University of St.Gallen

Crypto Currencies: From an Anti Money Laundering and Banking Law Perspective

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"From insight to impact"

Swiss Crypto Currency Laws (Federal Codes)

1. Private Law:
   - What is a crypto currency? (e.g., a "chattel" according to Civil Code? A right? IP? Security? Etc.)
   - Who is the owner and possessor of a crypto currency token?
   - In some cases, perhaps, public offering of securities (prospectus) laws might apply? Etc.

2. Administrative Law:
   - Federal Act on Combating Money Laundering and Terrorist Financing (*Geldwäschereigesetz*)
   - Federal Banking Code (*Bankengesetz*)
   - Federal Financial Markets Infrastructure Code (*Finanzmarktinfrastrukturgesetz*)
   - Federal Stock Exchange and Stock Trading Code (*Börsen- und Effektenhandelsgesetz*)
   - Collective Investment Scheme Code (*Kollektivanlagengesetz*)

3. Criminal Law:
   - Federal Penal Code (*Strafgesetzbuch*); etc.

Financial Market Laws / Administrative Laws

- In many cases, you need to obtain a specific license before you set up your business within the purview of financial market laws.
- Violation of financial market laws will have administrative consequences, for example:
  - Disgorgement of profits
  - Withdrawal of authorisation, liquidation, and bankruptcy
  - Professional ban (*Berufsverbot*)
  - Cease and desist orders and trading bans
  - Publication of final rulings ("naming and shaming")
- In addition, violation of financial market laws might also trigger a criminal proceeding resulting in criminal sanctions (monetary penalties, jail sentence).

Anti Money Laundering Laws

- Financial intermediaries have an obligation to exercise diligence and to notify authorities in cases of reasonable grounds for suspicion.
- KYC, identify the benefical owner, various reporting duties.
- Financial intermediaries are also persons who on a professional basis accept or hold on deposit assets belonging to others or who assist in the investment or transfer of such assets.
- A financial intermediary must not accept assets if there are indications that assets are
  - the proceeds of a felony, or an aggravated tax misdemeanor,
  - or are subject to the power of disposal of a criminal organization, or
  - serve the financing of terrorism
- ➢ Prevent money laundering and terrorism financing

Banking Laws

– Generally, banking license required before you start a banking business unless an exception applies

– If your business commercially accept public deposits or recommend themselves to accept public deposits, you need a banking license.

– Deposits: liabilities with debt capital character, e.g. promises to return capital with a guaranteed return; exceptions apply.

– FINMA-Rundschreiben 2008/3 "*Publikumseinlagen bei Nichtbanken, Gewerbsmässige Entgegennahme von Publikumseinlagen durch Nichtbanken im Sinne des Bankengesetzes*"

– FINMA has already sanctioned "crypto currency" ICO activities because these ICOs allegedly violated banking laws (some decisions are not final yet); *see* FINMA Enforcement Report 2017, p. 20-21.

Further Information

– MÜLLER LUKAS/REUTLINGER MILENA/KAISER PHILIPPE J. A., Entwicklungen in der Regulierung von virtuellen Währungen in der Schweiz und der Europäischen Union, Zeitschrift für Europarecht (2018) 80-102, available at: https://www.alexandria.unisg.ch/254113/

– MÜLLER LUKAS/STOLTZ THOMAS/KALLENBACH TOBIAS A., Liberierung des Aktienkapitals mittels Kryptowährung - Eignen sich Bitcoins und andere Kryptowährungen zur Kapitalaufbringung? Aktuelle Juristische Praxis (2017) 1318-1332, available at: https://www.alexandria.unisg.ch/252545/

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