie vielleicht nicht genau wissen was dahinter steckt – etwas, das wir in der Schweiz vermutlich nicht tun würden.

16. Was halten Sie von Bemühungen wie Bsp. der Ansatz von UK, auch die Distributed Ledger Technology zu regulieren?

Ich denke, da haben wir in der Schweiz einfach einen leicht anderen Approach. Wir reden immer von dieser Technologie-Neutralität, die ich grundsätzlich auch sehr schätze, weil sie auch offen ist gegenüber neuen Innovationen. Ob die Blockchain an sich reguliert werden muss, würde ich wirklich bestreiten. Was sich aber bestimmt aufdrängt ist, dass man die bestehenden Gesetze so anpasst, dass sie auch für die Blockchain funktionieren. Ich denke hier insbesondere an die Wertrechte, die im Moment nur sehr schwer übertragen werden können. Da ergibt sich einfach eine riesige Diskrepanz zwischen der Realität auf der Blockchain - die ja eigentlich in Stein gemeisselt ist - weil wenn ich den Token habe, habe ich zugriff – wenn ich ihn nicht habe, habe ich keinen Zugriff – egal was das Privatrecht sagt. Auch wenn das Privatrecht sagt, es ist nicht gültig übertragen worden – aber wenn der vorherige Eigentümer den Token nicht mehr hat – kommt er einfach nicht dazu. Dass diese Diskrepanz etwas verkleinert oder wenn möglich aufgehoben wird, wäre in der Schweiz sicher sinnvoll. Ansonsten sehe ich keine wirkliche Notwendigkeit für eine Blockchain-fokussierte Regulierung.

17. Sehen Sie den Brexit als Chance oder Gefahr für ICOs in Grossbritannien?

Dies ist eine schwierige Frage. Schlussendlich kommt es darauf an, was die Absicht hinter dem ICO ist. Wenn man einen ICO macht, um beispielsweise Investoren auf dem europäischen Festland anzusprechen, dann ist es bestimmt eher ein Nachteil. Der EU-Festlandmarkt wird dann natürlich ein Stück weit abgeschottet von UK. Aber eben, wenn man rein von der Innovationsfreundlichkeit spricht, dann gehe ich davon aus, das UK einen liberaleren Ansatz fahren wird als die EU. In der EU hat die ESMA auch schon Warnungen herausgegeben – gewisse europäische Staaten haben wirklich klar gewarnt vor Investitionen in Krypto. Von dem her denke ich, hat UK einen ganz anderen Approach, aber das ist auch historisch bedingt. Allgemein im ganzen Finanzbereich hat UK einen viel liberaleren Approach. Allgemein geht man davon aus, dass es dem Finanzplatz London schaden wird, aber ich denke, wenn sie es geschickt machen, können sie sich auch durchsetzen. Die Schweiz ist schliesslich auch nicht in der EU und hat in Europa dennoch einen signifikanten Finanzplatz. UK hat den Vorteil, dass es sehr eng mit den USA kooperieren kann. Es gibt nicht wirklich schwarz und weiss hier im Bezug auf ICOs.

18. Gibt es Ihrer Meinung nach Bereiche, die von anderen Regulierungen besser gemacht werden, als von der Schweizer Regulationsbehörde?

Nicht das ich wüsste. Natürlich hören wir in der Schweiz viel Gejammer über die FINMA und auch wir sind nicht immer happy mit Allem, aber im Allgemeinen können wir sehr zufrieden sein. Wir wünschen uns zum Teil, dass es schneller geht, insbesondere auch für unsere Klienten, da gerade in diesem Krypto-Business alles sehr schnelllebig ist. Wenn ein Investor ein Projekt super findet, dann möchte er sofort investieren und nicht ein Jahr warten, bis der ICO wirklich stattfindet. Daher haben unsere Klienten häufig einen hohen Zeitdruck und wenn dann das Projekt während einigen Monaten bei der FINMA liegt, ist es sehr schwierig für das Projektteam, die Investoren im Boot zu halten. Ich verstehe aber auch, dass die Arbeitsauslastung sehr hoch ist. Dies ist der einzige Punkt, der noch wirklich Wünsche übrig lässt von Seiten des Regulators.

19. Kann die FINMA Ihrer Meinung der Ansatz der individuellen Betrachtung fortführen, wenn der Boom weiter anhält?

In der Schweiz hat man grundsätzlich das Recht auf eine sogenannte negative Feststellungsverfügung. Daher muss sie fast. Gleichzeitig zahlen die Klienten auch Gebühren für diese Dienstleistungen der FINMA. Es dürfte womöglich einfach dazu führen, dass die FINMA wachsen muss in diesem Bereich oder allenfalls externe Dienstleister, wie Auditgesellschaften für diese Arbeit beziehen muss.

