

September 2018

SBA guidelines on opening corporate accounts for blockchain companies

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Foreword

The number of blockchain companies in Switzerland has increased markedly over the last two years. The Swiss Bankers Association (SBA) welcomes this trend and takes a positive view of the high market momentum, as it boosts Switzerland's attractiveness as a workplace and financial centre. Banks see blockchain technology as an opportunity that opens up an array of possibilities for the country as a financial and technology location.

With the growth of blockchain companies, their demand for corporate accounts with banks in Switzerland has also risen. Opening an account poses various challenges for banks because the new blockchain technologies can also be associated with risks, especially in relation to money laundering in the use of cryptocurrencies or fraud. Switzerland has strict laws and due diligence requirements in place governing financial transactions. Banks must therefore carry out careful checks when opening an account.

Under the leadership of the SBA, in recent months a working group has developed guidelines for opening accounts for blockchain companies. These guidelines are intended to support the member banks in their discussions with such companies, and at the same time assist with risk management in their business dealings. The Federal Department of Finance (FDF) and Swiss Financial Market Supervisory Authority (FINMA) welcome the publication of these guidelines. Moreover, the Crypto Valley Association (CVA) helped to develop the contents of the guidelines and supports its implementation and future development.

1. Background and structure of the guidelines

The guidelines address potential requirements that a bank may place on a company involved in blockchain technology or other type of distributed ledger technology (DLT) when opening a corporate account. The potential requirements to some extent exceed the applicable minimum legal obligations of companies involved in DLT, but are not intended to replace applicable rules or existing official guidelines.

The guidelines are based on the principle that the Act on Combating Money Laundering and Terrorist Financing and all other interdisciplinary regulations are also applicable to all participating financial intermediaries in the area of blockchain/initial coin offerings (ICO). The anti-money laundering (AML) duties of a bank that apply when opening a corporate account are therefore based on the valid version of the Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB), the FINMA Anti-Money Laundering Ordinance (AMLO-FINMA), the Anti-Money Laundering Act (AMLA) and the Swiss Penal Code, in addition to bank-specific internal guidelines. These guidelines build on the CDB and also cover blockchain-related issues.

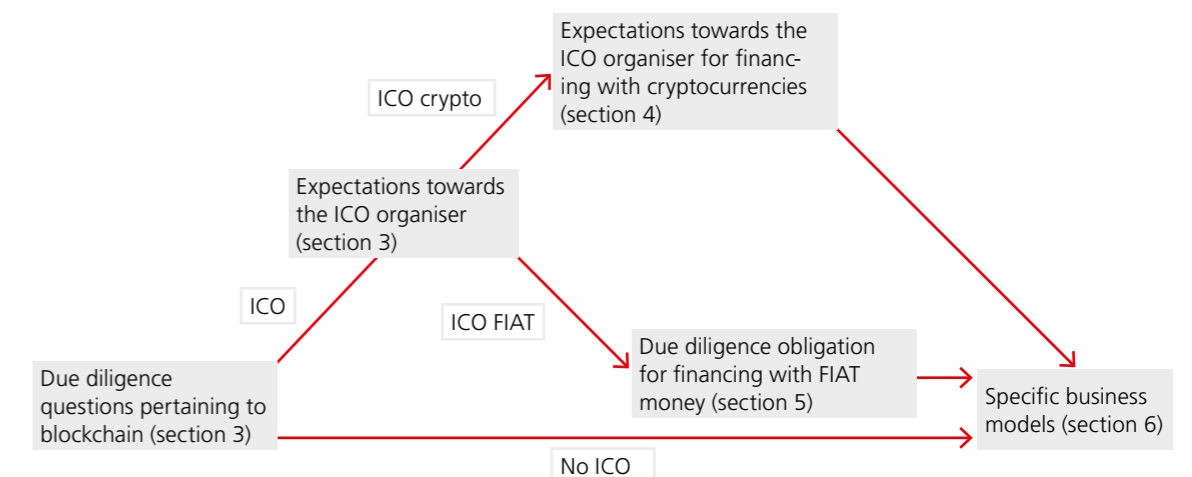
The guidelines are intended to reflect the differing nature and dynamics of companies involved in blockchain technology. Depending on the maturity and business-specific strategy of the company, not all details of the guidelines are relevant to account opening or ongoing account maintenance. For example, a traditionally financed start-up can apply for a corporate account in its initial phase and only arrange for the issuing of tokens (ICO) one to two years later. Furthermore, long-standing corporate clients can decide to offer blockchain services, accept cryptocurrencies as a payment method or hold an ICO. The latter may even involve companies with business models with no initial touch points to the blockchain technology but which want to finance themselves with an ICO.

