



# START Tech Session: Blockchain

## ICO / TGE Regulatory

# Disclaimer

- › All information provided in this lecture and presentation is given without warranty as to its accuracy and completeness. The presentation is meant for internal use of the recipient only.
- › Neither the lecture nor the presentation constitute legal advice. You must take specific legal advice on any particular matter which concerns you.

# Agenda

- › Part I - ICO / TGE in a Nutshell
- › Part II – ICO / TGE Regulation?

# Current knowledge?

- › How many among you have heard of bitcoins?
- › Who among you owns/trades crypto currencies?
- › Who understands the underlying blockchain technology?



## Part I - ICO / TGE in a Nutshell

Initial Coin Offerings / Token Generating Events

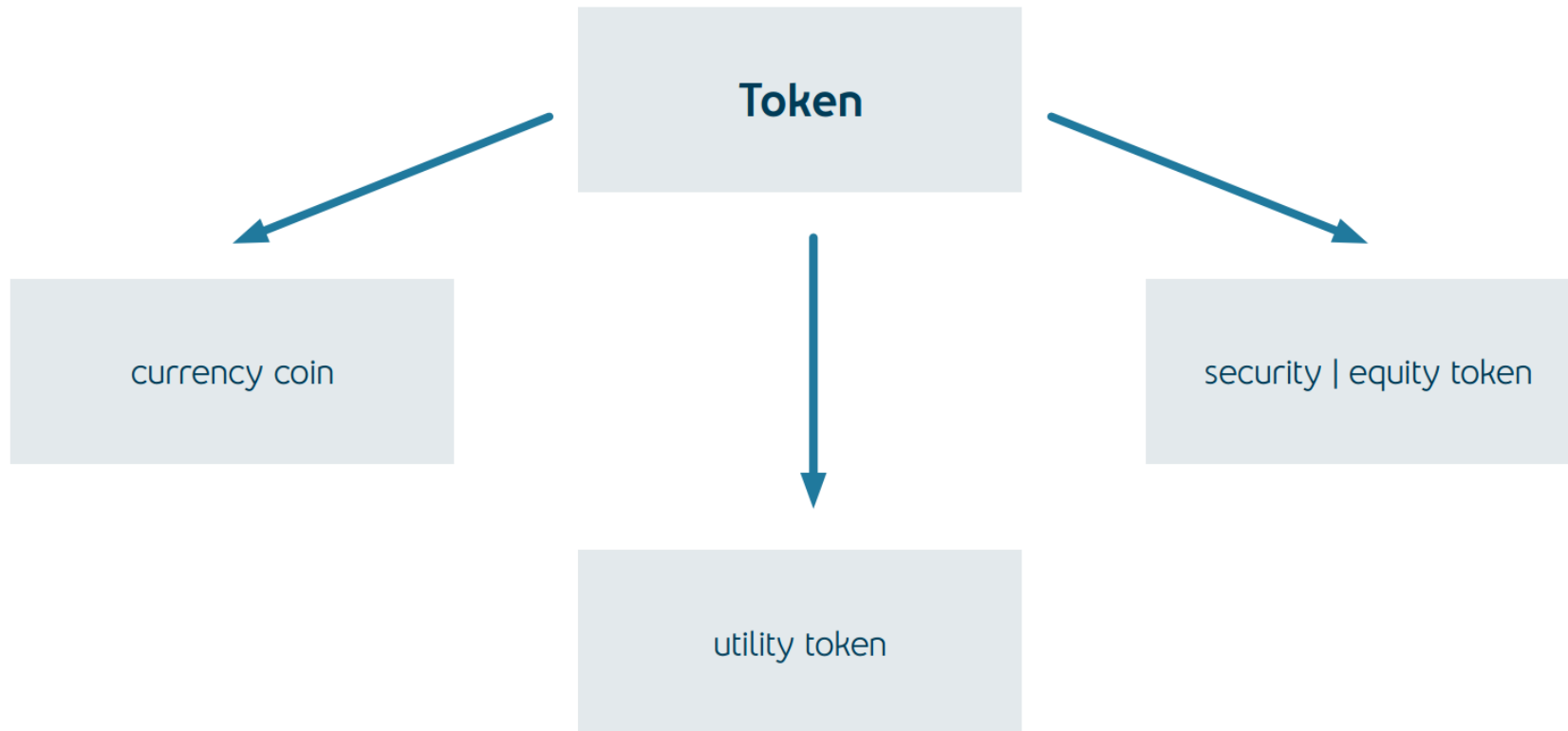
# How are token created?

- › Initial Coin Offering (ICO) or Initial Public Coin Offering (IPCO) is the initial offer of a new crypto currency and raising capital via crypto currency.
- › ICO is derived from IPO;
- › Also referred to as TGE (Token Generating Event).

# What are ICOs / TGEs?

- › Funding of projects and start-ups;
- › Sale of token in exchange for crypto currencies;
- › Token might, according to project and form, represent shares in companies or rights of use of a product;
- › Token are most commonly tradeable on crypto currency exchanges.

