

# Liechtenstein plays a pioneering role in government regulation of the crypto-financial market

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## I. Liechtenstein plans Blockchain Act

The Liechtenstein financial marketplace is well known for its openness to innovative ideas and developments. These comprise FinTech business models, including crypto currencies and blockchain-based financial services. Now Liechtenstein even goes one step further and announced a comprehensive Blockchain Act at this year's Finance Forum on 21 March 2018. According to Liechtenstein's prime minister Adrian Hasler the new act is about integrating current business models in regulatory terms in order to give companies and their clients legal certainty. With the planned act, Liechtenstein will be one of the first countries in the world to regulate the blockchain topic to this extent and thus create the basis for extensive economic applications. The planned act is expected to be circulated for consultations this summer.

## II. Liechtenstein approves Cryptocurrency Funds

As reported in the media early March, the Financial Market Authority Liechtenstein (FMA) approved three Alternative Investment Funds for cryptoassets (Incrementum Crypto One Fund, Postera Fund and Coinlab Digital Asset Fund). Liechtenstein thus plays a pioneering role in government regulation of the crypto-financial market.

## III. Treatment of Initial Coin Offerings (ICOs) in Liechtenstein

### At a glance

- An Initial Coin Offering (ICO) or a token sale refers to a company selling a predefined number of digital tokens to the public in a limited period of time.
- The ICO market has grown very rapidly in recent months and has been a new avenue for blockchain-based start-ups and projects to get the funding needed to launch their projects.
- In September 2017, the Financial Market Authority Liechtenstein (FMA) published a fact sheet on ICOs, which stated that depending on their specifications, tokens may constitute financial instruments subject to financial market law

### 1. What are ICOs?

**Initial Coin Offering** (“ICO”, also referred to as token generation event, token launch, token sale or token offering) is a term describing a limited period in which a company sells a predefined number of digital tokens (cryptocoins) to the public, typically in exchange for major cryptocurrencies (as of today, mostly Bitcoins and Ether).

On the side of the token issuer, the collected funds are typically used to finance a project (e.g. the building of a software/blockchain-based platform). In exchange for the financing, the investor receives a token which may be connected with the right to receive a dividend, a voting right, a license, a property right or a right to participate in the future performance of the issuer. Usually, tokens are tradable on cryptocurrency exchanges.

### 2. Token characteristics

**Tokens** (coins) can have different functions, which triggers the way how to treat them from a legal and regulatory perspective. Four main forms exist to date (incl. many hybrid combinations).

#### a) Security token

Tokens with security character (e.g. debt, equity or derivatives) with income-generating component and potential rights vis-à-vis the issuer (e.g. governance, participation, ownership)

#### b) Digital currency

Tokens with an attributed value. They can be used to buy and sell goods and services and to store value (although they can be very volatile).

#### c) Asset-backed token

Tokens that provide underlying exposure to real-world assets (e.g. gold, diamond, securities, cash, real estate, etc.)

#### d) Utility token

Tokens with utility character provide access to a blockchain-based platform, product, or service. They are not primarily designed in means of an investment.

## 3. What are the characteristics of an ICO?

In general, an ICO has the following structure:

- a)** Publication of a white paper describing a project or product as well as the funding via ICO. The white paper also describes the intended use of the tokens to be issued. Software and the technical specifications are published on open-source platforms like GitHub.
- b)** A smart contract is set up, usually based on the Ethereum blockchain. The smart contract is needed to generate and distribute the tokens later on.
- c)** During a fixed time period, cryptocurrency payments (usually Ether or Bitcoin) are accepted by way of the smart contract.
- d)** Using the public key for those payments (similar to a digital account number), the smart contract generates the new tokens and makes them available to investors.
- e)** The tokens may be stored by third parties (wallet providers) and/or made tradable with the help of cryptocurrency trading platforms.
- f)** Once the funded project is complete, the investor can sell the tokens or exchange them for services.

## 4. What are the key challenges of an ICO?

Worldwide, regulators start to look into ICOs, but only few have actually taken actions (e.g. China, USA, Singapore). It is expected that the US SEC/EU ESMA and other major regulators will soon regulate the ICO space, particularly from a capital markets, tax and KYC/AML perspective.

A further challenge is that many ICOs still lack proper cybersecurity, which can represent a major threat for investors. As most ICOs raise money in the form of cryptocurrencies, high-volume transactions provide an attractive target for criminals. Besides ICOs, several cryptocurrency wallets (where tokens/coins get stored) have been hacked recently.

## 5. How does Liechtenstein treat ICOs from a legal/regulatory perspective?

In September 2017, the Financial Market Authority Liechtenstein (FMA) published a fact sheet on ICOs, which stated that depending on their specifications, tokens may constitute financial instruments subject to financial market law.

Depending on their specification, tokens may constitute financial instruments subject to financial market law. This may include tokens that have characteristics of equity securities or other investments. In principle, activities relating to financial instruments are subject to licensing by the FMA on the basis of special legislation and may require publication of a prospectus.

In all cases, the specific design and de facto function of the tokens are decisive. Any AML/KYC obligations also depend on the specific design. Connecting factors for FMA jurisdiction exist, for instance, if a company's registered office or branch is in Liechtenstein and/or if relevant activities are pursued on the Liechtenstein market.

## **6. How is an ICO taxed in Liechtenstein?**

Liechtenstein offers a favourable tax system with modest tax rates for issuers of tokens (typically using foundation structure or a special purpose vehicle), for ICO entrepreneurs and for investors.

Careful structuring of the ICO is necessary to manage potential issuance stamp tax consequences (in case of issuance of equity tokens) as well as VAT and corporate income tax consequences (in case of issuance of utility tokens). Since there is no gift tax in Liechtenstein, employing a charitable foundation structure is an option which is worth considering in detail.

Taxation of ICO entrepreneurs and investors domiciled in Liechtenstein depends on the categorisation of a specific token. Capital gains on digital currency tokens should generally be exempt from income tax (due to taxation of notional income from wealth instead of effective investment income).