Therefore, the guidelines address blockchain-specific elements within the scope of the established know-your-customer (KYC) process and further set specific expectations for the issuers of tokens. Consequently, the guidelines differentiate between companies with general links to blockchain and companies with additional involvement in cryptocurrencies and the issuing of tokens (ICO).

When it comes to issuing tokens, the guidelines further differentiate between financing with cryptocurrencies (usually Bitcoin or Ethereum) and financing with government currencies (FIAT money).

The guidelines only cover ICOs that are carried out by an operating company domiciled in Switzerland and which are governed by the [FINMA guidelines for enquiries regarding the regulatory framework for initial coin offerings \(ICOs\)](#) dated 16 February 2018. In case of a connection to foreign countries, e.g. when ICO participants and other involved parties are domiciled abroad, the risks resulting from the application of foreign regulations (tax law, criminal law, anti-money laundering law, capital market law, etc.) must be adequately captured, limited and controlled. Foreign supervisory law in particular must be observed in the process.

Background and structure of the guidelines



Source: Swiss Bankers Association (SBA)

The current version of the guidelines does not cover the management, administration instead of maintenance of cryptoasset accounts for clients.

The guidelines only pertain to the members of the SBA. Internal instructions issued by SBA members always take precedence. The guidelines do not set any industry-wide minimum standards. Each individual institution may interpret and apply the guidelines within the scope of their own internal risk appetite.

No legal claim to the opening of accounts towards the members of the Swiss bankers Association (SBA).

The guidelines are periodically updated and expanded.

2. Questions for due diligence of corporate clients involved in blockchain technology

This section covers the specific expectations within the scope of the KYC process that result from general involvement in blockchain technology (with or without an ICO).

It is recommended that the documents and materials listed be obtained from corporate clients prior to opening any accounts.

Measure / check	Details
2.1 Blockchain or DLT involvement	Specific description of the areas of involvement
2.2 Description of the business model	<ul style="list-style-type: none">• Conclusive and comprehensible description based on reliable documentation such as a white paper• Description of the expected payment flows• Description of the planned operational set-up• In national/business language• Identification of the legal form
2.3 Exclusion of the domiciliary company	<ul style="list-style-type: none">• The company shall demonstrate that it is operational (CDB 16) and has a local substance.• For the establishment of a new company: The company shall disclose its intentions, purpose and expected current revenue and expenses.
2.4 Regulatory responsibilities	The company shall have a dedicated contact partner for all compliance, regulatory and legal issues. In particular it shall have: <ul style="list-style-type: none">• knowledge of the relevant local rules/regulations• a clear description of how the company implements the relevant rules.
2.5 Validation of the business model after account opening	Account holders are obliged to notify the bank of any relevant change in their use of blockchain technology or in case of an impending ICO.
2.6 ICO triage	<ul style="list-style-type: none">• If the company is planning to issue tokens within the next 12 months: Go to section 3 (ICO)• If the company is not issuing tokens: Go to section 6 (Business model)• If the company raises capital by traditional means and issues shares, for example: Go to section 6 (Business model)

3. Expectations TOWARDS of the ICO organiser (see before)

This section addresses the issuing of tokens (ICO) regardless of the type of financing. It only discusses ICOs whose issuers are operating companies domiciled in Switzerland.

The utmost priority is placed on preserving the reputation and the integrity of Switzerland as a financial centre and workplace. The explanations in [section 3](#) and [section 4](#) are based on this superordinate objective and also serve to protect the ICO organiser.

