



**Swiss Finance +
Technology Association**

Considering Cryptocurrencies:

What is happening and where are we going?

Fall 2017



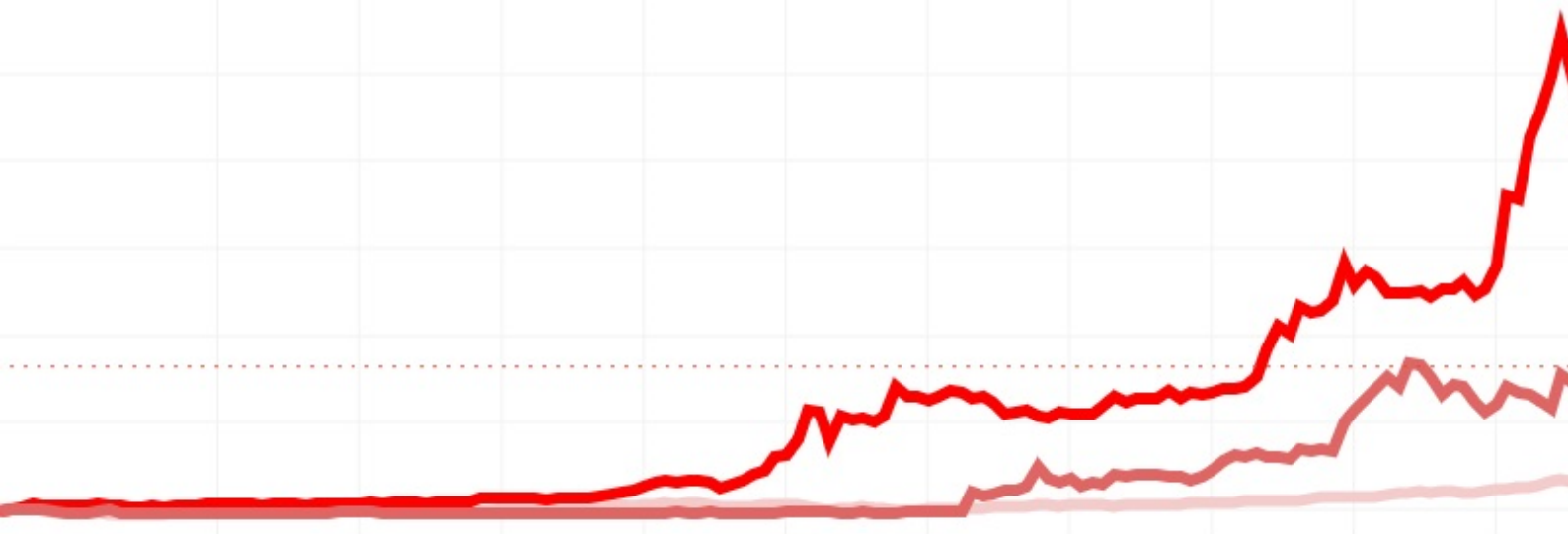
Swiss Finance + Technology Association

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Elliott Capital is an advisory firm offering innovation and venture building services at the point of convergence around finance and technology. We help our clients understand, adapt, and embrace change through our knowledge, network, and ambition. Elliott Capital is the service provider for the SFTA.

In this Issue



Message from the President, John Hucker [3](#)

Quarterly Update on SFTA Events [4](#)

Upcoming SFTA Events [6](#)

What to consider when launching an ICO in Switzerland [7](#)

The Interviews

The Companies

Lykke [9](#)

Equibit [11](#)

Protos [12](#)

Icon [13](#)

The Legal Firms

Loyens & Loeff [14](#)

Wenger & Vieli [15](#)

Depierre Avocats [16](#)

Final Thoughts:

FinTech regulation- A look beyond the sandbox's edge [18](#)



Message from SFTA President, John Hucker

Dear FinTech insiders,

The past quarter has been another period of impactful activity for the SFTA in which we took another step forward in terms of our ambitions. We hosted the third annual Swiss FinTech Pitch which saw winners ImBurse and SICTIC give great presentations, as well as a rare keynote from Stefan Heitmann, CEO of MoneyPark. The month of October also featured the landmark mission to the Singapore FinTech Festival, where the SFTA collaborated with the Secretariat for International Financial Matters and Switzerland Global Enterprise to host the Swiss Pavilion. It was a huge success and provided amazing exposure for SmartValor, NetGuardians, Gero, and gateB, as well as Swisscom and UBS. Lastly, we are proud to announce that our fourth local chapter in Lausanne hosted its first event and is gearing up for a second in December.



2017 overall has been a year of new milestones for the Swiss FinTech ecosystem. With the rise of the ICO craze and emergence of Crypto Valley on the international scene, Switzerland is taking its rightful place as a FinTech powerhouse. Wanting to provide some context to these developments, this edition of the SFTA Quarterly focuses on this rise and what it may mean in the long-term for firms and regulators. Meanwhile, in the mainstream FinTech scene, we have seen a number of accelerators come up to speed, lots of new startups launch, and an increasing number of investments and exits.

The SFTA has had several major developments in 2017. We surpassed 600 individual members, with notable growth in the number of women in FinTech as the result of focused efforts supported by the Commission for Technology and Innovation. In September, we broadened the platform to offer service packages to startups, investors, corporates, and partners. The SFTA had waited to do this until this point as we wanted to grow our audience and capabilities in order to ensure that we could serve all stakeholders effectively. Response to our service packages has been very strong, especially among startups and partners. Behind the scenes, we continue to refine the operating model and our offering to ensure that members, subscribers, and the overall ecosystem benefit.

Before ending the year, we have a special event on December 13th featuring a panel of top FinTech influencers from Crypto Valley, Digital Switzerland, and FinTech Fusion. These leaders will review their priorities for 2018 and answer some of the burning questions; for example, how much money they think will be raised by ICOs in 2018 and what should FINMA do next? I won't spoil all the surprises, so I urge you to attend. More will be said in my end of year letter to members, so if you have not already done so, please [join us](#) today. For those who are feeling the Holiday Spirit, we also encourage targeted donations in support of specific SFTA activities on our website [here](#).

Cheers!



Quarterly Update on SFTA Events

Blockchains, Cryptos, Smartcontracts, DAO, what does that mean?

In its inaugural SFTA Meetup, the Lausanne Chapter hosted Olivier Depierre of Depierre Avocats on **September 13th**. The experienced Depierre provided the 30 attendees with valuable insights regarding the current landscape of FinTech in Switzerland and how Switzerland's legal framework is adapting. The discussion was followed by a fruitful networking session.