20. Was sind die wichtigsten regulatorischen Punkte, die bei einem ICO in der Schweiz berücksichtigt werden müssen?

Ich denke, das wichtigste sind die Geldwäschereibestimmungen. Dazu gibt es zusätzlich zu beachten, dass eine der grössten Herausforderungen nicht unbedingt regulatorischer Art ist – sondern für die ICO-Gesellschaft ein Bankkonto in der Schweiz zu eröffnen. Dies ist wirklich sehr schwierig bis hin zu unmöglich. Es gibt natürlich die Möglichkeit, ohne Bankkonto ein Geschäft zu machen oder auf eine Bank im Ausland auszuweichen. Wenn man es im Bereich des Möglichen halten möchte, ist es wichtig, dass man als ICO die Geldwäschereibestimmungen strikt einhält, so kann man es gegenüber der Bank vertreten. Die Effektenqualifikation ist meines Erachtens nicht so tragisch, aber falls ein Token als Effekte qualifiziert wird, ist es einfach wichtig, dass man dann die entsprechenden Compliance Vorkehrungen trifft – entsprechend einen Prospekt aufsetzt – sich zu überlegen, wo wird der Token genau „getraded“ und sicherzustellen, dass da keine Interessenskonflikte vorhanden sind. Dann gibt es natürlich auch noch weitere Aspekte, die je nach Typ von ICO relevant sein können, z.Bsp dass das Entgelt für den Token nicht als Einlage bei der ICO-Gesellschaft gilt und nicht wieder zurückgefordert werden kann. Ansonsten gilt die ICO-Gesellschaft als Bank. Je nach Konstellation kann es auch sein, dass sich die ICO-Gesellschaft als eine kollektive Kapitalanlage qualifizieren würde. Auch da muss man natürlich aufpassen, damit man nicht ins Kollektivanlagegesetz fällt. Es hängt sehr davon ab, wie der ICO ausgestaltet ist, wie die Zahlungsmodalitäten sind, was die Gegenleistungen gegen den Token sind. Aber ich denke, das sind so die wichtigsten Punkte – Geldwäscherei, Effektenqualifikation, Bankenrecht und Kollektivanlagerecht.

21. Das Whitepaper kann bis anhin praktisch formfrei aufgesetzt werden. Gibt es Ihrer Meinung nach eine Änderung der Prospektvorschriften in Zukunft?

In rund einem Jahr wird voraussichtlich das FIDLEG - Finanzdienstleistungsgesetz in Kraft treten, sofern es dann im nächsten Monat vom Nationalrat verabschiedet wird. Dort gibt es neue Prospektpflichten, die für alle Finanzinstrumente gelten und somit vereinheitlicht werden. Heute haben wir gewisse Prospektpflichten für Aktien und Bonds und gewisse für kollektive Kapitalanlagen. Diese sind aber in unterschiedlichen Gesetzen geregelt und sind auch ganz unterschiedlich ausgestaltet. Das soll einfach vereinheitlicht werden. Da kann es dann schon sein, dass ein gewisser Typ von Token, der heute womöglich nicht als Effekte qualifiziert wird, dann als Finanzinstrument qualifiziert wird und dann ein entsprechenden Prospekt erstellt werden muss. Dennoch muss man auch hier sagen, dass im Vergleich zur EU, wo die Prospektanforderungen sehr hoch sind, wir in der Schweiz auf einem liberaleren Level sind. Selbst wenn ein Token als Effekte qualifiziert ist, sind dies nur ein paar Sätze mehr im Whitepaper, die es benötigt.

22. Hat die Schweiz die Voraussetzungen, die starke Position im weltweiten Krypto-Vergleich zu halten oder sogar auszubauen?

Ja ich denke auf jeden Fall. Meines Erachtens ist vor allem dieser Netzwerkeffekt extrem stark hier. Wenn sich mal so eine Community aufgebaut hat, dann wächst und wächst diese. Die weiteren Vorteile der Schweiz, die ich vorher bereits erwähnt habe, und wenn dann zusätzlich noch gewisse Gesetzesänderungen in absehbarer Zeit kommen werden, die aus privatrechtlicher Sicht die Rechtssicherheit erhöhen, dann wird es meines Erachtens dazu beitragen, dass die Schweiz ihre Stellung halten oder ausbauen kann. Der Bund hat bereits eine Task Force eingerichtet, die sich überlegt, welche Schritte notwendig sind – da gehe ich davon aus, dass die Problempunkte erkannt und innert nützlicher Frist auch behoben werden.