The bank shall conduct no legal analysis of the nature and maturity of the tokens to be issued and shall initially assume that the ICO organiser is subject to the AMLA. The ICO organiser must demonstrate and justify its case if it is not subject to the AMLA. In case of doubt, it must in particular produce proof in the form of a subordination enquiry answered by FINMA. The AMLA stipulates various due diligence obligations and the duty to either join a self-regulating organisation (SRO) or allow a Swiss financial intermediary subject to the AMLA to receive its assets.

Institution-specific internal instructions may set additional requirements. Internal instructions always take precedence over the guidelines.

Measure / check	Details
3.1 Use of funds	<p>Prior to launching an ICO, ICO organisers shall demonstrate that the project to be financed exists and that the funds being deposited into the account stem from the ICO and will subsequently be used for the stated purpose.</p> <p>The ICO organiser shall provide the bank with its final terms and conditions.</p>
3.2 Liquidity planning	<p>The ICO organiser shall notify the bank at which the account is held prior to the launch of the ICO of the following:</p> <ul style="list-style-type: none">• the breakdown of fiat money and individual cryptocurrencies (e.g. 50 % FIAT, 25 % Bitcoin, 25 % Ethereum)• the amounts and frequency at which the funds converted into FIAT money will be transferred to the bank at which the account is held• repayment patterns if the target amount is not reached• the companies at which cryptocurrencies are exchanged (see section 4.6).
3.3 Handling risk under foreign law	<p>An ICO organiser shall establish relevant guidelines. It shall implement measures to exclude ICO participants from countries in accordance with the bank's internal definition.</p> <p>The ICO organiser shall provide the bank with this information upon request.</p>
3.4 AMLA subordination	<p>The bank shall initially assume that the ICO organiser is subject to the AMLA. AMLA subordination is exclusively based on the FINMA guidelines for ICOs dated 16 February 2018. If the ICO organiser is not subject to the AMLA, it must demonstrate this. In case of doubt, it must in particular produce a subordination enquiry answered by FINMA.</p> <p>The ICO organiser shall produce the following proof in case of AMLA subordination:</p> <ul style="list-style-type: none">• name of the SRO and confirmation of SRO membership or• in case of delegation: name of the financial intermediary, confirmation of its membership in a SRO and confirmation of delegation• complete documentation in accordance with the internal compliance rules of the bank at which the account is held.
3.5 Tokens	<p>Detailed description of the tokens to be issued in accordance with the Appendix to the FINMA guidelines for subordination enquiries regarding initial coin offerings (ICOs) dated 16 February 2018 and its current status (market maturity, issue date).</p> <p>This documentation of the token, which usually takes the form of a white paper, represents an essential component of the bank's due diligence. Therefore, it must be provided as soon as possible to the bank at which the account is held.</p>

3.6 Duties under the ICO

- Legal obligations are based on the AMLA.
- At the bank's request, the ICO organiser shall demonstrate to the bank that the current use of funds corresponds with the stated purpose.
- At the bank's request, the ICO organiser shall demonstrate to the bank that the restrictions for foreign participants described in [section 3.3](#) have been upheld.
- As a rule, any measure to create transparency with regard to the change of ownership (tokens) after the completion of the ICO reduces risk and is welcomed by the bank at which the account is held.

3.7 Financing type triage

- If the ICO organiser arranges for some or all of the financing on blockchain/via a cryptocurrency:
 - Go to [section 4 \(ICO with financing\)](#)
- If the financing is carried out exclusively with FIAT money:
 - Go to [section 5 \(Due diligence obligations\)](#)

4. Expectations of the ICO organiser for financing with cryptocurrencies

The following table describes corporate financing that is partially or entirely executed through cryptocurrencies. This version of the guidelines assumes that the bank at which the account is held does not directly receive any cryptocurrencies.

The ICO organiser has the cryptocurrencies converted into FIAT money through an exchange regulated by Swiss law or equivalent laws or by a third-part bank regulated by Swiss law or equivalent laws and then transfers the corresponding funds to the bank at which the account is held.

These guidelines recommend requiring the ICO organiser, regardless of whether or not it is subject to the AMLA, to apply the KYC and AML standards applicable in Switzerland to the receipt of funds when accepting cryptocurrencies.

