



Guide:

Initial Coin Offerings (ICOs) in the Canton of Geneva

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1. Guide: Initial Coin Offerings (ICOs) in the Canton of Geneva by DG EDRI

The Directorate General for Economic Development, Research, and Innovation (DG EDRI) of the State of Geneva contributes to the development of the local economic ecosystem in all its diversity. It promotes entrepreneurship, digital and sustainable transformation, the emergence of talent, as well as innovation and scientific research.

Given the growing interest from various actors for blockchain technology and distributed ledgers as well as for Initial Coin Offerings (ICOs) in Geneva, DG EDRI presents this guide in order to accompany and evaluate ICO projects with a view to their installation in Geneva, regardless of their degree of advancement.

With its profoundly international nature and its multicultural tradition, Geneva provides the ideal setting for ICO projects. The canton offers quality infrastructures, a favorable tax system, and a competent blockchain ecosystem composed of entrepreneurs, academics, and an administration that has already initiated several projects using blockchain technology.

In addition, Geneva positions itself as a global hub for cybersecurity and is host to leading players in the field. The canton supports the idea of international regulation of cybersecurity and welcomes the [Cybersecurity Tech Accord](#) signed in mid-April 2018 by more than 30 major companies in the technology sector.

The Swiss legislative and regulatory context is particularly encouraging for ICOs and companies active in the blockchain sector. This is due in particular to the classification of the various kinds of tokens in a practical guide published in the first quarter of 2018 by the Swiss Financial Market Supervisory Authority (FINMA), the Swiss financial market regulator.

This present guide offers a summary of the information relative to the regulatory and tax measures in Geneva intended to assist ICO project promoters in their search for the best launch pad. It describes the evaluation criteria for facilitating and accelerating projects becoming established in Geneva.

DG EDRI offers entrepreneurs the possibility of obtaining an evaluation of their ICO project, as well as being put into contact, according to their needs, with actors in the Geneva ecosystem. A map of that Geneva ecosystem is available on the DG EDRI website.

The information in this guide is updated by an open specialist group composed mainly of Geneva experts from the public and private sectors focused on the legal, banking, academic, and technical aspects of ICOs, as well as regulatory compliance, marketing, and more. This holistic approach makes it possible to consider every facet of an ICO.

2. Practical Information: regulatory and tax aspects

2.1 FINMA Regulatory categories for tokens

In accordance with the [Guidelines for enquiries regarding the regulatory framework for initial coin offerings \(ICOs\)](#) published by the Swiss Financial Market Supervisory Authority FINMA on 16 February 2018, the first step is to identify the category of tokens created or to be created by the ICO initiator. FINMA notes that there is currently no universally recognized classification of ICOs and the resulting tokens issued, neither in Switzerland nor elsewhere in the world.

FINMA has based its approach on the economic function of the tokens issued. On the basis of criteria of functionality and transferability, FINMA has established a first outline of future regulations of digital token issues, retaining the following categories:

- **Payment tokens:** this category (synonymous with "pure cryptocurrencies") includes tokens that are accepted as a means of payment for the purchase of goods or services, in fact or in the intention of the organizer, or to be used for the transmission of money or securities. Cryptocurrencies give rise to no claims on the issuer.
 - FINMA considers that ICOs whose tokens fulfill the economic function of means of payment and that are already transmissible at the time of the ICO are clearly subject to provisions regarding the fight against money laundering.
 - FINMA will not, however, treat these tokens as securities.
- **Utility tokens:** FINMA qualifies as "utility tokens" those that are intended to provide digital access to an application or service and that require the use of a blockchain type infrastructure. Utility tokens are not treated as securities if they only confer digital access to an application or service and if they can be used in that way on the issue date.
 - If the economic function of serving as an investment exists, FINMA will treat these tokens as securities (as asset tokens).
- **Asset tokens:** this category includes tokens that represent assets. Such tokens can in particular represent a debt or equity claim on the issuer. They promise, for example, a share in future company earnings or future capital flows. In terms of economic function, these tokens are therefore analogous to equities, bonds, or derivative financial instruments. Tokens that enable physical assets to be traded on the blockchain also fall into this category.
 - FINMA treats asset tokens as securities with the corresponding consequences for their trading in the context of financial market regulation. As a general rule, this approach also implies the corresponding obligations under the Swiss Code of Obligations (for example, the requirement to file a prospectus).