23. Wie läuft eine Betreuung eines ICOs durch Ihr Unternehmen ab?

Es gibt den groben Rahmen, der immer etwa gleich ist. Meist machen wir ein erstes Treffen, dann versuchen wir ein bisschen zu verstehen, was hinter diesem ICO steckt - weil es für uns als Juristen teilweise technisch nicht ganz einfach zu verstehen ist. Auch wenn wir uns sehr Mühe geben, ist dies auch für uns eine sehr neue Welt. Und dann ist meistens ein

erster Schritt, das Whitepaper entweder neu aufzusetzen – dies wird aber meist vom Klienten selber gemacht – weil es sehr technisch ist, aber wir ergänzen allenfalls und schauen, ob es gewisse Aspekte gibt, die aus regulatorischer Sicht kritisch sind. Beispielsweise eine Rückzahlungsverpflichtung, die dann eine Banklizenzpflicht auslösen würde. Dann überlegen wir uns zusammen mit dem Klienten, welches ist die ideale Gesellschaftsform – also AG, GmbH, Stiftung oder allenfalls ein Verein. Dann wird die Gesellschaft aufgesetzt und es wird ein Schreiben an die FINMA entworfen. Dann kommt die Phase, in der man auf die Rückmeldung der FINMA warten muss. Allenfalls gibt es in dieser Phase weitere Arbeiten am Whitepaper oder eben beim Aufstellen der Gesellschaft. Dazu kommen auch weitere Fragen, wie Arbeitsbewilligungen oder Aufenthaltsbewilligungen für gewisse Mitarbeiter oder Datenschutzfragen, die noch geklärt werden müssen. Auch Cross-Border Fragen können auftreten, wenn bei einem ICO der Token nicht nur in der Schweiz vermarktet werden soll. Dann muss dies auch noch regulatorisch abgeklärt werden. Und sobald von der FINMA die Bewilligung respektive der No-Action Letter vorhanden ist, dann kann der Klient loslegen. Und dann gibt es immer bei jedem ICO andere spezifische Fragen, aber das ist so der grobe Ablauf. Im Allgemeinen rechnen wir mit vier bis sechs Monaten für ein ICO ab der Anfrage. Aber es kommt natürlich immer darauf an – wenn der Klient noch unvorbereitet ist und noch nicht mal einen ersten Draft fürs Whitepaper hat, dann zieht sich dies natürlich in die Länge. Auch wenn die FINMA beispielsweise zurückkommt und sagt, dass etwas nicht in Ordnung ist, und sie einen regulatorischen Trigger sehen, dann muss man entweder diese Regulierung erfüllen oder halt das Whitepaper und das Projekt so abändern, dass dieser Trigger nicht ausgelöst wird. Es kann viel länger dauern, aber bei einem ganz einfachen ICO könnte es auch viel schneller gehen.

Appendix C

Interviewee III: Co-Founder & Member of the Board of several Blockchain and DLT-specific Businesses

1. ICO gilt als neue und innovative Finanzierungsquelle für Start-ups. Wie schätzen Sie das Potenzial von Initial Coin Offerings ein?

Das muss man aus zwei Dimensionen betrachten. Das eine ist die Tokenisierung von Asset-Rechten - das grundsätzlich ermöglicht relativ effizient, schnell und nachweisbar über Systemgrenzen – also technisch gesprochen – eine grosse Reichweite aufzubauen. Dieses Potenzial ist extrem gross. Ich glaube, das wird einer der wichtigsten Technologien sein - was die Blockchain für einen unmittelbaren spürbaren Nutzen auch für die allgemeine Masse bringen wird. Auf der anderen Seite – ICOs im Sinne vom globalem Crowdfunding hat sicher Relevanz - weil es eine sehr attraktive Art ist, sich Finanzmittel zu beschaffen, und weil man grundsätzlich relativ schnell auf einem globalen Markt kommt. Da stellt sich die Frage des Potenzials. Das Potenzial wird im Wesentlichen durch zwei Elemente beschränkt. Das eine ist die Frage der Liquidität dieser Token – ich glaube, das sind Themen, die man heute schon sieht mit dem ganzen sekundären Handel. Egal was tokenisiert ist, wenn die Liquidität nicht gegeben ist, dann wird er zwangsläufig irgendwann wertlos. Da gibt es sicher auch ökonomische Theorien dazu. Auf der anderen Seite ist der Begrenzungsfaktor das Verhalten des Regulators. Ich glaube es ist schon ziemlich absehbar, in welche Richtung es geht. Crowdfunding ist aus meiner Laiensicht im Wesentlichen ja eigentlich dasselbe, und auch da hat der Regulator eingegriffen und hat gewisse Themen vorgegeben. Und ich glaube, das wird wahrscheinlich in eine ähnliche Richtung gehen.

