



ZIONI PILLERSDORF PHILLIP ADVOCATES
ציוני פילרסדורף פיליפ עורכי דין

Practical Challenges in the Post- ICO stage

Ohad Phillip

Zioni Pillersdorf Phillip Advocates



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SOME RECENT DEVELOPMENTS IN THE LOCAL SCENE

- **The ISA published a draft report by a committee that examined the possible regulation of ICOs.**
- **The ISA is inspired by the SEC as well as other regulators, but the initial recommendations seem to be slightly less stringent than the SEC.**



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THE (INITIAL) RECOMMENDATIONS BY THE ISA FOR DETERMINING WHETHER A TOKEN IS A SECURITY:

- **The purpose of the purchase from the buyer's perspective.**
- **Functionality of the token at the time of issuance.**
- **Warranties and presentations of the issuer, such as assurance of returns or of a secondary market post issuance.**



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ISA'S RECOMMENDATIONS – FOR SECURITY TOKENS ICOS

- To construct “safe harbor” mechanisms in order to make sure ICOs are “compliant enough” without binding them to Securities law and regulations:
 - Regulation A+
 - Crowd funding modules
 - Double registration
 - Specific disclosure regulations for ICOs



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LIFE AFTER AN ICO IS NOT ALWAYS SIMPLE

- **Banking Relations** - many banks refuse to receive ICO related funds; freeze or close accounts.
- **Tax** Payments due - especially for utility tokens.
- Potential **Civil Litigation** - failure to comply with representations made during the ICO; faults in the ICO process or post-ICO conduct.
- Potential **Regulatory and Criminal Procedures** – Securities law, Money Laundering & Terror Financing issues, Privacy issues (GDPR!).



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MITIGATING POST-ICO RISKS

- **Collection of all the relevant legal opinions in advance.**
- **Counsel not only in the territory where the ICO is done, but also in the territories where the company intends to operate, and from the territory of investors' residency/citizenship.**
- **Work with leading firms for cyber and regulatory advice.**
- **Pre-rulings where possible.**



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WHAT CAN A PRE-ICO COMPANY DO?

- Involve as many professional service providers in the Pre-ICO stage:
 - Broker
 - Banking solutions provider
 - Tax advisor
 - Legal advisors
- For now - consider avoiding US participants



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WHAT CAN INDUSTRY LEADERS DO?

- **Strive to reach “Best Practice” standards:**
 - **White paper standards**
 - **Corporate governance**
 - **Ongoing disclosure**
 - **Legal opinion content**



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THANK YOU!