These token categories are not mutually exclusive. Asset and utility tokens can also be classified as payment tokens (referred to as **hybrid tokens**). A utility token can, for example, be subject to the anti-money laundering act when it is usable as a generalized means of payment, or should be able to be used as such.

2.2 Value added tax (VAT) liability

The Swiss federal tax authorities have not, for the moment, published any directives or communications on ICOs. Nonetheless, according to a pre-analysis by PwC Switzerland based on existing regulations and administrative practices, particularly with regard to financial matters and data carriers, it is possible to reason by analogy, which requires an evaluation prior of the token according to the categories identified by FINMA.

- **Payment tokens:** these tokens may be recognized as a means of payment even though they would not be legal tender under Swiss law and depending on the evolution of the legislation.
 - As such, income from the issuance of means of payment would not be considered as revenue in determining VAT (out of scope). Therefore, the advance tax (input VAT) relating to costs incurred exclusively for the purposes of the issue of payment tokens would not be recoverable.
 - For overhead costs that are not exclusively attributable to those revenues (so-called "mixed" expenses), the related input tax can be recovered according to an allocation key based on all the activities undertaken. Similarly, in its Hedqvist decision (Case C-264/14) on 22 October 2015, the European Court of Justice ruled that the Bitcoin virtual currency is a contractual means of payment and therefore benefits from an exemption provided for in article 135(1)(e) of Council Directive 2006/112/CE on the value added tax. Ultimately, it could be argued that transactions, including trading, involving payment tokens benefit from this exemption. As a result, token subscribers based in the European Union should also be exempt from VAT in their country.
- **Utility tokens:** these tokens could be considered as pre-payment of services under common law (e.g. right of access, right to a service).
 - As such, if, at the time the tokens are issued, the prepaid services are clearly identifiable and known, that emission would be treated as a taxable service in the place of business of the recipient of said service. Consequently, it would be taxed at the applicable rate if the recipient is in Switzerland (7.7%), or exonerated from VAT (0%) if the recipient is abroad. The input tax incurred for the acquisition of income resulting from the issue of those tokens would be recoverable.
 - On the other hand, if the services are not clearly identifiable and known, the issue of the tokens could constitute a means of payment. Consequently, the previously developed considerations would be applicable.
 - In the European Union, these tokens - usually used for the purposes of raising funds needed for the development of future products and/or services by the issuing company - are considered as a prepayment of future goods or services from said company. However, under Article 2 of the aforementioned VAT Directive, delivery of goods and provision of services for consideration by a taxable person acting as such are subject to VAT, which presupposes the existence of a direct link between the provision of services or the delivery of goods and the payment received. However, on the date of issue of the token, no services or delivery of products can generally be clearly identified.
 - In addition, if the project of the issuing company is unsuccessful, it is possible that the investor will receive nothing. It could therefore be argued that there is no direct link between the token issued and the service rendered, and that the sums paid when the

token is issued are outside the scope of VAT, provided that the issue cannot be equated with a right of access or reservation. Only the use of the token as a means of payment for the good or service would then be subject to VAT.

- Special attention should then be paid to applicable rules of territoriality and the resulting declarative obligations.
- **Asset tokens:** these tokens would likely be treated as assets: shares/holdings or ownership of an asset or a portion of an asset (tangible or intangible assets)
 - For this kind of token, VAT treatment and the right to recover input tax would vary depending on the underlying.
 - In the case of shares/holdings, income generated for their issue would not be subject to VAT because considered out of scope. Nonetheless, the right to recover input tax would not be affected.
 - If, on the other hand, there is ownership of an asset, VAT treatment and implications for the input tax would depend on the underlying.
 - Given the nature of these tokens, they could certainly benefit in Europe from the exemption provided for in Article 135(1)(b) or (f) of the VAT Directive 2006/112/CE or be considered out of scope if assimilated to dividends. Similarly to Switzerland, the system applicable to tokens representing assets will depend on the underlying asset.
- **Hybrid tokens:** in the event that a token has several of the above qualities, VAT treatment should be determined on a case-by-case basis.

2.3 General tax treatment of tokens by the Cantonal Tax Administration of Geneva (AFCGE)

With regard to corporate taxation (profit tax), the principle that the treatment for book purposes must also be adopted for determining taxable profit (principe de détermination/Massgeblichkeitsprinzip) applies with regard to Swiss tax law. Accounting treatment, as long as it complies with commercial law and no corrective tax rule exists, is thus decisive from a tax point of view. At present, for ICOs, the AFCGE position can be summarized as follows:

- At the level of the legal entity issuing the ICO (token-issuing entity), **the AFCGE treats the financial resources received in exchange for the issued tokens as constituting a taxable return that must be credited in the "Profit & Loss" statement** (hereafter P&L) of the entity in question. This is valid regardless of the nature of the tokens issued (payment tokens, utility tokens, asset tokens, or hybrid tokens).