2. Wie weit können ICOs klassische Formen der Finanzierung (wie Bsp. VC oder IPO) ersetzen oder ergänzen?

Zurück auf den ersten Punkt. Mit der Tokenisierung irgendwelcher dargestellten Rechte – Ja. Das tut es ja in gewisser Art und Weise jetzt schon. Ich glaube, das wird aber erst dann passieren, wenn der Mittelbau – und mit Mittelbau meine ich Anwälte, Banken, Versicherer, Wirtschaftsprüfer usw. – in dieser Welt angekommen sind. Die kämpfen heute alle noch. Die einen sagen Nein, die anderen versuchen es. Die, die dafür bezahlt werden es zu versuchen, tun es und die, die für diese Risiken nie belohnt worden sind, tun es nicht. Irgendwann wird sich das wohl angleichen. Ich glaube auch sehr stark, dass diese Tokenisierung von Assets wahrscheinlich aus dem Investmentbanking-Umfeld getrieben wird. Genau aus dem Grund, weil eben so relativ schnell und relativ effizient sehr grosse Funds geraised werden können, die eben auch vollständig transparent sind. Wenn man sich heute einen Bookbuilding-Prozess bei einem IPO ansieht – ich nenne es mal uncodeable Lug und Betrug, was da alles passiert - bis man da ein Kontobuch herkriegt. Und genau die Tokenisierung in dem Mass kann da Transparenz schaffen. Dies halte ich für absolut notwendig. Dass der öffentliche Teil in Zukunft nach wie vor so stattfinden wird, weiss ich nicht. Ich bin da eher skeptisch.

3. Worauf ist der letztjährige und auch derzeit anhaltende ICO Boom zurückzuführen?

Ja, meiner Meinung nach sind es zwei Elemente. Zum einen sind es scheinbar einfach gemachte Profite ohne Risiken zu nehmen. Das hat schon immer alle Fliegen angezogen. Ob jetzt positiv oder negativ. Auch da werden wir wahrscheinlich einen Bevölkerungsdurchschnitt haben. Das ist sicher einer der Aspekte, wenn man diese imposante Wertentwicklung, vor allem im 2017 betrachtet. Ich glaube aber zugrunde liegt auch ein anderes Element. Und zwar, dass die Leute, die sehr früh aktiv waren und sehr früh über gewisse Tokens verfügt haben, eine Reinvestment-Strategie fahren, die grundsätzlich die Gelder wieder anderen Projekten zuführt. Für einen Krypto-Investor ist es attraktiv, mehrere Tokens zu halten – der totale Nightmare von jedem Banker. Und ich glaube, so kommt auch relativ schnell relativ viel Kapital wieder zurück. Dies sieht man auch an diesem unglaublichen Speed an Innovation. Das Kapital ist schnell vorhanden. Es sind in diesen

Early-Stages auch praktisch immer die Leute, die das Underlying irgendwo verstanden haben, die da Kapital zur Verfügung stellen. Durch die Anzahl Personen, die da teilnehmen können, waren es auch ordentliche Summen, sodass man sich auf dem Produktmarkt auch darauf fokussieren konnte, das Produkt in den Markt zu bringen und sich nicht mit unendlichen Finanzierungsrunden aufhalten muss. Das ist der wesentliche Beschleunigungsfaktor gegenüber all den Hypes, die man sonst so gesehen hat. Wenn man über VC oder so gehen muss, nimmt dies einfach Speed aus dem System. Wenn ich natürlich dann durch solche Art der Kampagne relativ schnell zu Kapital komme und auf die Kerntechnologie fokussieren kann, - das beschleunigt das System natürlich eminent. Man muss sich mal diese Time-to-Unicorn anschauen. Ich glaube, vor 50 Jahren waren es 100 Jahre, vor 20 Jahren waren es noch 10 Jahre und im letzten Jahr waren es noch circa 6 Monate. Die Kraft der Multiplikation dank der Digitalisierung multipliziert sich brutal.

4. Ist die Schwierigkeit Token in Fiat-Gelder zu wechseln Ihrer Meinung nach, auch einen Grund für den Anstieg von durchgeführten ICOs?

Nein. Ich denke jeder, der sich etwas damit beschäftigt, weiss über welche Wege er liquidieren kann. Ich denke, der Boom ist noch viel mehr idealistisch getrieben mit der Ansicht, ich halte die Token bis zu meinem Tod.

5. Was spielt Ihrer Meinung nach aus Sicht der herausgebenden Unternehmen eine wichtigere Rolle? Die regulatorische Sicherheit oder eine ICO-freundliche Regulierung? Weshalb?