Furthermore, as a rule the receipt of cryptocurrencies within the scope of an ICO may be treated at least as a cash transaction. However, it should be noted that every transaction is stored in the blockchain and there is a risk of violating sanctions with transactions in cryptocurrencies, regardless of their amount. The form of token and AMLA subordination also give rise to additional obligations.

Institution-specific instructions may create additional requirements or set threshold values that deviate from the guidelines. Internal instructions always take precedence over the guidelines.

Measure / check	Details
4.1 Accepted cryptocurrencies	In principle, cryptocurrency should be suited to a wallet analysis. Deviations must be justified.
4.2 Obtaining information about the ICO participant	<p>Information about every subscriber, which must be collected by the ICO organiser, is generally derived from the requirements of the applicable rules (e.g. SRO rules and FINMA circular on video and online identification).</p> <p>The ICO organiser must register each participant regardless of the subscription amount and record the name, address (including country), date of birth, nationalities and place of birth.</p> <p>Regardless of the AMLA subordination of the ICO organiser, it is expected that the participant be identified pursuant to the AMLA/AMLO-FINMA/CDB from a subscription amount of at least CHF 15,000. Any further measures to increase transparency serve to reduce risk, in particular in view of potential violations of sanctions. The information collected in the identification process also contains all relevant wallet addresses that the ICO participant uses when making capital contributions.</p> <p>The ICOs of payment tokens are subject to the AMLA. In accordance with FINMA practice, in this case a simplified identification duty applies up to a threshold value of CHF 3,000 in accordance with Art. 12, para. 2 (d) AMLO-FINMA by means of a simple copy of an identification document (instead of the general identification duty from CHF 0). Here, the name, address, date of birth, beneficial owner/authority holder, e-mail and telephone number must be recorded in writing. The information also includes all relevant wallet addresses that the ICO participant uses when making capital contributions.</p> <p>It is generally appropriate to document beneficial ownership in line with the existing processes of the respective institution. The bank may request the ICO organiser to provide the complete documentation for the ICO participants at any time.</p>
4.3 Use of risk databases	<p>The ICO organiser shall reconcile subscribers with risk databases customary for the industry (in particular politically exposed persons [PEP] and terrorism and sanction lists).</p> <p>The reconciliation shall be provided to the bank together with the internal guidelines on the monitoring of PEPs and sanctioned clients.</p>

4.4 Background check (source of funds) and risk assessment of the wallet addresses used for participation in the ICO (AML)	<p>It is generally recommended that the ICO organiser takes a risk-based approach to the background check. A general tracing of the source of the funds in the blockchain has so far not been required. In principle, all additional transparency that the ICO organiser provides serves to reduce risk. In special cases or instances of specific suspicion in particular, it is recommended to carry out a thorough check by means of a wallet analysis or additional documentation (e.g. additional due diligence instead of a pure database reconciliation in case of high investment amounts or domicile in a risk country).</p> <p>A thorough check by the ICO organiser is always recommended for subscriptions that exceed CHF 100,000 (individual or cumulative). This thorough check includes documented reconciliation of wallet addresses and ICO subscribers.</p> <p>The bank at which the account is held reserves the right to request information about the investors prior to the receipt of funds and, should it have its own specific suspicions, to request the ICO organiser to carry out further clarifications (e.g. receipt of specific wallet analyses).</p>
4.5 Quality certification of the KYC/AML check	<p>Regardless of AMLA subordination, it is recommended that KYC/AML checks be carried out in accordance with the applicable standards.</p> <p>An ICO organiser that is not subject to the AMLA may either employ a financial intermediary or a company specialised in AMLA compliance for this purpose.</p> <p>The results shall be disclosed to the bank at which the account is held. The results shall also document compliance with internal company PEP guidelines.</p>
4.6 Exchange for conversion from cryptocurrency into FIAT money	<p>Crypto exchanges and the conversion of cryptocurrencies into FIAT money pose a particular risk for banks as the risks associated with AMLA issues are very evident at the conversion point. Banks must therefore set risk-reducing requirements for an exchange: e.g. an exchange regulated by Swiss law or equivalent laws or a third-party bank regulated by Swiss law or equivalent laws.</p> <p>The definition of "equivalent regulation" shall be based on the internal guidelines of the respective bank.</p>
4.7 Suspicion of money laundering	<p>The participant shall not be authorised for the ICO (unless legally required due to the ban on tipping-off following a report to the Money Laundering Reporting Office [MLRO], Art. 9a AMLA). The ICO organiser is responsible for excluding the participant.</p> <p>The bank at which the account is held may waive bank client confidentiality for necessary clarifications within the scope of KYC and due diligence of a company with an ICO on the basis of the corresponding consent of the corporate client in the contract or by means of a separate waiver.</p> <p>The bank should explicitly notify corporate clients of this circumstance and, accordingly, the ICO organiser is recommended to state this transparently in the ICO terms & conditions.</p>

