



Vadim Blaustein, cryptocurrency expert and Senior Partner of BlauStein Business Lawyers, has an extensive expertise in providing legal advice to innovative start-ups and business interested in the most contemporary financial solutions. In this interview Mr. Blaustein gives practical first-hand legal advice to entrepreneurs who are interested in launching an ICO (Initial Coin Offering).

*Please describe in short what the ICO is.*

**Vadim Blaustein:** ICO stands for Initial Coin Offering, it is an innovative crowdfunding tool that allows selling tokens (cryptocurrency) to interested buyers in exchange for funds that are used to finance the project, or fund a research, or support another attractive business model.

*How relevant are ICOs today?*

**Vadim Blaustein:** Extraordinarily. In 2017 ICOs have shown tremendous growth, and the ICO market raised over 3.5 billion USD. The month of September was a success in itself when 800 million USD was raised. Some say that there were around 300 ICOs in 2017, but I can only state that the ICOs will only grow, and they will stay with us as a model for financing your business for a long period of time.

The ICOs offers unique comparative advantages, such as flexibility, cost efficiency, unlimited market of potential investors and the unique flexibility. The ICOs are exceptionally liberal and they do not recognize borders, moreover, they offer unprecedented liquidity to both investors, and the issuers of the tokens.

Hence, this instrument will only be developed more and more in the future, and will attract new businesses, ideas and investors.

*Is there any regulation for the ICO?*

**Vadim Blaustein:** At this stage there is no unified or codified legal approach to the ICOs, but that does not mean that no law is applicable.

The assets derived from the ICOs are still taxed, the privacy regulations and IP legislation is still applicable, the licensing regulations on securities are also in some cases relevant.

Therefore, there is no one law on the ICOs, but rather there are provisions from many areas of law applicable to different aspects of the ICOs. Furthermore, the contracts drafted between the parties involved in the ICO have a significant legal value, and, therefore, in many instances the ICOs and the cryptocurrency market are also self-regulated.

*How does the ICO work?*

**Vadim Blaustein:** ICO is a type of crowdfunding, therefore, this is an instrument to raise funds from the public that supports the idea behind the ICO.

The funds are raised by selling the tokens of the issuer during the ICO.

The funds may be raised in the currencies we are used to, so-called fiat, such as Euro, USD, Yen etc., or in cryptocurrency such as Bitcoin, Ether etc.

The tokens are issued using the blockchain technology and are secured by that technology.

*Can you also provide the reader with the explanation of what tokens are?*

**Vadim Blaustein:** Tokens are units of value issued by the issuer of the cryptocurrency. Therefore, each token is different, and the rights and obligations connected with the token is different. Bear in mind, that purchasing tokens almost never gives voting rights or any other rights linked to the shares, and bear unique rights and obligations of a specific issued token. Therefore, the ICOs are distinctly different from the IPOs, and the tokens are distinguishable from the securities based on the nature of the obligations and rights behind this asset.

The tokens may be used to pay for the services of the issuer, or used as the cryptocurrency, or serve as the evidence of investment. Based on the nature of the tokens there are the following tokens available on the crypto market now: utility tokens, payment tokens and assets tokens. Of course, if there is a new type of tokens proposed, that will also be possible.

At the ICO in exchange for the tokens of the issuer, which is a digital currency created by the issuer, the buyer provides the funds.

*ICO for many seems as the area for IT specialists rather than lawyers. Would you agree with that?*

**Vadim Blaustein:** Not at all. IT specialists are the basis of the ICO and represent the work connected with the mechanism of the ICO, and are absolutely necessary. However, lawyers have an important mission during the preparation of the ICO and its launch as well, namely, they are there to minimize risks, ensure compliance with applicable legislation and secure the success of the project by creating relevant legal structure and legal documents, apply for necessary licenses and create a contract framework of the ICO. Lawyers shall be involved in every single stage of the ICO and shall support the project at every single step as the legal risks with significant legal implications exist at every stage of the ICO.

*Can any lawyer provide legal support to ICO?*

**Vadim Blaustein:** Cryptocurrencies and the ICO, in particular, pose a challenge to many industries and business as there are simply not enough experts to support the current boom in demand. Many specialists got a special training, spent countless hours on research and development of new skills, and therefore not every legal professional has a sufficient expertise, experience, and knowledge to support the ICO.

