### Legal Implications on Token Issuing (ICO)

**Version 1.0, March 2018, Cornelia Stengel**

**Note:** Categorisation primarily for illustration purposes. Does not anticipate any legal or regulatory qualification. Any Token always needs to be assessed and will be regulated as to its substance irrespective of its form or label (substance over form).

#### FINMA

- **Pre-Financing**: No issuing of a means of payment, because no tokens exist yet. Therefore no financial intermediary activities of the issuers: AMLA not applicable on token issuing.
- **AML**: No issuing of a means of payment. Therefore no financial intermediary activities of the issuers: AMLA not applicable on token issuing.
- **Banking**: No acceptance of public deposits (no banking license required) if invested money is transferred as consideration (arising from a contract for transfer of ownership or from a service contract) or if token is treated as security (bond).
- **Financial Market Infrastructure**: Not treated as securities, provided that (as usual) there are no tradable claims against the issuers.

**Utility Token**

- **Pre-Financing**: Token is intended to function as a means of payment external to the platform or not only exclusively between the platform and its users but also between users.
- **AML**: No issuing of a means of payment. Therefore no financial intermediary activities of the issuers: AMLA not applicable on token issuing.
- **Banking**: No acceptance of public deposits (no banking license required) if invested money is transferred as consideration (arising from a contract for transfer of ownership or from a service contract) or if token is treated as security (bond).
- **Financial Market Infrastructure**: Not treated as securities, provided that (as usual) there are no tradable claims against the issuers.

**Payment Token**

- **Pre-Financing**: Token is intended to function as a means of payment for the purpose of settling the payment. Payment tokens are digital units of value. They do not confer any particular right on the holder.
- **AML**: No issuing of a means of payment. Therefore no financial intermediary activities of the issuers: AMLA not applicable on token issuing.
- **Banking**: No acceptance of public deposits (no banking license required) if invested money is transferred as consideration (arising from a contract for transfer of ownership or from a service contract) or if token is treated as security (bond).
- **Financial Market Infrastructure**: Not treated as securities, provided that (as usual) there are no tradable claims against the issuers.

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- **Financial Market Infrastructure**: Not treated as securities, provided that (as usual) there are no tradable claims against the issuers.

#### Pre-Financing

- **Token B does not exist, but is being developed. A repayment obligation and any other claim against the issuers is excluded.**
- **AML**: No issuing of a means of payment, because no tokens exist yet. Therefore no financial intermediary activities of the issuers: AMLA not applicable on token issuing.
- **Banking**: No acceptance of public deposits (no banking license required) if invested money is transferred as consideration (arising from a contract for transfer of ownership or from a service contract) or if token is treated as security (bond).
- **Financial Market Infrastructure**: Not treated as securities, provided that (as usual) there are no tradable claims against the issuers.

#### Voucher

- **Pre-Financing**: Token B issued directly, but it does not yet exist. Investors are promised that the blockchain or tokens will be developed and they will receive these tokens in due course, or that the project developers will implement a corresponding allocation proposal in the Genesis code of the blockchain protocol to be published. A repayment obligation and any other claim against the issuers is excluded.
- **AML**: No issuing of a means of payment. Therefore no financial intermediary activities of the issuers: AMLA not applicable on token issuing.
- **Banking**: No acceptance of public deposits (no banking license required) if invested money is transferred as consideration (arising from a contract for transfer of ownership or from a service contract) or if token is treated as security (bond).
- **Financial Market Infrastructure**: Traded as securities, provided that (as usual) there is a tradable claim against the issuers (transfer of Token B).

#### Pre-Functional

- **Token B is issued directly, but it does not yet exist. Investors are promised that the blockchain or tokens will be developed and they will receive these tokens in due course, or that the project developers will implement a corresponding allocation proposal in the Genesis code of the blockchain protocol to be published. A repayment obligation and any other claim against the issuers is excluded.**
- **AML**: No issuing of a means of payment. Therefore no financial intermediary activities of the issuers: AMLA not applicable on token issuing.
- **Banking**: No acceptance of public deposits (no banking license required) if invested money is transferred as consideration (arising from a contract for transfer of ownership or from a service contract) or if token is treated as security (bond).
- **Financial Market Infrastructure**: Traded as securities, provided that (as usual) there is a tradable claim against the issuers (transfer of Token B).

#### Functional

- **The fully functional token is issued.**
- **AML**: Generally no payment function connected. As a result, the issue of a pure utility token (FINMA definition) does not involve any financial intermediary activity: AMLA not applicable on token issuing.
- **Banking**: No acceptance of public deposits (no banking license required) if there are no claims against the issuers. However, if there is a claim against the issuers, this would qualify as acceptance of deposits: requires a banking license (check exceptions). No acceptance of public deposits (no banking license required) if invested money is transferred as consideration (arising from a contract for transfer of ownership or from a service contract) or if token is treated as security (bond).
- **Financial Market Infrastructure**: Pure utility token (FINMA definition) is not treated as security. If token (also) represents asset (tradable claim against the issuers): will be treated as security.

#### Asset Token

- **Pre-Financing**: Tokens represent assets (e.g. claims to dividends, interest payments or shares in a company, income, etc.) or may also include membership rights. Asset tokens are similar to equities, bonds or other derivative financial instruments.
- **AML**: No acceptance of public deposits (no banking license required) if token is treated as security (bond).
- **Banking**: No acceptance of public deposits (no banking license required) if token is treated as security (bond).
- **Financial Market Infrastructure**: Not treated as securities. If token (also) represents asset (tradable claim against the issuers): will be treated as security.