5. Due diligence obligations for financing with fiat currencies

Regardless of whether the financing is for the purpose of issuing tokens or shares: KYC duties (e.g. source of funds/beneficial ownership [BO], etc.) apply to financing with FIAT money as they do to a normal account opening. In this context, ICO participants/investors must be identified and the beneficial owners determined in accordance with the AMLA/AMLO-FINMA/CDB.

6. Specific business models

Potential company-specific characteristics listed in [sections 2.1](#) and [2.2](#) may also require additional clarifications and documentation. It is not possible to provide a conclusive list and detailed discussion of all business models that are involved in blockchain technology. The areas of involvement most commonly seen in practice are discussed below:

- In accordance with existing FINMA practice, the exchange of cryptocurrencies for government FIAT money or for other cryptocurrencies is considered to be a financial intermediary activity pursuant to Art. 2, para. 3 ALMA. The applying company must also disclose and check the applicability of the Stock Exchange Act (FinfraG).
- The same also applies to the offering and transfer of tokens. If the service provider holds a power of disposal over the private key (i.e. the custody wallet provider), the service provider is considered a financial intermediary.
- Companies that offer the option of obtaining their services or products in exchange for cryptocurrencies are urged to conduct the background checks discussed in [section 4.5](#) and to apply the threshold values recommended in [section 4.2](#).

Appendix – Glossar

Distributed Ledger Technologie (DLT)

Distributed ledger technology is often referred to as DLT. A distributed ledger is simply a database that is distributed across multiple locations, regions or participants. This means that all participants may display all relevant data sets in the distributed general ledger. The technology offers a verifiable history of all information stored in this specific data set.

Blockchain

Blockchain is a specific type of distributed ledger. For example, blockchain is used for transactions with Bitcoin, Ethereum and other cryptocurrencies. The name blockchain refers to the fact that transactions and other data are summarised into blocks and attached to a chain of previously verified blocks. In order to link blocks into a chain, blockchain uses a cryptographic signature known as a “hash”. A public blockchain is accessible to anyone and is maintained by multiple anonymous participants (e.g. Bitcoin). In contrast, a private blockchain is maintained by a few identified participants (e.g. a consortium blockchain).

Initial coin offering (ICO)

There is no unified definition of an ICO (or TGE – token-generation event). The smallest common denominator of ICOs is the issuing of digital, transferable, unique information and/or functional units (coins or tokens) by a company (ICO organiser) to a participant (user). These guidelines are based on this definition.

Token

FINMA classifies tokens based on their economic function and differentiates between payment, asset and utility tokens. Also see the [FINMA guidelines for subordination enquiries regarding initial coin offerings \(ICOs\)](#) dated 16 February 2018.

Cryptoassets

Cryptoassets are cryptographically secured assets. The best-known cryptoassets are cryptocurrencies. A cryptocurrency is a digital currency with a payment system. Currently, the best-known cryptocurrencies are Bitcoin and Ethereum. Unlike traditional FIAT money created by a central bank, such as dollars or Swiss francs, a cryptocurrency only exists in digital form. The technical transfer of digital currencies is based on blockchain.

Wallet analysis

A wallet analysis is intended to provide information about the source of (crypto) assets. Many criteria can be used in the process, e.g. outgoing or incoming payments in the wallet with a connection to the dark net, “mixers” and “tumblers”, scamming and/or gambling websites and transactions from or in high-risk countries. The analysis may also include a risk classification of the trading centres from which the wallet in question was supplied.

Exchange

Cryptocurrencies can be converted in traditional FIAT money such as CHF or in other cryptocurrencies on exchanges.

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