

The Law and Regulation of ICO (Initial Coin Offering)

Abstract

This diploma thesis deals with legal analysis of ICO (Initial Coin Offering) and legal analysis of tokens that are issued within an ICO. The thesis aims to find out whether and to what extent an ICO is subjected to initial public offering law and whether the tokens can be characterized as things, securities, dematerialized securities, and electronic money.

In the first part of the thesis, I define the basic concepts and terms. Definitions and terms are supplemented by the technical and economic background of each respective institute. The first part also briefly summarizes the historical development of ICO, which shaped it into its present form.

The second part of the thesis deals with the legal categorization of tokens. Firstly conceptual features of the thing in the legal sense, dematerialized security, security, and electronic money are established. Subsequently, it is examined whether the tokens can fall within these conceptual features or not. In the chapter regarding securities, it is pointed out that different understanding of securities in public and private law may have some negative consequences. The analysis of the contractual relationship between the issuer and the investor is also addressed in the second part.

In the third part, ICO is analysed from the EU initial public offerings law point of view. Given the legislative changes that took place at the time of writing of this thesis, one chapter deals with sources of public offers law. The definition of a public offering of securities is divided into two subparts. The formal part of the definition addresses the process of an offer. Material part of the definition characterizes the subject of the offer. Subsequently, the analysis of whether an ICO can fall within the definition is taken. The third part is concluded by pointing out the possible economic and legal consequences of the application of the legal regulation of public offers.

The fourth and the last part of the thesis describes three possible regulatory approaches that can be taken in relation to ICO. The first one is to ban ICO. The second is to enforce existing legislation, including the issuance of notices and non-binding opinions. The third approach is to adopt specific legislation concerning ICOs. Based on the evaluation of the pros and cons of each individual approach, I conclude which one should fit the regulation of ICOs the best.