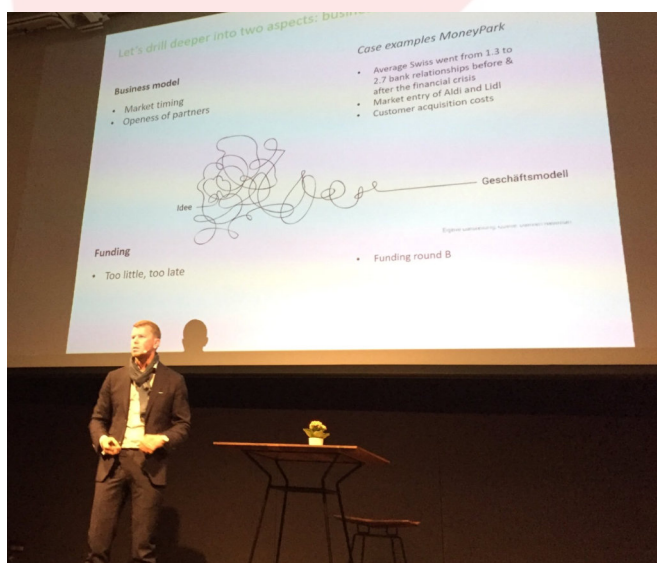
Bitcoin and the new Crypto Currencies

The Lugano chapter hosted Claudio Bareato and Oreste Venier from Swiss Blockchain Technology on **September 20th**. The duo provided participants explained the main technical aspects that underpin the new Crypto Currencies, and, in particular, Bitcoin. The presenters discussed the technical foundations through a variety of simple and real examples, focusing on core basic elements such as cryptography, private keys, hashing, addresses, transactions, wallets, and cold storage.



Learn about Abu Dhabi

Led by presentations from Steve Barnett and Thomas Hirschi of Abu Dhabi Global Market (partners of the SFTA), attendees were informed regarding the opportunities available to FinTech firms and investors in Abu Dhabi. Stressing the similarities and acknowledging the differences between the Abu Dhabi and Swiss systems, the representatives from ADGM informed our attendees about how Abu Dhabi's regulatory framework welcomes FinTech evolution and invites foreign entrepreneurs to thrive in one of the most important Middle East markets.



Swiss Fintech Pitch 3

The 3rd annual Swiss Fintech Pitch was another huge success. Held at the Landesmuseum in Zurich on **October 11th**, the morning of the Pitch featured fruitful 1 on 1 meetings between selected start-ups and qualified investors. The afternoon kicked off with an inspiring keynote from Stefan Heitmann, CEO of MoneyPark, outlining the challenges and lessons he learned as MoneyPark transitioned from start-up to FinTech success story. Following the keynote were presentations from investors looking for interesting opportunities in the Swiss market. While Swisscom, Red Alpine, DI Ventures, AXA Investment, and SICTIC all differentiated their offerings, it was evident that they recognized

Switzerland as a fertile investment environment. Following the investors, startups BEE SOLAR, IMBurse, Protos, Werthstein, and Lend offered a glimpse to the breadth of industries in which FinTech startups are looking to make their mark. Overall, it was another invigorating day for the all of us working in the Swiss FinTech community!



Swiss Finance + Technology Association

Digital Marketing meets FinTech

On **October 24th**, Monica Lira of NetComm Suisse and Antonio Procopio of Intarget provided the Lugano chapter an introduction to digital marketing for finance and FinTech, as well as strategies for digital marketing for FinTech with business cases. They discussed how to foster the implementation of technology as a driver of change. The meet-up was well-attended and another success for the Lugano chapter.

Women in Fintech Breakfast

The SFTA-supported Women in Fintech group held another interesting meet-up on the morning of **October 25th** at Loft Five in Zurich. Speaking was Kristine Braden, Citi Country Officer for Switzerland, Monaco and Liechtenstein and the Corporate & Investment Banking Head for Switzerland. Kristine will shared with the 30 attendees her perspective on the future of the financial sector and her career advice to young professionals.

Singapore FinTech Festival

The SFTA was pleased to work with Swiss Global Enterprise in organizing the Swiss Pavilion at the Singapore FinTech Festival held from **November 14th to 16th**. The Pavilion provided firms an excellent opportunity to participate in the leading Southeast Asia FinTech festival to meet and network with potential clients, partners, end-users, and industry representatives; estimated attendance of the Festival was 25,000 people. Smart Valor, NetGuardians, Gero, and gateB made sure that the Swiss start-up ecosystem was well-represented along with the presence Swisscom and UBS demonstrating the strengths of Switzerland's corporate culture.



Climate FinTech Hackathon

Following up on Sustainable FinTech's Open Situation Room in Bern where participants developed policy solutions, programmers, designers, hackers, developers, students, and companies gathered on **November 17th and 18th** in Schliern to work on and solve a set of challenges related to Climate Change and the financial services industry. Supported by the SFTA and foraus, the of aim of the over 50 participants was to develop new and unique prototypes for innovative FinTech ideas addressing climate issues. The next stage is a refinement session where the hackathon solutions are assessed on their viability with a view to ensure tangible solutions are proposed.

**#climatefintech
hackathon**





Upcoming SFTA Activities

29
Nov

**Swiss FinTech
Lausanne**

Crowdlending, le future de
la finance ?

EPFL Innovation Park, Lausanne
18:30

30
Nov

Swiss FinTech Lugano

Meet the FIO incubator
&
accelerator in Lugano

USI, Lugano
10.30am



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**WOMEN IN FINTECH
LUNCH**

Cybersecurity
and FinTech innovation

with **Maya Bundt**
Head Cyber and Digital Solution
at Swiss Re Reinsurance

Zurich, December 11th

12
Dec

**Swiss Finance +
Technology
Association**

Bitcoin & Blockchain, what
else ?

STarmac (HEIG-VD), Yverdon
17:30



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PLANNING FOR SUCCESS IN 2018

What will it take to make this the year **Switzerland**
realises its full potential as a **leading global FinTech hub?**

December 13th, 2017
18.00
Zurich, Impact Hub Viadukt

event and onsite interviews will be recorded by our professional team

Panel discussion with **leaders** from

 POLYTECH ECOSYSTEM
 digitalswitzerland
 Crypto Valley

What to consider when launching an ICO in Switzerland

Andrea Huber (local partner Banking & Finance)

Fabian Sutter (associate Tax)

Lea Hungerbühler (associate Banking & Finance)

LOYENS L LOEFF

Corporate Member of  **Swiss Finance +
Technology Association**

New developments in the area of distributed ledger technology lead to the emergence of more and more initial coin offerings. Switzerland is one of the most popular places worldwide for such ICOs as the Swiss regulatory and tax environment grants flexibility as well as legal security to conduct ICOs.