*What kind of lawyer shall be consulted for these purposes?*

**Vadim Blaustein:** The lawyer with a solid understanding and knowledge of cryptocurrency market and rapidly changing regulatory framework. The lawyer shall also have a solid knowledge of international tax law, business law, contracts, and IP (intellectual property). Moreover, the lawyer shall have an awareness of the regulatory regimes and licenses that shall be obtained for a specific type of ICO. Each ICO is different and it shall be treated with legal scrutiny.

Cryptocurrencies are uniquely innovative and require not encyclopedic lawyers, which understand law and processes, but lawyers who are creative and know how to find outside of the box legal solutions. Furthermore, these lawyers shall be able to identify legal risks entailed in ICO and offer legal solutions beforehand.

*If a person wants to launch an ICO, what would you recommend them to do?*

**Vadim Blaustein:** First of all, there has to be a new and interesting idea, that can be explained in more or less simple terms in order for potential investors to comprehend it. Hence, the first step is to write down the idea and the model.

If there is no idea of use of the tokens, and the ICO is created just for the sake of the ICO, there is a little chance of success. Therefore, it is important to consult with the expert in existing ICOs to help you analyze your model, and modify it if necessary.

The most successful ICOs offer new and innovative tokens which have value to those who purchase them, or they are used to fund something the public believes in or feels like can receive capital gains in the future.

Secondly, find a team of professionals in IT, marketing and experienced lawyers. This is of the most relevance to the success of the ICO. The professionals will facilitate finding the best platform for the ICO, the suitable marketing strategy and will help to identify the areas of improvement. The team is as important as the idea as they execute it, communicate with the public and represent the end product.

The team shall invest time and effort to draft the White Paper, the main document of the ICO, where all relevant details of the ICO and the tokens offered are enshrined. It is also a good idea to describe the value of the product, the legal rights and obligation, and provide more information about the issuer to ensure that there is no fraudulent activity behind the tokens for sale.

Thirdly, ask the lawyer to review the proposal for the ICO. Normally, the description of the product, phases and details of the ICO that shall take place is provided in the White Paper. The lawyer shall analyze for potential regulatory compliance of the proposition and the ICO with applicable legislation, support the idea with the legal advice, and facilitate the preparation of the final of the White Paper.

Fourth, throughout the ICO you shall communicate with public and offer it with necessary clarifications.

Moreover, the reward campaigns for those who support the ICO shall also be offered, and overall reputation shall be very positive as the ICOs are strongly built on trust and transparency. Without trust and transparency even genius ideas will not receive sufficient funding as the potential investors are looking for these components primarily.

The team, the idea and the marketing strategy that are developed by the business and the team shall be examined and the legal strategy shall be proposed. The legal strategy is also detrimental the success in many respects. Therefore, I recommend focusing on these aspects of the ICO, bearing in mind its legality at every single stage as it is still a very risky area of business for both investors and the issuer of tokens. Some say that the cryptocurrency is highly speculative, and it is difficult to predict an outcome, but I think that this is a very fast-moving area, and, therefore, changes happen much faster than in the regular market, and therefore you always have to remain proactive, dynamic and have an updated information. The cryptocurrency experts can predict the success of certain projects when all the necessary IT, marketing and legal work is handled appropriately. However, bear in mind that due to possibility of extreme liquidity, there is also a very high volatility.

*Since you have mentioned the legal risks and legal solutions, could you give general legal advice applicable to all ICOs?*

**Vadim Blaustein:** Indeed. Let's take one at a time. My first advice would be to consult the international tax advisor who will offer an international tax planning solution based on the type of the ICO you intend to launch, where the primary location of the project will be, who the investors will be, etc.

Second advice is with regards to regulatory regime and awareness of applicable legislation. The legal team shall support ICO at the early stage in order to determine its framework. In order to avoid legal risks and penalties from authorities of certain jurisdictions, the lawyers shall be involved and give a legal advice. Bear in mind, the ICO is open to anybody in the world, and, therefore, the unfavorable legal regulation may also be applicable, and the lawyer can help you to either exclude your ICO from certain jurisdiction, or offer a framework which will minimize the negative impact of certain regulations.