# Types of Token 1/2





# Types of Token 2/2

## › Utility Token:

- allows the use of a software or participation in a (IT-)system;
- provides rights of use or licencing rights.

## › Security / Equity Token:

- has the characteristics of equities or investments;
- Is a digitalized security and therefore governed by the relevant provisions.

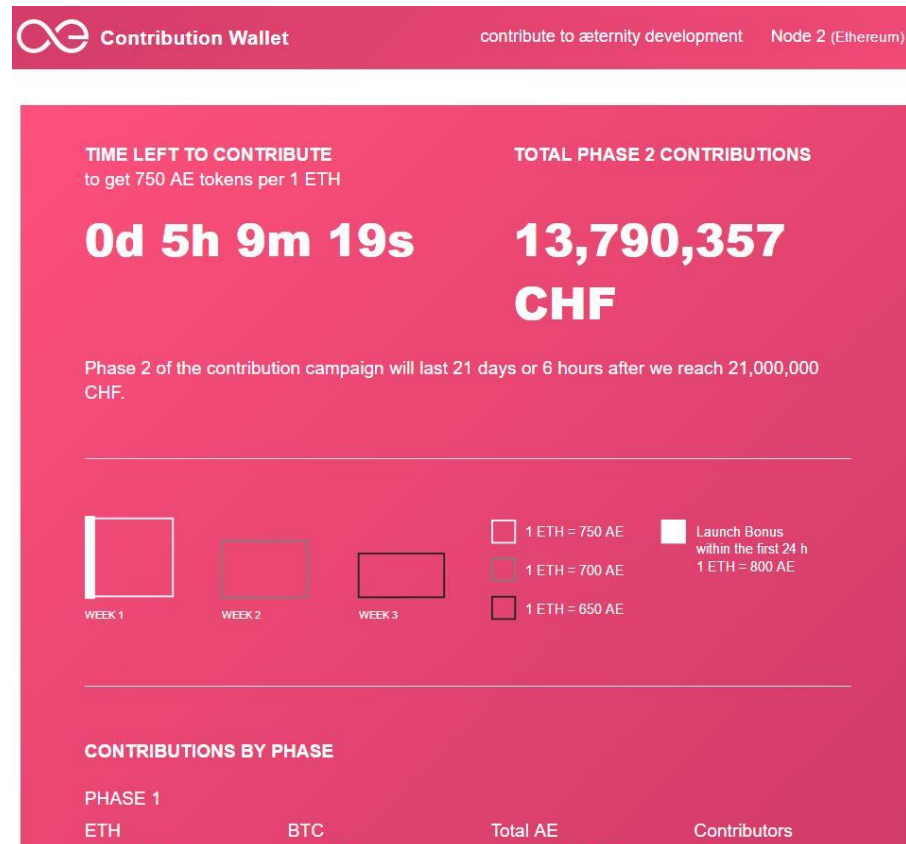
## › Currency Coin

- Needed primarily for payments.

# Where to find current „ICOs“?

- › <https://www.icoalert.com>
- › <https://tokenmarket.net/ico-calendar>
- › <https://www.ico-list.com>
- › ...

# Example of a Contribution Campaign



# Who are the people behind ICO's?

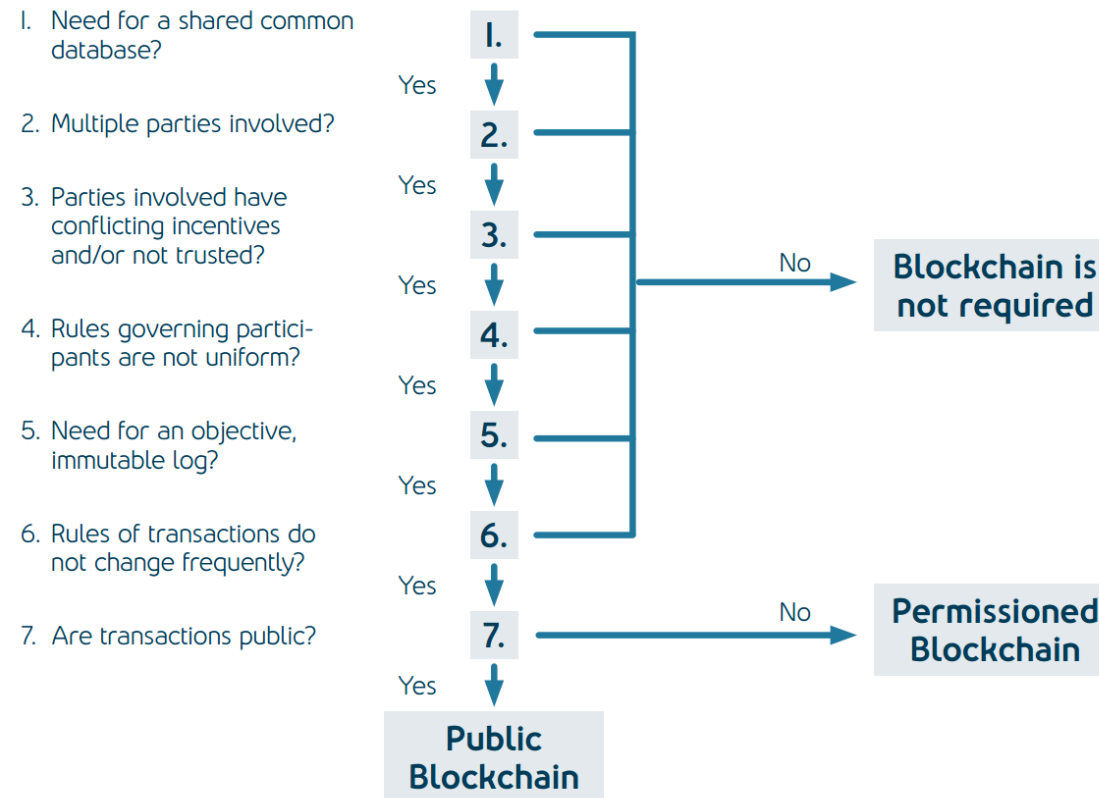
› From Tekkies to (former) Wall Streeters?