I. Introduction

The issuance of crypto tokens (initial coin offering (“ICO”) or Token Generating Event) became more and more popular in the past few months. Companies may raise huge amounts of money in minutes by using this block chain based way of funding. Many issuers have chosen Switzerland to initiate their project, especially the area of Zug (“Crypto Valley”) has been very popular in the past months. Even though Swiss law is very favorable to ICOs and it grants a lot of flexibility, certain legal and regulatory aspects should be considered when planning an ICO in Switzerland. The following summary shall provide an overview of the most important issues to keep in mind. This, however, does by no means substitute a thorough legal analysis of and advice on each project on its individual merits. In particular, we strongly recommend to obtain a FINMA no-action letter before launching an ICO, in order to ensure compliance with relevant Swiss regulations.

II. Corporate law

For many ICOs, the legal form of a foundation is chosen. The advantages of such legal entity are the independence of activities from ownership, the governmental supervision, stability and reliability as well as the restrictions to distribute funds. Especially the last point, however, may also turn out to be a disadvantage in certain constellations. Therefore, a limited liability company (Gesellschaft mit beschränkter Haftung, GmbH) or a corporation (Aktiengesellschaft, AG) may be more suitable, depending on the specific features desired in the case at hand. While the establishment of a limited liability company requires a minimal capital of CHF 20,000, for the corporation a minimal capital of CHF 100,000 is required. The shareholders of a corporation are generally not known to the public, whereas the quotaholders of a limited liability company are published in the commercial register.

Accordingly, the accurate choice of the legal form highly depends on the specificities of the desired set-up. Swiss law provides a broad range of legal entities that match different needs and preferences of the founders. Therefore, it is crucial to assess the project’s features in detail before deciding upon which type of legal entity shall be established in Switzerland.

III. Regulatory questions

The tokens to be generated in the realm of the ICO can have various characteristics. Depending on the respective features at hand, different regulatory questions have to be considered. FINMA confirmed in its written guidance dated 29 September 2017 that it follows a principle-based and technology neutral approach. Accordingly, when setting up the project as well as for the drafting of the white paper, the following aspects have to be considered, amongst others:

a. Banking or securities dealer license

The taking of deposits in the realm of an ICO may trigger the requirement of a banking license. If tokens qualify as securities, a securities dealer license might be required.

b. Collective investment schemes regulation

Depending on the features of an ICO, compliance with certain regulatory requirements of the Swiss Collective Investment Scheme Act may be mandatory. This applies in particular to cases where the proceeds of an ICO are managed externally.

c. Prospectus requirements

Especially (i) if tokens are linked with financial rewards, (ii) if they are designed as equity or debt instruments as well as (iii) if they are distributed to the broad public, it has to be evaluated in detail whether a prospectus has to be prepared in advance. With the entry into force of the new Financial Services Act (expected mid-2019 at the earliest), the prospectus regulations will be amended, which will also influence and alter the requirements for prospectuses in the context of ICOs.

d. AML requirements

If tokens qualify as a payment instrument, abidance with anti-money laundering rules may be mandatory for certain parties involved. This mainly holds for brokers and platforms.

e. Cross-border regulations

Depending on the structure of the ICO, the domicile of the company and the target markets of the offering, cross-border financial regulation of other countries may be applicable as well. The actually applicable foreign regulations vary significantly based on the business set-up at hand.

IV. Tax law

Swiss tax authorities have not yet issued any official guidance on the Swiss tax aspects of an ICO. However, depending on the legal form chosen for the ICO, the proceeds of such ICO can be subject to corporate income tax at the level of the company if not structured properly. Similarly, depending on the specifics of the token, the ICO may be exempt from or out of scope for Swiss VAT or may be considered as a supply of services subject to Swiss VAT.

For Swiss tax residents, proceeds from an ICO generally have to be declared in the personal income tax return and will in most cases be subject to regular income and wealth tax. Swiss residents are, however, well advised to check the income tax treatment in advance in order to avoid pitfalls.

V. Conclusion

Even though the Federal Council is currently considering to introduce a legal framework for crypto currencies, Switzerland is and will remain a highly attractive location for ICOs: Not only the legal, regulatory and tax environment is very welcoming to new market participants, also the infrastructure in one of the world's leading financial centers is outstanding, well educated workforce is available and the attitude of the authorities towards blockchain technology is favorable. Moreover, economic and political environment is stable and decentralized – which again mirrors the underpinning principle of blockchain.

**1. Can you explain what it is your company is offering?**

Lykke, a Swiss-based, London-dwelling FinTech startup, has some very bold ideas about how technology can revolutionize the world – and not without causing some disruption in the process.

Lykke's development team is building a blockchain-based marketplace that goes one step further than existing cryptocurrencies such as Bitcoin and Ethereum. The premise is to create not only a new medium of exchange based on privacy, strong security, and inherent ownership rights, but also to use cryptography to realize a better way of exchanging anything — literally anything — in real time.

Whether it's a financial trade of one currency for another or the sale of concert tickets, cryptography has the unique ability to blend privacy with transparency; and now, there is the tech-enabled computing power to make it all a reality.

2. How is your offering different from what is on the market?

Lykke wants to change the world by navigating a legal path through existing regulators such as the Swiss Financial Market Supervisory Authority (FINMA).

Lykke has had a record of success in working with traditional financial authorities to expand economic opportunities for all. The company has raised millions online to finance its application with the FINMA in Switzerland, FCA in the UK and CySEC in Cyprus for officially recognized authorization to operate its business model through Lykke coins and the Lykke Exchange.

If successful, Lykke will become the only regulated marketplace offering cryptocurrency as a means of exchange and trading and as a store of value. By instilling transparency and enabling everyone to see everything, Lykke has created an ingenious solution to the problem of information asymmetry: through full transparency, it is possible to generate complete privacy and a high level of security facilitated by peer-to-peer collaboration in a decentralized way.

3. Why is an ICO needed versus existing funding mechanisms like venture capital or IPOs?

To demonstrate what Lykke calls "the way of the future", the company recently launched its improved alternative to the traditional Initial Public Offering (IPO) by raising money through an Initial Coin Offering (ICO). The ICOs are a global phenomenon, because they provide access to regions and investors from all around the world, in stark contrast to the smaller, more insular bands of traditional funding. Companies that take advantage of ICOs do not need to expend valuable resources competing for increasingly

scarce venture capital. Instead, they can allocate more of their resources to serving their market, growing their team, and enhancing their product. In November 2016, Lykke raised an additional 1.2 million Swiss francs through the sale of 11 million Lykke coins in 28 days. The process saw the number of Lykke coinholders more than double. Momentum continues to grow for this out-of-the-blocks startup, with a blockchain strategy that builds upon itself in an organic way.

4. What is your company's preferred term: ICO, Token Generations Event (TGE), or something else? Is there a reason for this preference?

Lykke tends to innovate and building upon the success of the initial sale, Lykke presented investors with a new asset, a 1-Year Forward Offering in February 2017. Buyers received a 20 percent discount on the face value of Lykke tokens in exchange for agreeing to hold the tokens for a period of one year. The cyber community responded in the overwhelmingly positive, and Lykke shattered their own internal record by raising 2 million Swiss francs — substantially more than Lykke had privately anticipated.