Ich glaube, es besteht Rechtssicherheit in der Schweiz. Es gibt bestehende Gesetze und die gilt es einzuhalten. Nur weil da paar Cowboys herumlaufen, die sagen es ist eine neue Welt und darum gelten sie nicht – vielleicht sind die einfach die Idioten. Die FINMA hat nicht viel mehr gemacht, als darauf hingewiesen, welche bestehende Gesetze es gibt und sie haben sich bei den Utility Token den Joker gezogen – und gesagt es gibt hybride Modelle. Es ist also entweder ein Wertrecht oder es ist ein Zahlungsmittel. Also kann ich es einordnen. Von daher finde ich diesen Ruf nach Regulierung – obwohl ich juristisch ein Laie bin – falsch. Ich glaube, wir haben ein relativ flexibles Modell, wenn man sieht was für andere Derivate, etc. in irgendeiner Art und Weise auf den Markt gebracht werden können, die nicht mit Krypto zu tun haben. Das ist doch alles ok. Das grosse Problem ist etwas anderes. Es ist genau dieser Mittel-Layer. Wenn ich als Blockchain-Unternehmen kein Bankkonto kriege, wenn ich als Blockchain-Unternehmen mit einem Wirtschaftsprüfer diskutieren muss, ob er für mich als Revisionsstelle fungiert, wenn ich keine regulierten Marktplätze habe, wo ich diese Tokens wieder ausgeben kann, wenn die Anwälte mehr als 10'000 CHF für ein Initial Meeting verlangen um herauszufinden, ob das sinnvoll ist, weil scheinbar niemand versteht, worum es geht, wenn ich eine Produkthaftpflichtversicherung für ein Blockchain-Unternehmen suche, das sind die realen Probleme, die jetzt gelöst werden müssen. Wenn der Mittelbau da ist, dann kriege ich ja auch wieder Rechtssicherheit. Ich glaube nicht, dass das Recht das Problem ist, sondern genau dieser Mittelteil, wo genau diese Unternehmen per Default Nein in ihren Entscheidungsbäumen haben, irgendwo den Schritt zu Krypto und Blockchain einbauen müssen, um es beurteilen zu können und dann das Nein nicht per Default kommt. Die Banken sagen heute einfach, dass jeder der Blockchain macht, kein Konto kriegt. Die müssten sich das Anschauen, wie viele Andere auch und dann zum Schluss kommen, das ist legitim und kann getan werden - oder sagen, versuche es irgendwo anders mit deinem Projekt. Ich glaube, das gibt die praktische Rechtssicherheit und die fehlt.

6. Hätten Sie sich einen detaillierten Ansatz der FINMA bezüglich ICO gewünscht?

Ich finde, es ist nicht die Aufgaben von Anwälten den Job der FINMA zu machen. Es ist ein anspruchsvolles Feld, weil es viele Themen miteinander verwebt. Es betrifft das Gesellschaftsrecht, das Steuerrecht, es betrifft den Finanzmarkt und die Geldwäscherei. Es ist also ein extrem breites Rechtsgebiet. Die Auslegung von Gesetzen ist die Aufgabe des Anwalts und nicht die Aufgabe der FINMA. Ansonsten stimmt die Gewaltentrennung nicht. Die FINMA ist ein reiner Überprüfer.

7. Welche Stellung nimmt die Schweiz aus Sicht von potenziellen Token-Herausgebern gemäss Ihren Erfahrungen ein?

Ich glaube, wir haben einen absolut idealen Nährboden. Auf der einen Seite gibt es relativ viel politischen Support. Wir haben einige Leute an der politischen Spitze, die sich zu dem Thema exponieren. Ich glaube, wir haben auch sehr viel Support auf governmental Ebene – mit den Personen, mit denen wir die Gespräche über Steuern, Mehrwertsteuer und Sozialversicherung geführt haben, sind alle sehr offen und wollten helfen. Ich glaube der Staat ist für einmal nicht das Problem. Ich glaube auch, wir haben das passende libertäre Gedankengut und die grundsätzliche Freiheit. Wenn du in China was Neues tust, kommst du in den Knast, in den USA wirst du verklagt bis du keine Kohle mehr hast und in der Schweiz schauen sie mal zu und handeln erst, wenn es richtig übel wird. Und das ist sehr wichtig. Wir befinden uns in einer Findungsphase, weil eben dieser Mittelbau fehlt. Man muss sich da noch durchschlängeln - was genau ist, erfordert extrem viel Wissen auf der Seite des Unternehmens. Aber grundsätzlich ist die ganze Offenheit da. Das einzige Risiko ist es, dass es irgendwelche bedauernswerte Gestalten gibt, die diese Freiheit aus verschiedenen Motiven wie Gier, Egozentrik oder Dummheit in einem Mass ausnutzen und dann negativ prägen, dass dann eigentlich die Politik doch aktiv wird. Solche Spezialisten gibt es leider.