To the extent that the issuing entity has formally committed itself to allocate the financial resources obtained during the ICO to the development and financing of its project (covering operating costs and research and development), it is accepted that it may constitute a provision against its P&L statement, up to the amount of the proceeds from the ICO.

That provision must then be dissolved, by crediting the P&L statement, as the project development phase advances and the financial resources obtained during the ICO are invested, or over a period to be determined beforehand with the AFCGE. Expenses

generated by the development of the project can be, in turn, posted as expenses charged to the P&L.

At the end of the project's development phase, any potential balance must be dissolved and credited to the P&L, thus constituting taxable proceeds.

- In view of the special rights these tokens may confer on their holders towards the issuing entity, the issuing during the ICO of **asset tokens**, or **hybrid tokens** that also possess characteristics specific to **asset tokens**, should be subject to a specific prior analysis in collaboration with the AFCGE. Depending on the characteristics of the tokens in question, their tax treatment may contain specificities that are not analyzed in this document.
- To obtain a tax ruling legally binding the AFCGE and the company carrying out the ICO (issuing company), it is advisable to submit, before the implementation of the operation, a request for a ruling, which must respect the structure and contain the information specified on the canton of Geneva website at the following address: <https://www.ge.ch/ruling>.
- Generally, taxation of companies in the canton of Geneva (profit tax) currently corresponds to an effective rate on the order of 24.2%. Companies whose business is primarily foreign-oriented (auxiliary companies) are taxed at an effective rate of around 12%.

Switzerland will soon be abolishing special tax statuses, in particular for auxiliary companies. The new system that will be put in place will be compatible with internationally recognized tax standards.

In the context of that corporate tax reform, the Canton of Geneva plans in the end - in principle by 2020 - to subject all companies to a single corporate profit tax rate, which could be 13.79% (effective rate).

3. Evaluation

3.1 Evaluation criteria

The open specialist group that prepared this guide identified 7 areas of evaluation for an ICO that project promoters must analyze in order to understand the progress of their project, be it in terms of legal compliance, including standards against money laundering and funding terrorism, or of the economic model allowing for these innovative projects to have a durable impact in Geneva and thus promote job creation.

I. Composition of the ICO team and its ecosystem

DG EDRI reviews the profiles and skills of the members of the team responsible for ensuring the success of an ICO project. It also analyzes the larger ecosystem, which includes external stakeholders, service providers, legal entities, and requisite authorities. It is therefore

essential that the team identify the members of its ecosystem in order to put in place the interactions necessary for the success of the project.

Required documents:

- Statutes of the issuing entity, and, if applicable, its unique enterprise identification (UID) number;
- List of service providers and authorities that might rule on the ICO;
- Presentation of the relationships among the members of the ecosystem;
- Structure of the organization to address the needs of the concept developed by the ICO;
- CVs and references for all members of the team and the ecosystem;
- Diagram summarizing the interactions among the various members.

II. Technological aspects

DG EDRI evaluates each ICO project submitted to it according to its stage of development and the relevance of using blockchain technology, knowing that not all projects are necessarily suitable to this technology.

A second technological aspect concerns the development stage of the smart contract, following the usual typology: concept - coding - test - audit. Candidates must indicate in their submission what stage(s) they have reached, as well as their roadmap of the technological developments of their smart contract.

Required documents:

- Yellow paper (i.e. a document focused on the smart contract and the technical aspects of the ICO);
- Audit report of the smart contract and of other applications used in the context of the ICO.

III. Concept & Business plan

DG EDRI also carefully analyzes the innovation potential of the project as well as the demand for the proposed service.

If the entity presenting the project is already established, DG EDRI analyzes it from the point of view of its structure, products, and income.

A first guarantee of transparency, as well as a good indicator of the seriousness of the project, is the allocation structure of the funds, especially the share of funds allotted to the team in comparison with that allotted to the project, which is essential. The same is true for the structure of the distribution of the tokens, particularly the share of tokens issued that is distributed to the public, as well as their functionalities.