5. Who do you think will be the typical investor in your offering? What is the size of this market segment? Will your offering be international or strictly domestic?

Lykke's unique business model can accommodate both institutional and private investors by implementing the latest technology (speed, execution and transparency) and providing true best execution.

Investors have contributed millions of dollars since Lykke's inception in this new billion dollar cryptomarket, and the future that Lykke envisions is picking up supporters around the world. The company's initial push to raise private capital generated tremendous interest, which eventually saw Lykke offer its shares — which take the form of digital tokens — to the wider public.

6. Do you think there is a saturation point of coin offerings?

ICOs have become popular because people have witnessed incredible price rises in Bitcoin and Ethereum including their forked derivatives. People are now eager to make money similar to trading shares at early stages, investors now have the chance to immediately trade and participate before a company is listed. This attracts new investors looking to earn, pushing up the valuations.

On the other hand, there is the possibility that many coins (similar to the 1999 bubble) could become worthless before the market collapsed abruptly; but in the end new blue chip companies will emerge similar to Microsoft and Amazon.

7. For late adopters to cryptocurrencies, how does your company promote their usage? How can your company convince people who currently have no cryptocurrency-denominated assets to use your coin?

Until now people have generally used cryptocurrencies as a new way of fast, secure and efficient payments.

Currently we see a growing interest of the investment community towards cryptocurrencies and crypto assets. These new crypto assets have the ability to store value (ERC 20 token), represent ownership and are traded on a blockchain — in a way upgrading the traditional investment cycle to cater to the future generation of investors.

To reflect this, our coin is legally binding and represents shares of direct ownership of Lykke. In this way our community and enthusiasts can share our vision and growth by participating in our perception of the future as coin holders.

8. ICOs are currently only monitored by FINMA, do you think this an advantage or disadvantage of operating in Switzerland?

Although ICOs in Switzerland are monitored by FINMA, on a global level ICOs are liable to local regulation where a coin has been issued.

FINMA is pioneering in regulating ICOs by facilitating a safe environment for clients to exchange assets. In this way innovation is promoted by safeguarding and protecting clients. ICO becomes a regulated asset class of its own.

These new professional standards will allow FINMA to cope with listings, distribution and trading of new asset classes, and we see Switzerland as a global player in this new chapter of finance.

9. What do you think is the future of regulation for companies such as yours?

Current regulation is dynamic and companies such as Lykke strive to implement these new rules and requirements in their business model.

What makes us unique is that we embrace regulation and we do not see regulation as a threat - *au contraire* - we see this as an advantage.

From day one we understood that a lot of our competitors will not take this challenging and costly plan, but our vision is bigger, and we want to become the safest place to trade all assets.

10. What are the other advantages and disadvantages of operating in Switzerland?

Switzerland has an excellent infrastructure, in terms of location it is situated in the heart of Europe and has a highly educated workforce. In summary it is one of the most politically and economically advanced countries to operate a company.

Lykke's headquarters are based in Zug, which is regarded as the fintech capital of Europe and is surrounded by new innovative companies such as the Ethereum Foundation. Additionally, Zug has a low tax regime and a friendly business environment.

We do not see any major disadvantages in terms of operating in Switzerland since we are truly an international company that embraces different regulations in jurisdictions such as US, UK, Singapore, etc. on a global level.

11. How can the federal government or cantonal governments support your company's growth?

Lykke is based in Switzerland and is currently located in Zug. As a Swiss company we are following all the rules and regulations with regular audits as required by law.

We have always had a good relationship with both the cantonal and federal governments, and that is why we have made the executive decision to move our headquarters from Zurich to Zug.

Finally, Lykke is in constant communication with the local regulator, and there have been discussions in terms of new products and services both on a local and international level.



Founder Profile: Richard Olsen, Lykke Founder & CEO

Richard is a pioneer in high frequency finance with extensive entrepreneurial experience and well known for his academic work. He was a co-founder of OANDA, a currency information company and market maker in foreign exchange. Under Richard's stewardship as CEO of OANDA the company was a shooting star that launched the first fully automated FX trading platform offering second-by-second interest rate payments and netted 37 Mio of profits in 2007. Already at OANDA, he conceived the first trading platform with second-by-second interest payments. He is visiting professor at the Centre for Computational Finance and Economic Agents at the University of Essex. His ambition is to transform financial markets into a seamless system without the inefficiencies that we today take for granted.



Editor's Note: Equibit Group is a Canadian FinTech firm currently working with Wenger & Vieli and Elliott Capital to expand into Switzerland

Can you explain what it is your company is offering?

Equibit Group is applying blockchain technology to establish the world's first peer-to-peer equity and debt marketplace. In much the same way Bitcoin applied digital technology to currency and payments, Equibit eliminates the need for expensive infrastructure and third-party facilitation from depositories or transfer agents. Registration, transfer, settlement and investor relations will all be managed securely and digitally within a decentralized environment. Founded by a former CFO from the securities industry and a team of blockchain development experts, Equibit Group was established to revolutionize the securities industry.

How is your offering different from what is already on the Swiss market?

There currently are no blockchain-based technologies capable of disrupting the custodial and transfer agent services that are depended upon by issuers and investors to manage their relationship. In this sense the Equibit Network is poised to completely revolutionize the foundations of the global securities industry, empowering investors and issuers like never before.

Do you think there is a saturation point of coin offerings?

Many companies have begun issuing securities under the guise of an initial coin offering. Insofar as these offerings are concerned we're in a huge bubble and actions from regulators will cool this off. Unfortunately, these "fake" ICO's are diverting capital away from being invested in true blockchain development and this is a long way from being in a bubble as it is still being ignored for the most part, or misunderstood by investors, regulators, and issuers. Few understand the revenue opportunity in developing public networks, but nevertheless it is there and quite lucrative.

For late adopters to cryptocurrencies, how does your company promote their usage? How can your company convince people who currently have no cryptocurrency-denominated assets to use your coin?

As the securities industry migrates from the centralized registration and transfer model, to the decentralized one provided by Equibit, it will be used more and more by retail investors of all stripes knowingly or unknowingly. With our wallet product, though, investors would be able to purchase any equity or debt securities registered on Equibit directly with their Bitcoins and never have to leave the world of cryptocurrencies.

Why is Equibit considering expanding internationally?

Equibit by default is a global community of issuers and investors and if Equibit Group does not move to secure opportunities and promote our brand internationally, other firms from those regions will build their own Equibit services and launch them in competition against us. As the original developer we want to maximize our first-mover advantage.

Cryptocurrencies are currently only monitored by FINMA, do you think this an advantage or disadvantage of operating in Switzerland? How does this compare to Canada?