We are humæn

Crypto believers and true experts in each of their fields, who have taken on the challenge to build aeternity.

<p>Yanislav Malahov FOUNDER</p> <p>in</p>	<p>Marion Vogel MARKETING &amp; OPERATIONS</p> <p>in</p>	<p>Nikola Stojanow BUSINESS DEVELOPMENT</p> <p>in</p>	<p>Vladislav Dramaliev MARKETING &amp; COMMUNITY</p> <p>in</p>

# Do I need a Blockchain ?



# ICOs – Capital raised so far

## › TEZOS

- The Tezos ICO started on July 1. At the end of the selling period of 14 days, the project had rendered approx. USD 222 million in bitcoins and ether. This was the new ICO record.

## › EOS

- EOS-token brought USD 183 million. New record till Tezos broke the record three weeks later.

## › BANCO

- The ICO in June brought USD 153 million.

## › STATUS

- The Status team drew a profit of USD 95 million with their ICO on 20 June.



## Part II – ICO / TGE Regulation?

No Regulation at all?

# Biggest Concerns - Money Laundry or Fraud?





# ICO Regulation I/2

- › How ICOs are structured from technical, functional and business viewpoint, varies from offering to offering.
- › ICOs are currently not governed by specific regulations, either globally or in Switzerland and Liechtenstein.

# ICO Regulation 2/2

- › In July 2017, the US-American exchange supervisory authority, the Securities and Exchange Commission (SEC) hinted that the American securities legislation might apply to ICOs:
  - However, the SEC did not state whether all token based on blockchains and crypto currencies constituted securities in the sense to be regulated;
  - in fact, the SEC would decide on case by case basis.
- › China prohibited ICOs (Sept. 4, 2017). ICOs already taking place have to be stopped and funds must be paid back. All further activity will be punished.
- › ESMA highlighted in November 2017 the risks for investors and firms.

# ICOs under existing regulation in CH?

- › Swiss legislation on financial markets is principle-based;
  - one such principle is technology neutrality.
- › Depending on how an ICO is structured, some parts of the procedure may already be covered by existing regulations. This concerns the following areas in particular:
  - provisions on combating money laundering and terrorist financing;
  - banking law provisions;
  - provisions on securities trading;
  - provisions set out in collective investment scheme legislation.

# FINMA is investigating ICOs

- › FINMA is currently looking into a number of different cases.
- › Moreover, whenever FINMA is notified about ICO procedures that breach regulatory law or which seek to circumvent financial market law, it initiates enforcement proceedings.

# ICO under existing regulation in FL I/2?

- › As there is no EU Regulation in place, national law is applicable:
  - Acceptance of deposits and other repayable funds (Art. 3 para. 3 subpara. a Banking Act);
  - Definition of „money“: banknotes and coins, fiat money and e-money (Art. 3 para. 1 subpara. 7 ZDG);
  - E-money: centralised system with an issuer, deposited by fiat currency.
- › Banking Act, E-Money Act or ZDG therefore are not directly applicable to crypto currencies.
- › Attention: Exceptions possible!

# ICO under existing regulation in FL 2/2?

- › Basically, crypto currencies are considered as commodities.
- › Generation and use of crypto currencies as means of payment are not subject to special authorization requirements, however:
  - Depending on the structure of the business model, authorization requirements may apply nevertheless;
  - In particular, the definition of funding instruments / securities according to MiFiD should be taken into account.

# Aims of Blockchain regulation

- › Customer protection
- › Abuse prevention
- › System stability

# Challenges

- › Anonymity, money laundering;
- › Global system;
- › Decentralized autonomous organizations;
- › Issues with different jurisdictions;
- › Drafting of rules, missing international standards;
- › Enforcement, implementation of regulation.



# Questions?

- › Contact me by e-mail: [tn@naegele.law](mailto:tn@naegele.law)
- › Visit our law-blog under [www.naegele.law/blog](http://www.naegele.law/blog)





**Thank you very much for your attention**

NÄGELE Attorneys at Law GmbH | Landstrasse 60, 9490 Vaduz | T 237 60 70 | tn@naegele.law