8. Die USA sind noch immer der grösste Markt für ICOs. Dies, obwohl die SEC prinzipiell alle Tokens als Securities einstuft, was halten Sie davon?

Vielleicht ist es halt einfach so. Vielleicht ist es einfach Fakt und vielleicht muss man sich an den Gedanken gewöhnen, dass es vielleicht einfach so ist. Auch bei der FINMA-Map sind schlussendlich alle Tokens entweder Payment oder Assets. Was ist also der Unterschied zwischen dem SEC und der FINMA? Eigentlich nur die Aggressivität im Auftreten. That's the only thing. Aber ich glaube, der Kern der Aussage ist genau derselbe. Und ich finde dies auch nicht schlecht. Es setzt aber voraus, dass es regulierte Exchanges gibt. Deswegen glaube ich, Regulierung wird - so wie in den letzten 2-3 Jahren die Nichtregulierung der Wettbewerbsvorteil war - das ist immer so, in unmaternen Märkten – wird die Regulierung als absoluter Marktvorteil kommen, wenn ich jetzt aus Sicht eines ICO-herausgebenden Unternehmen denke. Ich habe einen Big 4 Revisor und muss diesem revidierte Statements abgeben. Wenn ich die Wahl habe zwischen einem vollständig regulierten und einem nicht regulierten Exchange, gehe ich natürlich zum regulierten Exchange. Damit kommt auch Liquidität auf die regulierten Exchanges. Ich glaube, regulierte Players sind genau die, die wirklich Zukunft haben, alle anderen sind meiner Meinung nach Träumer.

9. Entspricht der amerikanische Ansatz Ihrer Meinung nach einer fortschrittlichen Regulierung? Es gibt ja viele Behörden, die Tokens unterschiedlich einstufen?

Ich glaube, dies ist der grosse Unterschied. Ich glaube die FINMA ist politisch relativ neutral. Was man bei der SEC oder CFTC so was von nicht sagen kann. Die USA haben eine imperialistische Politik, die zieht sich über alle ihre Aktivitäten - mit ihrer aktuellen Führung eigentlich noch mehr als anhin - aber am Ende des Tages hat sich im Grundsatz deswegen nichts verändert. Das war schon immer ihre Politik. Die USA müssen sich irgendwann vielleicht mit dem Gedanken anfreunden, dass sie nicht mehr die „Leading Economy“ sind. Das sind Auswüchse davon. Sie haben ein sehr diktatorisches und imperialistisches Gehabe bezüglich ihrer Regulierung. Wenn man die Weltpolitik anschaut, überrascht dies keinen. Just take it as a fact. Ich glaube nicht, dass sich das ändern wird

10. Wird durch die Regulierung in den USA der Markt beeinflusst und wird es Abwanderungen nach Europa oder Asien geben?

Man sieht es heute schon. 98 Prozent der ICOs schliessen Amerikaner aus. Dies führt aber überhaupt nicht dazu, dass diese ICOs unfähig wären etwas zu tun. Wir haben für uns relativ klar gesagt, Amerika machen wir nicht. Warum sollten wir? Da kommen so viele Legal Risks auf einen zu. Und dabei spielt es nicht mal eine Rolle, ob man ein Blockchain-Unternehmen oder eine Bank oder eine Versicherung ist.

11. In Gibraltar gibt es seit Anfangs Jahr eine DLT-Provider Regulation. Was halten Sie von diesem Ansatz?

Als Gibraltar würde ich dies auch machen. Was ausser Felsen haben sie dann sonst. Auch Malta überrascht niemanden, dass sie die etwas innovativeren Geschäftsmodelle verfolgen wollen. Malta hat praktisch alle „Online-Gambling Entities“ bei sich registriert. Malta hat sich dieses Konzept – wenn du auf unserer Insel investierst, erhältst du einen EU-Pass – marktfähig gemacht. Aus Perspektive dieser Insel ist dies ein cleverer Schachzug. Die wären ja bescheuert, wenn sie es nicht machen würden. Im Gesamtkontext kann man sagen, es ist der Kleine, der ärgert, aber es wird nicht das „Big-Business“ sein. Es ist eher ein Zeit-Geschäft für diese Regionen, das für sie wirtschaftlich überlebensnotwendig ist. Es ist auch nicht verwunderlich, dass sie aufgrund ihrer Grösse die Agilität haben und die entsprechenden Risiken nehmen können. Das wird bei jeder neuen, weiteren Thematik, die grundsätzlich virtuell geführt werden kann, garantiert auch so sein.