In Canada we've seen numerous announcements from many agencies (Financial Consumer Agency, FINTRAC, Canada Revenue Agency), including our diverse set of securities regulators. Presently these announcements appear to be in conflict, with some considering digital currencies commodities and other's securities. We're at a point where the regulatory position is so confusing as to make it practically impossible for a company in the blockchain space to operate with any degree of comfort.

This is where Switzerland has a huge advantage over other jurisdictions. It has only one securities regulator (instead of thirteen), and they have put forth a logical and consistent position on cryptocurrencies that is technologically neutral. Political risk is high enough already with blockchain technology as it disrupts very old and politically entrenched incumbents. Switzerland has done a good job at minimizing this risk for startups and created a safe space there to operate.

What are the other advantages and disadvantages of expanding into Switzerland? Why are you considering expansion to Switzerland over other countries?

Switzerland has been of interest to the company and part of our growth plan for a long time. While the cost of living is higher relative to Canada, this is compensated for by the much higher standard of living. The more competitive business regulations and tax regime are also very attractive. Switzerland is very stable from a political standpoint and looks to remain so for the foreseeable future. When considering all these factors Switzerland routinely comes out on top; such as in the Economic Freedom of the World Index, produced by the Fraser Institute, a respected Canadian think tank.



Can you explain what it is your company is offering?

The crypto markets are rapidly accelerating. There are new tokens every day, aggressive professional traders and bots make trading competitive. Properly securing a portfolio of 30+ tokens is difficult.

At Protos we gather a group of investment professionals and experienced crypto technologists who work tirelessly to grow blockchain investments for you.

How is your offering different from what is on the market?

Our team at Protos brings an expert understanding of asset markets and quantitative trading strategies. We believe that our deep background from the traditional hedgefund industry in combination with the longstanding technical blockchain project experience differentiates us most distinctly from other asset managers in the market.

The Fund seeks to deliver long-term value for PRTS Tokenholders by deploying capital across a broad range of digital tokens, cryptocurrency and other cryptocurrency investments (including derivatives linked thereto), through an active investment strategy.

In addition to investing in new digital tokens, we are among the first funds to build a robust database of digital token and cryptocurrency market data, that will be source for advanced technical trading strategies. We are unlocking the second major investing wave in crypto and once data on the market exists, we anticipate we'll see an explosion in trading strategies just as it did in stock trading.

Why is an ICO needed versus existing funding mechanisms like venture capital or IPOs?

Within the last year we have seen a massive influx of investors, who sought exposure to cryptocurrencies. The crypto space is unbelievable fast moving and individual projects are technically complex to understand. Successful crypto investing with a target on long-term returns requires a clear technical mindset, expert knowledge of markets and a set of proven systematic trading strategies.

At Protos we want to grant everybody the opportunity to invest alongside a dedicated team, that works full-time on dissecting blockchain projects and analyzing markets. We

consider our fund an alternative to investors who seek smart exposure to cryptoassets. The ICO provides the right format to let as many investors as possible partake.

What is your company's preferred term: ICO, Token Generations Event (TGE), or something else? Is there a reason for this preference?

We believe the term ICO comes more natural to most people, as most people quickly associate the word with a traditional IPO (a term which many already know). There are a lot of new terms, which might pose a hurdle for newcomers to the space. It is important that crypto communities work on simplifying their concepts and mechanisms, such that people can educate themselves easier.

Who do you think will be the typical investor in your offering? What is the size of this market segment? Will your offering be international or strictly domestic?

Our offering is designed for international investors, each subject to his own domestic legislation. There are two fundamental types of investors. Those who already own cryptoassets and those who do not.

For people who already own Bitcoin, Ethereum or perhaps additionally a set of altcoins, Protos constitutes a great investment to diversify their portfolio. For instance, we received much feedback from investors who would like to manage 50% of their assets by themselves and 50% by us.

For people who are new to the space, Protos constitutes an easy way in. Investors often lack the time to stay constantly on top of this ever changing market. With our reporting investors stand to stay informed and gradually educate themselves about the market, while they can spend their precious time on other valuable activities.

Do you think there is a saturation point of coin offerings?

We believe the market is still at an early stage and do not see a saturation point yet.

ICOs are currently only monitored by FINMA, do you think this an advantage or disadvantage of operating in Switzerland?

We believe regulation will increase and therefore structured our ICO as a security.



ICON CAPITAL RESERVE AG

Answers provided by: J. Bradley Hall, Chairman & CEO

Can you explain what it is your company is offering?

ICON CAPITAL RESERVE AG has been established to empower UHNW and FO private clients who want to create, trade and reserve value using Smart Contracts, Gold and the Blockchain. ICON began in 2013 as a development stage company to create AUREALS™, a fusion of gold and the Blockchain that insulates holders from currency, institutional and systemic hazard.

How is your offering different from what is on the market?

ICON is preparing to launch the worlds' first Collateralized Coin Offering (CCO) of AUREALS™ each denominated as a 1-gram weight and measure of Gold. AUREALS™ are priced at 99.99% of spot Gold and additional discounts will be allocated as part of the CCO.

Virtually all of the ICO's are co-related to either BTC or ETH and AUREALS™ are indexed to Gold meaning that they can act as a clearing and settlement currency for all crypto. Also, the vast majority of Institutional and Sovereign investors interested in crypto prefer something less volatile like AUREALS™.

Why is an ICO needed versus existing funding mechanisms like venture capital or IPOs?

From our perspective, ICO's are viewed very much like an IPO, in that it is a global PR event. The cost and ongoing expense of a traditional IPO is prohibitive and candidly VC's add limited value.

What is your company's preferred term: ICO, Token Generations Event (TGE), or something else? Is there a reason for this preference?

CCO or Collateralized Coin Offering. AUREALS™ represent the first global asset backed coin.

Who do you think will be the typical investor in your offering? What is the size of this market segment? Will your offering be international or strictly domestic?

We are clinically focused on the 232,000 UHNW and Family Offices that control USD\$30 trillion in wealth and want to be able to preserve intergenerational wealth. We also believe that 10% of the USD\$250bn digital currency asset class will be interested in moving into something linked to a hard asset.

Do you think there is a saturation point of coin offerings?

The era of 2 guys in a pickup truck with a white paper raising funds is ending. Many of the large but substance free offerings will come under increased scrutiny and the US regulators will likely file formal charges against some fast and loose proprietors of ICO's with civil litigators not far

behind.

For late adopters to cryptocurrencies, how does your company promote their usage? How can your company convince people who currently have no cryptocurrency-denominated assets to use your coin?

It is still early days in the space. Gold has been a store of value for 6000 years. It is a heuristic default. People trust Gold as a store of value. We are investing heavily to convey the merits of the blockchain and trust based on applied mathematics, which will take time. We also have a proven team well versed in technology, gold and governance, all of whom have enjoyed major success in their careers, offering the third leg of trust under the stool we are creating.