DG EDRI also analyzes the level of financial resources allocated and the future resource needs, both in the phase preceding the ICO and in the post-ICO phase, with particular consideration of budget projections and the business plan.

Required documents:

- White paper;
- Use of the tokens;

- One-page summary;
- Business plan including budgets;
- Any other available conceptual document.

IV. Legal aspects

It must be clearly stated that legal questions must be resolved as a priority by ICO project promoters, not only because the various steps to be taken require time, but also due to the preeminent influence the legal system can have on the business model.

The main legal aspects to be taken into consideration can be identified as follows:

- Regulatory aspects: evaluation of the planned activities from the viewpoint of Swiss financial markets, in particular the need or not for a FINMA authorization, a confirmation of subjection or non-subjection to financial market laws (FINMA ruling), as for example with regard to the possible application of the anti-money laundering law (AMLA) to the planned activities, and, if that last is applicable, to the affiliation with a self-regulatory organization (SRO).
- Contractual aspects: depending on the phases of the ICO and the type of tokens created, these include documentation covering the token sales contract for Private Presale; the general conditions of sale for the ICO (Presale and Main Sale); disclaimers; and the general conditions of use of the website. In the event of the sale of securities such as shares, bonds, or certificates of participation, the issuer must prepare a prospectus in accordance with the content requirements under the Swiss Code of Obligations (articles 652a and 1156). The white paper must also be reviewed and supplemented from a legal perspective. Depending on the project, other contractual documents may be considered.
- Aspects relative to corporate law: analysis, creation, and governance of the legal entity structuring the ICO.

Other legal questions may arise depending on the specificities of the project. We encourage candidates to seek appropriate legal advice.

Required documents: available legal documents (legal opinion; FINMA ruling, or, if absent, exchanges with FINMA; contracts; tax ruling; documents relative to the legal entity, etc.).

V. The investor onboarding process

DG EDRI evaluates ICO projects submitted to it according to standards established in the [Swiss Federal Act on Combatting Money Laundering and Terrorist Financing](#) (Anti-Money Laundering Act - AMLA) at the time of investor onboarding as well as based on the methodology employed to identify those investors and verify the origin of funds invested.

That analysis, commonly called "Know Your Customer" (KYC), can be delegated to a specialized financial intermediary.

Required documents:

- Information about the investor onboarding process;

- Material elements indicating the type of investor and eligible countries;
- Any external service providers and their status vis-à-vis FINMA.

VI. Marketing strategy & Public relations

DG EDRI also evaluates ICO projects submitted by project promoters with regard to their funding strategy and the means employed to approach investors.

The marketing activities for an ICO are generally divided into three phases:

1. Strategy: as part of a strategic plan, the ICO must define its concept, its message, as well as the visual universe in which it intends to evolve. It is also a question of conceptually defining the intended investors (the target) as well as channels that will be used to reach them.
2. Production of materials: once a plan has been developed, materials required to launch the campaign must be available (website, ICO presentation documents, press kit, teasers, banners, films, etc.).
3. Campaign: during a third phase, the marketing campaign is launched according to the plan and the defined targets. Roadshows in the field, in proximity to targeted investors, as well as a communications and public relations plan to reach digital media of reference (specialized media, social networks) are generally essential to achieving objectives.

Required documents:

- Website;
- Marketing, media, and PR plans;
- Planned roadshows;
- Marketing budget.

VII. Calendar

DG EDRI analyzes each project submitted according to its state of advancement.

That being so, four "typical" stages of ICOs can be identified:

1. Concept phase: writing of a white paper that presents the concept, the proposed innovation(s), the team in charge of implementing the project, the schedule, the *tokenomics* (algorithmic and financial mechanisms of the tokens to be created), along with the preparation of other key elements of the project, including a business plan.
2. Implementation phase: setting up the team and the concept. The documentation available in addition to the white paper and business plan will depend on the progress of the project.
3. ICO phase (raising funds): this can be organized in initial phases (Private Sale and Presale) and then a public phase (Main Sale). Most of the above aspects and documents are finalized and available. The marketing campaign is about to be launched or is being rolled out. At this stage, it is a question of verifying that a process of onboarding investors

in conformity with Swiss law is implemented and, therefore, that the ICO can in fact be launched from Geneva.

4. Post-ICO phase: the raising of funds is complete and the ICO is looking to settle in Geneva to concretize its project. It is necessary therefore to review all of the above-mentioned aspects and documents.