12. Grossbritannien hat auch die Absicht die DLT zu regulieren, ist aber zum Schluss gekommen, dass sie die DLT genug mit bestehenden Gesetzen abdecken können. Ist Ihrer Meinung nach in der Schweiz eine DLT-Provider Regulation notwendig?

Ich denke nicht. Ich glaube jede Frage für sich gestellt, kann man auf Ebene der Gesetze beantworten. Und wenn es die eine oder andere Registrierungspflicht voraussetzt, ist es auch nicht dramatisch. Dass man KYC/AML machen muss, wenn man Millionen einnimmt, ist doch normal. Wir haben dies letzten Juli gemacht und uns haben alle komisch angeschaut, dass wir es überhaupt machen. Die Überlegung dahinter war ganz einfach, irgendwann kommt es - wir wollten nicht die Situation haben, dass wir irgendwann ein Einschreiben mit einem Barscheck erhalten und dafür kein Bankkonto mehr haben. Und deshalb haben wir uns gefragt, welche Gesetze gibt es? Es steht zwar nirgend drin, dass Du Krypto so behandeln muss, aber wir haben es einfach gemacht. Dies hat auch dafür gesorgt, dass wir entsprechend überhaupt keine Probleme mit unseren Banken haben. Genau deswegen ist es der mittlere Layer, der Klarheit schaffen muss. Eine Bank muss nicht einfach nein sagen, sondern schauen, wenn ein Unternehmen verschiedene Voraussetzungen vornimmt, dann ja. Und wenn eine der Voraussetzungen nicht eingehalten wird, egal welche, dann nein. Das braucht es und das gibt Sicherheit.

13. Wie schwierig ist es als Blockchain-Unternehmen ein Bankkonto zu eröffnen?

Es ist nicht schwierig - es ist praktisch unmöglich. Es gibt schon Banken die Blockchain Unternehmen annehmen. Das sind in der Tendenz eher kleiner Banken, ähnlich wie das Gibraltar Modell. Nehmen wir die Bank Frick – ein kleines Familienunternehmen und hervorragend positioniert. Die nutzen jetzt die Trägheit der Grossen aus und gehen da in das Risiko, dass sie aufgrund ihrer Agilität und ihrer Ausrichtung in die Zukunft nehmen können. Deswegen sind auch ganz viele Privatbanken und vor allem kleine Privatbanken viel offener. Für sie stellt es ein relativ einfacher Mechanismus dar. Grossbanken hingegen haben sicher auch Leute, die dafür kämpfen, dass Geschäfte mit Blockchain-Projekten eingeführt werden. Aber die können gar nicht mehr entscheiden. In einer Bank ist die Entscheidungsfindung verwässert – ein Teil ist bei Legal, einen Teil ist bei Compliance, ein Teil ist bei Risk, usw. – als Spitze einer Bank kann ich nicht mehr entscheiden. Vor zwanzig Jahren war diese Entscheidungsfähigkeit noch da und heute nicht mehr. Deswegen geht dies so lange. Wenn aber die grossen Banken in ihre E-Banking Portale die Token Wallets einbauen, dann sind die kleinen Banken weg. Es gibt ja keinen Grund dafür.

14. Gibt es Ihrer Meinung nach global gesehen irgendwelche regulatorische Punkte, die besser gemacht werden als hier in der Schweiz?

Nein. Hier hat man eine unglaubliche Freiheit, dass Geschäft so zu tun wie man es für richtig hält. Man wird dabei nicht aufgehalten, was ich grundsätzlich richtig finde. Ich glaube, die Rahmenbedingungen sind absolut ideal. Ich wiederhole mich, es braucht unbedingt diesen Zwischenlayer und dann ist diese Sache gegessen. Wenn man betrachtet, wie viele Derivate und strukturierte Produkte ausgegeben sind. Wenn man einfach sagt, Tokenisierungen sind

Derivate. Wieso sind diese monopolisiert auf einer Bank? Nobody knows. Einfach nur weil es schon immer so war. Ich glaube mit der ganzen Digitalisierungsstrategien dieser Institute – müssen diese sich etwas einfallen lassen – Retail-Banking ist meiner Meinung nach schon tot – „Revolut“ als digitale Bankalternative hat in den letzten 12 Monaten mehr Kunden akquiriert als die UBS in ihrer gesamten Zeit – ein bisschen überspitzt gesagt. Da kommt eine Welle auf die Bank zu und so doof sind die nicht. Und wenn du es dann schaffst, mit spezialisierten, digitalisierbaren Leistungen in diese Interface einzuhängen, dann bist du der Gewinner. So können Banken ihre Existenzberechtigung erhalten. Ich kann mir gut vorstellen, dass ganz viele vom „bösen“ Investment Banking getrieben werden. Das löst auch für sie ganz viele Probleme.