ICOs are currently only monitored by FINMA, do you think this an advantage or disadvantage of operating in Switzerland?

Advantage. Most participants are early adopters who are tech savvy and don't need to be protected from themselves. It is early days and although there is tremendous promise and upside, participants should be guided by *caveat emptor* as opposed to burdensome regulations.

What do you think is the future of regulation for companies such as yours?

Regulation should be disclosure driven so market participants can make informed decisions. I think proprietors who make false or misleading claims should face a risk of being shut down while innovative and disruptive entrepreneurs should have the freedom to experiment with business models and cutting edge technology applications.

What are the other advantages and disadvantages of operating in Switzerland?

Well of course there are the obvious lifestyle choices, which mean that smart, successful and well-educated people want to live here. There is a growing pool of talent and expertise as well as risk capital and specifically in our space of gold and wealth management, large pools of private client funds who understand the merits of gold and are increasingly looking for innovative ways to create, trade and store value with the blockchain.

How can the federal government or cantonal governments support your company's growth?

Well certainly tax incentives and eliminating friction for entrepreneurs wanting to re-locate here. Making it easier to invest in real estate and of course committing to a reg light environment. In my experience a number of the cantons are quite pro-active and helpful in encouraging companies to consider here as a desirable location for an HQ.

1. Does your firm offer advice specifically on FinTech, cryptocurrencies, or ICO / TGE? If so, for how long?

We do offer regulatory, corporate and tax advice specifically on FinTech, cryptocurrencies and ICOs/TGEs since the beginning of this year.

2. Does your firm have a specific team to work with these clients or do the teams change based on the requirements of the client? If so, for how long has the practice area been established? Please provide any further details or material on your FinTech-related services.

We have a dedicated FinTech sector team to assist clients operating and investing in all areas of FinTech. Our four home markets are Switzerland, Netherlands, Luxembourg and Belgium so that we are in a position to provide integrated advice to our clients. In addition, we have offices in the financial centres around the world (approximately 900 lawyers worldwide).

3. What are the biggest legal challenges facing companies conducting ICO / TGE and/or working with cryptocurrencies? How does your firm work with these companies to overcome these challenges?

With respect to FinTech, we always face challenges from different aspects, namely legally/regulatory, anti-money-laundering, tax aspects and cybersecurity. For this reason, it is of utmost importance to liaise with the competent tax authority and FINMA already at an early stage of the project.

4. Can an ICO be structured in a way that is compliant with Swiss financial market law? If yes, what are the regulatory criteria and requirements for such a "legally compliant" ICO under the Swiss banking act, stock exchange act, financial market infrastructure act and anti-money laundering act in your view?

Certainly. FINMA very recently issued guidance regarding token sales/ICOs. Specifically, FINMA pointed out that each ICO may be different from a technical, functional and economical point of view so that it needs to be analyzed on a case by case basis. As most of the other countries, Switzerland does not have ICO specific regulation as the Swiss financial market law is considered to be neutral from technology so that general Swiss law provisions apply. Depending on the features of the business model, Anti-Money Laundering Act, Banking Act, Stock Exchange and Securities Trading Act and the Collective Investment Schemes Act need to be taken in consideration.

5. What role does your firm see for the Swiss government in regulating these companies and their activities?

Due to the rapid development of blockchain technologies in Switzerland, the Swiss government should take a proactive, careful approach with respect to ICO regulation, always taking into account the international developments. Switzerland needs to maintain its reputation as a strong, innovative financial center.

6. Does your firm advise companies operating outside Switzerland? If so, what are some of the tangible differences in regulation that your firm has noticed in Switzerland versus outside of Switzerland?

Our firm does operate outside of Switzerland, and we see that our Benelux colleagues face very similar issues.

7. Do you assess the legal framework for ICOs in every single relevant country of potential ICO investors? If yes, what are the costs of foreign law firms to conduct a regulatory evaluation and to draft selling restrictions for the respective country?

In general, yes. As we are an international law firm, such work can be done by us cost-efficiently.

8. In your firm's opinion, is the Swiss legal framework robust enough to adapt to the age of digital currencies, or will major legal changes be required?

As the law is always a little behind new technologies, it will take certain time until new regulation will come into play.

9. What is your firm's responsibility in ensuring that the business models of your FinTech clients exhibit long-term sustainability and are an ethical offering? How does your firm conduct this due diligence?

We analyze each case very carefully to get the necessary comfort. Also, the entire implementation of the business idea must be legal, and clearance from FINMA and the tax authorities must be obtained in any event.

10. As the FinTech legal space is evolving, what is your firm's role as a subject matter expert in the Swiss Bar Association's or your Cantonal Bar Association's sharing best practices/ethical guidelines with your colleagues?

As we are an international law firm, we rather engage in the International Bar Association (IBA) instead of the Swiss or Zurich Bar Association.

11. Do you offer special rates for Fintech startups? If yes, what are they?

Generally, we are open for alternative fee arrangements for Fintech startups.

1. Does your firm offer advice specifically on FinTech, cryptocurrencies, or ICO / TGE? If so, for how long?

Yes, on FinTech for 5 years and on ICOs/TGEs for 1½ years.

2. Does your firm have a specific team to work with these clients or do the teams change based on the requirements of the client? If so, for how long has the practice area been established? Please provide any further details or material on your FinTech-related services.

We have a core regulatory team and a core corporate team. Depending on the needs of the clients, specialists in tax matters, intellectual property rights, data protection join the projects. This interdisciplinary practice has emerged as a response to the recent "ICO wave"; that is to say over the past 1½ years.

3. What is are the biggest legal challenges facing companies conducting ICO / TGE and/or working with cryptocurrencies? How does your firm work with these companies to overcome these challenges?

- Assessment of the token contents and use cases,
- Classification under civil law (e.g. ownership, transfer of ownership), and
- Classification under regulatory law (e.g. possible qualification as a means of payment, deposit taking, collective investment scheme etc.).

4. Can an ICO be structured in a way that is compliant with Swiss financial market law? If yes, what are the regulatory criteria and requirements for such a "legally compliant" ICO under the Swiss banking act, stock exchange act, financial market infrastructure act and anti-money laundering act in your view?

Obstacles to an unregulated ICO (very short and superficial view) could be or are:

- AML and KYC, mandatory in any case
- Banking Law (no redemption obligation for the token, issuing means of payments)
- Securities Law (underwriting, prospectus etc.)
- Collective investment scheme (management of the paid in funds by a third person)
- Gaming act (loyalty bonuses depending on pure luck)

5. What role does your firm see for the Swiss government in regulating these companies and their activities?

The legal basis for tokens under civil law should be established by an amendment of the Swiss Code of Obligations. In essence, a token should qualify as an instrument to which a right attaches in such a manner that the right may not be exercised or transferred to another without the token. A token is then treated like a negotiable security. All issues regarding property and transfer are clear based on the art. 965 ff. Code of Obligations. See our contribution to the forthcoming Jusletter of 4 December 2017.

