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 beneficial 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


Prof. Dr. Lukas Müller
Assistant Professor of Business Law with special emphasis on Company Law
IFF-HSG – Institute of Public Finance, Fiscal Law and Law and Economics
University of St.Gallen (HSG)
Varnbüelstrasse 19
9000 St.Gallen
Switzerland

Lukas.mueller3@unisg.ch
https://www.alexandria.unisg.ch/persons/Lukas_Mueller3