

Initial Coin Offerings – Legal Basics

Round Table Session, ICOs - from Theory to Practice

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Agenda

- What are we doing?
- Which rules apply?
- Where are we doing this?
- How can we do this right?
- When can we start?

What are we doing?

- Sale or Distribution of Blockchain Tokens
- Is “Cryptocurrency” Currency?
- Are We Offering Securities?
- Are We Selling Assets/Commodities?

What are we doing?

- Sale or Distribution of Blockchain Tokens.
 - Whitepaper
 - Smart Contract
- Is “Cryptocurrency” Currency?
- Are We Offering Securities?
- Are We Selling Assets/Commodities?

What are we doing?

- Sale or Distribution of Blockchain Tokens.
- Is “Cryptocurrency” Currency?
 - IL - Bank of Israel Law, 5770-2010 – NIS or banknotes or coins which are legal tender in a foreign country and are not legal tender in Israel. Legal tender is a medium of payment recognized by a legal system to be valid for meeting a financial obligation.
 - US - Financial Action Task Force Report - Virtual currency is distinguished from fiat currency (a.k.a. “real currency,” “real money,” or “national currency”), which is the coin and paper money of a country that is designated as its legal tender.
- Are We Offering Securities?
- Are We Selling Assets/Commodities?

What are we doing?

- Sale or Distribution of Blockchain Tokens.
- Is “Cryptocurrency” Currency?
- Are We Offering Securities?
 - SEC – “Whether or not a particular transaction involves the offer and sale of a security— regardless of the terminology used—will depend on the facts and circumstances, including the economic realities of the transaction”.
 - US - Under Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act, security includes “an investment contract”. SEC v. W. J. Howey Co. - An investment contract for the purposes of the Securities Act means a “contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party”.
 - IL - The Securities Law, 5728-1968 – “Certificates issued in series by a company, a cooperative society or any other corporation conferring a right of membership or participation in them or claim against them, and certificates conferring a right to acquire securities, all of which whether registered or bearer securities...”
- Are We Selling Assets/Commodities?

What are we doing?

- Sale or Distribution of Blockchain Tokens.
- Is “Cryptocurrency” Currency?
- Are We Offering Securities?
- Are We Selling Assets/Commodities?
 - IL – Income Tax Ordinance [New Version] 5721-1961 - “asset” any property, real or movable, as well as any contingent or vested right or benefit, all whether they are in Israel or abroad.
 - US – CFTC - Section 1a(9) of the Act defines "commodity" to include, among other things, "all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in." The definition of a "commodity" is broad. Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.

Which rules apply?

- Securities Laws
- Financial Regulation
- General Contract Laws

Where are we doing this?

- Nowhere
- Everywhere
- Israel
- US
- Offshore

How can we do this right?

- Proper Whitepaper
- Legal Terms of Token Sale
- Full Disclosure
- Self-Regulation

When can we start?

- Earlier than you think..



Questions?



Thank you!

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