6. Does your firm advise companies operating outside Switzerland? If so, what are some of the tangible differences in regulation that your firm has noticed in Switzerland versus outside of Switzerland?

Yes. Some countries have issued tailor made rules regarding ICO (China, Korea etc.) ranging from banning them to qualifying them as means of payments (Japan) or securities (USA). Some countries have not issued any guidance at all.

Switzerland's regulator FINMA acts neutral regarding the technology used, but requests compliance with existing laws

7. Do you assess the legal framework for ICOs in every single relevant country of potential ICO investors? If yes, what are the costs of foreign law firms to conduct a regulatory evaluation and to draft selling restrictions for the respective country?

We only provide advice under Swiss law. For any ICO/TGE we strongly recommend the client to define the foreign markets where the tokens are going to be offered and to ask for legal advice regarding token sale and distribution for these countries. All other countries should be excluded. Advice regarding token sale/distribution of tokens in foreign countries is available at the costs of CHF 5'000 – 15'000 in average.

8. In your firm's opinion, is the Swiss legal framework robust enough to adapt to the age of digital currencies, or will major legal changes be required?

The Swiss legal system is quite robust. However we suggest the above mentioned change (question 5). FINMA will develop a practice and might publish guidance or circular letters which is sufficient in our view.

9. What is your firm's responsibility in ensuring that the business models of your FinTech clients exhibit long-term sustainability and are an ethical offering? How does your firm conduct this due diligence?

We analyse the white paper. If it does not make sense or is not compliant with applicable laws, we reject working for the project.

10. As the FinTech legal space is evolving, what is your firm's role as a subject matter expert in the Swiss Bar Association's or your Cantonal Bar Association's sharing best practices/ethical guidelines with your colleagues?

We regularly publish our opinions in academic papers or our law firms' publications and join the SLTA groups on the subject matter where we actively contribute.

11. Do you offer special rates for Fintech startups? If yes, what are they?

No, we charge our ordinary rates which are competitive.

1. Does your firm offer advice specifically on FinTech, cryptocurrencies, or ICO / TGE? If so, for how long?

Yes, for the last 8 months (and before the formal creation of the Firm), we have offered full services for ICOs/TGEs; mainly Ethereum blockchain conducted TGEs.

2. Does your firm have a specific team to work with these clients or do the teams change based on the requirements of the client? If so, for how long has the practice area been established? Please provide any further details or material on your FinTech-related services.

We work closely with two external major blockchain developers, internal tax and corporate specialists, as well as external scholars of Geneva University when needed. This team was established only 4 months ago but is now fully operational. We identify the best jurisdictions and timing to pursue private or public TGEs and closely analyze Swiss and international legal developments in corporate law, tax law, and financial regulation.

3. What is/are the biggest legal challenges facing companies conducting ICO / TGE and/or working with cryptocurrencies? How does your firm work with these companies to overcome these challenges?

It all depends the deadline/roadmap of the envisaged TGEs. However, at any given time and place, the main legal challenge is that the project shall be in line with local and international law such as corporate law, tax law, and financial regulation. With regard to this last legal challenge, one shall be particularly cautious about the way a financial regulator might categorize the envisaged digital tokens and the consequences thereof (i.e. *utility tokens*, *tokenized securities* or strict *cryptocurrency*).

If a particular TGE is urgent (less than 3 months), and if the reasons for such urgency have been identified as licit and acceptable, we have valid workable solutions to set up private TGEs outside of Switzerland. If the client has more time (ideally 6 months), we analyze the situation on a global scale according to the client's financial needs and development timeline to be able to set up a public TGE in full compliance with any anticipated legal requirements, maybe even in Switzerland in the near future.

4. Can an ICO be structured in a way that is compliant with Swiss financial market law? If yes, what are the regulatory criteria and requirements for such a "legally compliant" ICO under the Swiss banking act, stock exchange act, financial market infrastructure act and anti-money laundering act in your view?

Currently, if the client wants to do things correctly, it is too dangerous to issue digital tokens from within Switzerland unless the client has first proven or at least convincingly argued that its tokens would qualify as strict *utility tokens*

(in opposition to *tokenized securities* or strict *cryptocurrencies*). Even in doing so, the client would still not know what FINMA would finally come up with as the individual characterization of said tokens. Hence, we strongly recommend a consultative (direct) approach with FINMA or with the concerned authorities of a particular jurisdictions although this might take months. FINMA has confirmed its neutrality regarding technical innovation but has not yet decided how it would treat digital tokens issue by way of *smart contracts* under Swiss legislation and financial surveillance.

Indeed, the situation has changed after the 4 largest TGEs conducted in Switzerland in 2016 and 2017 (out of the 6 largest in the world during the same period!), that is *Tezos* (with almost USD 240 mio), *Bancor* (around USD 150 mio), the *DAO* (USD 142 mio) and *Status* (USD 95 mio). In FINMA "Guidance 04/2017" of last 29 September, the Swiss Regulator warns the public that it is the responsibility of the token issuer to make sure that the envisaged TGE is simultaneously respecting the Swiss Federal banking act ("BA"), the Stock Exchange Act ("SESTA") - to which we may indeed add the Financial Market Infrastructure Act ("FMIA") -, the Collective Investment Schemes Act ("CISA") and the Anti-Money Laundering Act ("AMLA") at the time the TGE is conducted.

In this 29 September Communication, FINMA argued that ICOs [TGEs] are currently not governed by any specific regulation, either in Switzerland or globally (which was not completely true at the time it was drafted) and briefly explains that,

- the AMLA **will** apply as soon as the creation of tokens involves the issue of a payment instrument, in which case the AMLA **may** apply for third parties carrying out exchange transactions or secondary trading of said tokens (such as brokers of cryptocurrencies or token-trading platforms);
- the BA **will** apply as soon as the initiator of a particular TGE has an obligation (to issue and/or to deliver tokens but also to reimburse any monies) towards the investor/participant to this TGE, as this is a feature of the bilateral obligation of accepting deposits from the public, that is, of exercising a banking activity;
- the SESTA/FMIA **may** apply as soon as the creation of tokens would mean that said tokens would qualify as securities or as any type of derivatives;
- the CISA **may** apply as soon as the token issue and/or the particular business model behind it would involve or provide for a third-party management of funds (*Fremdverwaltung*).

5. What role does your firm see for the Swiss government in regulating these companies and their activities?

The traditional commitment of the Federal Council - as for

any executive body at a national level - is to continuously reaffirm Swiss nationals that Swiss legislation will be correctly applied.