3.2 Evaluation process

Experts with DG EDRI are available to study ICO deal flow in relation to the aforementioned evaluation grid. Depending on the cases, DG EDRI can propose to ICO project promoters to submit their plans to an expanded Experts Committee, with members from the public and private sectors, to allow for analysis by specific specialists.

The assessment provided should be considered as an evaluation of the degree of advancement of the project provided by DG EDRI and/or the Experts Committee to ICO project promoters and shall under no circumstances be used as a certificate of quality to promote to various project stakeholders, such as potential investors.

How to submit your dossier?

To benefit from an evaluation of your project, please fill out the [evaluation form request](#) at the following address: <https://ge.ch/sondage/index.php/692669/lang-en#>

For any questions, you can also contact us by phone: +41 22 388 34 34 or via email at: dgderi@etat.ge.ch

Evaluation process

1. Submission of the complete evaluation form request.
2. Evaluation by DG EDRI experts within 1 to 4 weeks.
3. Response via email within 1 to 4 weeks of the results of the evaluation, and, if necessary, organization of a complementary interview (in person or by video-conference), and/or organization of an expanded Experts Committee within 4 weeks.
4. Possible contacts established with ecosystem actors, depending on identified needs.

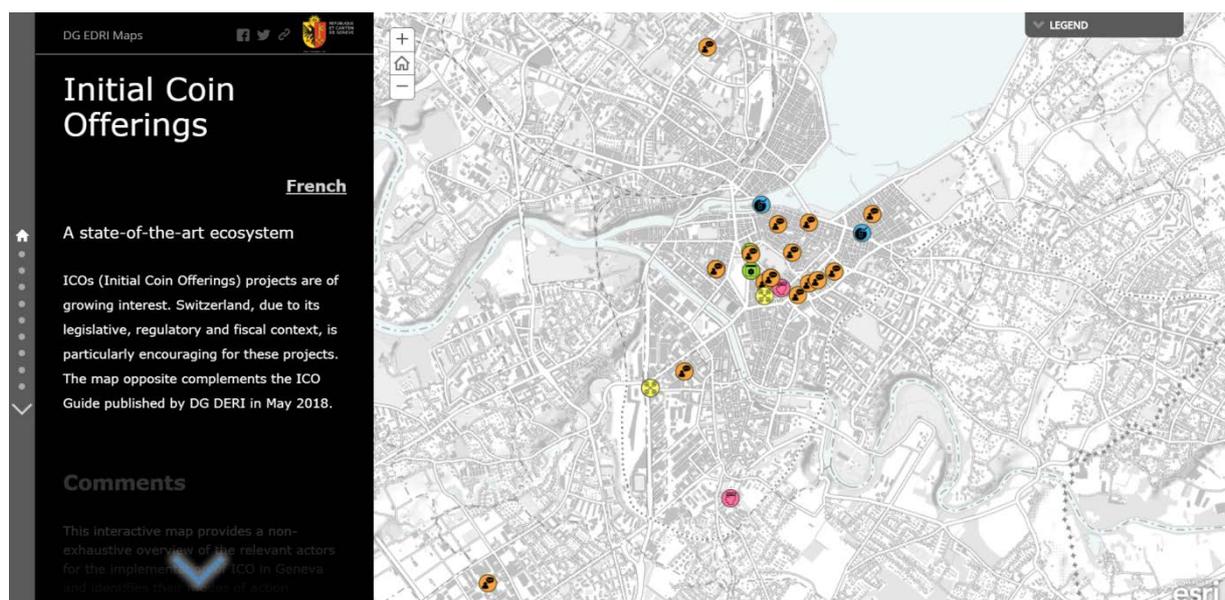
4. Map of the Geneva ecosystem

DG EDRI maintains an up-to-date list of Geneva actors, presented via a specially designed map based on the following categories and sub-categories:

- Service provider:
 - Legal & compliance
 - Consulting & implementation
 - Banking services
 - Accelerator, incubator & co-working
 - Accounting, audit & tax
 - PR, marketing & communication
 - Venture Capital
- Collaboration:
 - Event
 - Association
- Conducted ICO
- Skills & Research:
 - Training
 - Academia
- Technology:
 - Data & analytics
 - Platform
 - Hardware & infrastructure

This is an open directory. To be included, please fill out the [form](#) (in French only) at the following address: <https://ge.ch/sondage/index.php/911767/lang-fr>. When the "thématique" question appears, please select the "ICO" category to complete the questionnaire.

The current map of these actors can be viewed at this address: <https://arcg.is/19LvC5>



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