Here, I shall mention that the origin of the team of the ICO is not always corresponding with the corporate structure created for the support of the ICO. For example, the USA, the UK and Russia are on the top lists of countries from where the ideas and the teams of the issuers are coming from, however, the corporate structures involved in the ICOs are linked to Dubai, Gibraltar, Switzerland, and other countries more often. Therefore, it shall be born in mind that the origin of the ICO and the corporate structure behind the ICO are two different things. The jurisdiction shopping is possible for the ICO, and in choosing the structure and the jurisdiction, the nature of tokens, the fiscal and financial components, as well as special regulations in place shall be taken into consideration. It shall be assessed whether the country is crypto friendly or not as well, as there is also a need to predict the foreseeable regulations too.

Third advice is with regards to the determination of the nature of tokens. Make sure to receive necessary legal approval that your tokens are not securities. The regulators in different jurisdiction would look into the nature of tokens you issue and will assess the situation differently depending on the circumstances you have. Hence, one needs to make sure that the legal requirements are respected and the tokens are of the nature that does not amount to the securities. This is very important as the moment you offer tokens, one makes a public offer of a product, and depending on a jurisdiction, the requirement for securities offering may be of such a high threshold, that they are simply not feasible for one's business model.

A good warning example here is the successful the ICO of Tezos project, which raised 232 million USD at the early stage of the ICO. There are several legal disputes currently against Tezos, and one of them was initiated by the US regulators. The case is about the alleged violation of the securities legislation of the US. The US regulators claim that the tokens sold by Tezos qualify as unregistered securities. This case teaches us a lesson that even if the ICO is a success, the legal risks may catch up later and threaten the entire project even if the funds are there.

Fourth advice is with regards to the IP protection and licensing. During the creation of tokens, programming and throughout the ICO, there is a lot of IP involved, which shall be protected accordingly. The experienced lawyers shall identify the legal risks involved, propose different type of protection to different IP and shall also create a legal framework to achieve the highest level of protection.

Fifth advice is with regards to fraud prevention and compliance. The international anti-money laundering and anti-terrorism financing is also applicable to the ICOs. The transactions shall be monitored, the KYC shall be prepared and the overall compliance shall be adhered. The documents prepared for the ICO shall all be comprehensive, correct and without any indication of possible fraud. Of course, the conduct shall also be fraud free.

*Could you please provide the short overview of legal and other services BlauStein Business Lawyers provides with regards to the ICO?*

**Vadim Blaustein:** We provide a range of services at every stage of ICO. There are three general types of services you will need to look for if you decide to launch an ICO: Technical and IT, Marketing and Legal.

BlauStein Business Lawyers has experience in providing Project Management services, attracting cryptocurrency experts, subcontracting the IT, marketing and other experts, overseeing the developments and reporting them to clients, and overall administration and management of the ICO.

We also provide legal support to the ICOs. We assist in drafting of all the documents involved in ICO, including Token Purchase Agreement, Terms of Use, and Privacy Policy, legal analysis of the White Paper and drafting of all the contracts with subcontractors, including services agreements, NDAs, licensing agreements, and others. Furthermore, we provide full legal analysis of the potential legal and regulatory risks of the ICO, tokens and GDPR, financial regulations and directives, consumer protection legislation, e-money regulations, and apply for relevant licenses if necessary. We also apply on behalf of our clients for relevant IP protection mechanisms: trademarks, patents, and others if applicable. Besides, we provide legal analysis of bounty campaigns and marketing material. Moreover, we provide legal support to consumers and potential investors at the stage of Pre-ICO and ICO, and many more. Therefore, we can say that we provide full-range of legal and project management services to our clients based on their interests and needs.

*Why you are interested in cryptocurrencies as a law firm with 20 years of experience in the market throughout the world?*

**Vadim Blaustein:** We are indeed a very experienced boutique law firm and we provide a range of expert corporate legal support, and recently have also extended our expertise to providing legal advice to crowdfunding campaigns, ICOs and crypto trading businesses.

To this date we have experience in all of the following and we are always glad to share our expertise with

interested entrepreneurs. Our expertise in other areas of legal business support is of the high relevance, and we believe that we are exceptional in that sense.

As a firm we support innovation, creativity and thinking outside of the box, and we believe that cryptocurrency represents these values in a beautiful, flexible and unique manner. Therefore, we are always happy to provide legal support to business involved in cryptocurrency. By providing high level legal support we facilitate in development of this tool we believe in, and ensure that the crypto market becomes cleaner, safer and more transparent, and attract more and more players, investors and experts. Moreover, the cryptocurrencies could be a tool of not only making profit but bringing a positive change in the least developed countries in the world.

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