However, the Federal Council with FINMA may propose new legislation - or amendments to the existing one - that the Swiss Parliament would be agreeable to consider. As regards particularly FINMA, the latter has already stated that it cannot rule out that TGE activities may be fraudulent, especially considering current market developments in early and mid 2017. Hence, uncertainties remain with regard to financial and legal aspects involved in planned TGEs.

6. Does your firm advise companies operating outside Switzerland? If so, what are some of the tangible differences in regulation that your firm has noticed in Switzerland versus outside of Switzerland?

Yes, we are currently advising one big project planning multiple private and public TGEs. We are organizing the first private TGE of this project outside Switzerland, in a jurisdiction where the current regulation is favorable and the commercial legislation and applicable tax rates are acceptable. However, we are constantly following the situation as to the legislative evolution of any particular jurisdiction. Indeed, what legally works for a TGE one day (*de lege lata*) may not work for another TGE in the future (*de lege ferenda*) and, accordingly, one jurisdiction may, in the near future, offer a more favorable legislative framework than the one in place at the time of a previous TGE.

7. Do you assess the legal framework for ICOs in every single relevant country of potential ICO investors? If yes, what are the costs of foreign law firms to conduct a regulatory evaluation and to draft selling restrictions for the respective country?

Obviously, we do not advise our clients to spend money for any internal or external legal advice if it is not strictly needed for their project and development. Requesting legal advice in every country of potential ICO investors would certainly be too costly in comparison with the results of the concerned risk assessment. However, since it is true that investors from one jurisdiction may be forbidden to purchase digital tokens in another specific jurisdiction, not solely as a primary purchase but also on a secondary purchase level, a client may want to restrict the access to its website from some jurisdiction-based investors when feasible or warn investors of a particular jurisdiction.

As an example, one of our clients has paid for extensive legal advice outside Switzerland. In fact, we identified that this client was paying for the attorneys to actually understand what the blockchain was or what a smart contract meant... This should of course be considered as unacceptable by the client and is even not in line - in our views - with a proper deontological attorney practice anywhere in the world. Depending of the complexity of the project, we still consider that a normal cost (corresponding to the actual fee retainer paid) for any serious law firm that knows about blockchain

and that has already conducted a TGE (or is at least currently conducting one) should not be higher than CHF 10'000.

8. In your firm's opinion, is the Swiss legal framework robust enough to adapt to the age of digital currencies, or will major legal changes be required?

We would rather use the word "flexible" as regards to the adaptation of the Swiss legislation to the world of blockchain and cryptocurrencies, commonly referred to as the *on-chain* world. It is obvious to us that major legal changes will be required in Switzerland - as in many other countries -, specifically with regards to the legal qualification and definition of what a "digital token" is and to when and how should a digital token be qualified a cryptocurrency. Needless to say, a cryptocurrency is not even a "currency" in most legal systems; in Switzerland, it simply does not fit in the Federal Act on Monetary Union and Means of Payment (with legal tender).

9. What is your firm's responsibility in ensuring that the business models of your FinTech clients exhibit long-term sustainability and are an ethical offering? How does your firm conduct this due diligence?

Due to demand and exposure, we are only following a few projects in which we strongly believe that they are truly innovative on a global scale or in a particular field in which we fully understand the business model and development opportunities (primarily, the USP, the quality of the team, the quality of the whitepaper, the pertinence of the roadmap, the quality of the smart contract(s) and the TGE conditions).

10. As the FinTech legal space is evolving, what is your firm's role as a subject matter expert in the Swiss Bar Association's or your Cantonal Bar Association's sharing best practices/ethical guidelines with your colleagues?

We are currently organizing a private event for investors keen to invest in serious private and public TGE projects and are preparing publications in the French speaking part of Switzerland's press, as well as a major conference in 2018. We will also present on cryptocurrencies to a specific group of attorneys specialized in banking and regulation law within the Geneva Bar Association. Hence, we see our role as making sure that the industry sees us and other trained professionals as fully compliant with the applicable legislation and regulation at the time of the TGE.

11. Do you offer special rates for Fintech startups? If yes, what are they?

Yes, we have an adaptive fee policy - in line with the respect of our particular attorney practice and deontological rules - according to the development of the project (with regard to its specific roadmap), the urgency for the need of legal services, the impact on the global economy and/or the common good and the realistic chances of success.

Final Thoughts: FinTech regulation – A look beyond the sandbox's edge

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Previously published on forausBlog.



While money travels online in a split of a second, passing borders in a wink of an eye, the search and need for financial regulatory laws and contracts are one big challenge, common standards to reach harmonization a must.

Bitcoin, Twint or Crowdfunding – these are the hot topics in banking and finance these days. FinTech stands at the intersection of finance and technology, or, to put it differently, it is technology used to enable banking or financial services. By offering services online, digitally or virtually, FinTech has the potential to drastically transform and disrupt the way financial services are being provided today. Without any physical material (e.g. cash) or presence (e.g. bank counter), these technologies increase consumer choice, reduce prices by decreasing margins, spur innovation and facilitate access to financial services.

While technologies are constantly emerging, legislators are trying to keep pace with these developments, which turns out to be a huge challenge. The simple fact that no physical presence is needed (nor wanted) to provide financial services is totally new to our regulatory regimes. Traditional banking regulation, as well as recent regulatory amendments, fail to address this topic appropriately. Since the perspective of lawmakers is mostly national, even new laws and regulations stop at the borders and neither inbound nor outbound FinTech services are duly considered. These purely national legal provisions hinder the cross-border expansion of FinTech companies and therefore prevent real consumer choice and financial inclusion beyond borders. Especially the lack of legal security about whether the home or host financial regulation applies renders FinTech companies reluctant to provide their services in a foreign country.

The cross-border provision of financial services is highly relevant for any financial intermediary. However, it is of elevated interest for FinTech companies since they do in fact (and by definition) not need any physical presence to provide their services. Furthermore, FinTech companies generally work with rather low margins. To make use of economies of scale, they are reliant on a broad, global client base. This is particularly true for those FinTech companies located in rather small countries, such as Switzerland.

As a consequence, a purely domestic view on FinTech regulation will not be sufficient in the long run. Therefore, also a national sandbox, as the lightly regulated «playground» for FinTech companies is called, will not be enough. We must come up with new, creative ways to regulate this emerging field of financial services wisely. International standards could contribute to global harmonization and facilitate market access without unduly increasing the regulatory burden. Such harmonization has already taken place within the European Union, where financial intermediaries located in an EU member state can provide their service all over the Union (so called «passporting»). In any event, a new approach to regulatory developments is required to deal with and promote FinTech, since national answers to international phenomena are insufficient. While national sandboxes are a nice starting point, we need to look beyond their edges to provide a regulatory framework which is truly FinTech friendly.



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