15. Was sind die wichtigsten regulatorischen Punkte, die bei einem ICO in der Schweiz berücksichtigt werden müssen?

Finanzmarktgesetz, Geldwäschereigesetz, Steuergesetz, Mehrwertsteuergesetz und das Sozialversicherungsgesetz. Das Finanzmarktgesetz klassifiziert grundsätzlich, was man tut. KYC und AML sollte man einfach machen und ist auch wirklich einfach. Steuern vergessen ganz viele. Wir haben weltweit ein absolutes Unikum mit Steuer-Rulings – dies sollte man unbedingt benutzen. Die Behörden sind sehr offen und hilfsbereit. Weil am Ende des Tages wollen sie nur die Steuern. Die Mehrwertsteuer ist auch ein riesiges Thema. Vieles läuft ja über Tokens. Ausschüttung über Tokens sollte einfach gleich wie Geld behandelt werden, auch steuerlich und sozialversicherungs-technisch. Ich glaube diese zwei Themen werden noch einige erwischen. Wenn ein ICO hunderttausende von Tokens herausgegeben hat, an Mitarbeiter oder irgendwelche Zulieferer, beläuft sich das schon auf einiges - wenn irgendwelche clevere Menschen sich gedacht haben, dass sie diese nicht versteuern müssen. Die sind dann ziemlich ungeduldig. Diese 5 Elemente sind eminent wichtig.

16. Was braucht es, damit die Schweiz die starke Position im weltweiten Krypto-Vergleich halten oder sogar ausbauen kann?

Ich glaube, ein guter Support aus diesem Mittelbau, wie ich den nenne, ist ganz wichtig. Die sind auch bereits daran, aber benötigen noch ihre Zeit. Ich glaube, das ist enorm wichtig, dass die KPMGs, EYs, PWCs usw. zusammen mit den Grossbanken - und auch mit Versicherungen, die man gerne vergisst – Rahmenbedingungen schaffen, dass operiert werden kann. Die sollen sich ruhig ihren „Slice“ daraus nehmen, weil es Services sind, die nachgefragt und die in diesem Zusammenhang auch erbracht werden. Das ist halt einfach New-Business und darauf regiert jeder in dieser Branche etwas anders. Deswegen ist es auch nicht sehr verwunderlich, dass die Anwälte als allererste aufgestanden sind und gesagt haben, wir sind Krypto-Experte. Das Risiko ist am wenigsten hoch für sie.

17. Wie lange dauert es voraussichtlich noch, bis dieser mittlere Layer auf Krypto eingestellt ist?

Die ersten Fehler werden wahrscheinlich nächstes Jahr gemacht, dann korrigieren sie ein Jahr und dann brauchen sie noch zwei Jahre. Also sicher noch zwei bis vier Jahre. Auch die können nur iterativ vorgehen. Dann gibt es ein grosser Irrsinn, weil paar Idioten was auch immer tun – dann rollen einige Köpfe und dann schreit die Politik und dennoch passiert nichts Weltbewegendes und irgendwann ist es dann da. Jeder der denkt, zwei bis vier Jahre sind lang, dem bin ich anderer Meinung. Man darf nicht vergessen, alle reden über diese Bubble aus dem Jahr 2000/2001 – die Marktkapitalisierung lag da bei etwa 400 Milliarden mit diesen überhüpften IPO Unternehmen. Die Summe der Marktkapitalisierung der Top 10 Unternehmen heute, deren Existenz grundsätzlich das digitale Ökosystem ist, das hier entstanden ist, ist höher. Signifikant mehr. Dazwischen liegen 18 Jahre. Ich glaube, der wirklich grosse Fall - was diese neue Technologie mit sich bringt, das sehen wir erst in 10 bis 20 Jahre. Wenn dann der mittlere Bau dazu in 2 bis 4 Jahre dasteht, wird es im Grossen und Ganzen nicht so relevant sein. Ich glaube, diese Zeitspanne ist schon okay. Natürlich hätte ich es auch gerne Morgen aber man muss auch realistisch bleiben.

Appendix D

UNIVERSITÄT BASEL

STUDIENDEKANAT DER WIRTSCHAFTSWISSENSCHAFTLICHEN FAKULTÄT

Plagiatserklärung

„Ich bezeuge mit meiner Unterschrift, dass meine Angaben über die bei der Abfassung meiner Arbeit benützten Hilfsmittel sowie über die mir zuteil gewordene Hilfe in jeder Hinsicht der Wahrheit entsprechen und vollständig sind. Ich habe das Merkblatt zu Plagiat und Betrug vom 23.11.05 gelesen und bin mir der Konsequenzen eines solchen Handelns bewusst.“

Name, Vorname: _____

Ort und Datum: _____

Unterschrift: _____

