



АГЕНТСТВО РАЗВИТИЯ  
МЕЖДУНАРОДНОГО  
ФИНАНСОВОГО ЦЕНТРА

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## **Kyrgyz IPO + ICO: Good Alternative to Unregulated Fundraising**

The recent phenomenal successes of fundraising through the means of 'initial coin offerings' (ICOs) have demonstrated that a huge demand exists globally for organizing the interaction between private investors and those raising the investment with a minimum of formalities on either side.

The arguments of ICO enthusiasts have a solid basis: yes, regulation of investment raising in many countries is absurdly complex but at the same time does not protect the private investors from fraud (to the contrary — fraudsters using formally law-compliant forms of fundraising are able to fool investors with more efficiency). And yes, small investors do face many formal difficulties in making investments in the regulated investment markets (qualified investor barrier; countries 'protecting' their residents from investments overseas; lack of access to IPOs etc.).

At the same time, we believe that attempting to skirt the regulations or pretend that they do not apply to certain innovations in the internet is not a sustainable basis for raising capital and dealing with investors. Whatever your take on the moral legitimacy of investment market laws and AML regulations, they do exist; they do not exempt blockchain or any other technical phenomenon from regulation; and harsh penalties exist for ignoring them, which can result in losses on both the fundraiser's and the investors' side.

It was the aim of our legal team working closely with the regulators and the investment market professionals in the Kyrgyz Republic to develop a legal mechanism enabling startups to raise capital through the Kyrgyz Republic's infrastructure in such a way as to implement as many innovative and democratic ICO features as possible.

### **Issue of investment rights (investment tokens)**

Raising investment capital from mass retail investors (in ICO context that is when investment-type and not utility-type tokens are issued) without regulatory approval is illegal in most countries and may lead to civil, administrative and even criminal liability for the founders of the token-issuing venture.

The reason why project founders are still choosing the format of an unregulated ICO instead of a traditional IPO has to do with their unwillingness to go through complicated and expensive bureaucratic procedures (drafting legal documentation in the prescribed format, engaging auditors, underwriters etc.)

At the same time the founders of a good faith investment project (that is, where the founders do not have to stay in the shade by definition) would be interested in making sure that their project raises the capital legitimately, should an opportunity exist to avoid spending too much money on compliance with complex legal requirements.

The jurisdiction of Kyrgyzstan provides good faith founders of innovative internet-based projects with an opportunity to raise capital from global investors in a fully law-compliant but at the same time unburdensome manner.

Kyrgyz Republic's rules of issuing shares to the general public correspond to the best standards of investor protection but at the same time are simple and easy to fulfil by issuers with genuine commercial intentions.

What you need to go public via Kyrgyzstan is set up a local public limited company, book the assets of the capital-seeking project (whatever they are) in its balance sheet and go through the process of obtaining the public distribution approval for the shares from the national securities market regulator — the Financial Market Supervision Agency. Then you can apply to the Kyrgyz Stock Exchange for a listing in Category 3 (Startups).

If the project founders seek to raise not only money but also cryptocurrency in the course of the IPO/ICO, this can be — without breaking the law — implemented through the underwriter (a licensed local broker-dealer which by law must collect all the issue proceeds and then pass them on to the issuer). The law sensibly requires that the issuer must in the end receive only fiat money for the issued securities, but there is no prohibition for the underwriter to collect other assets, provided they will all be converted into money by the time the issue closes.

As far as further circulation of the issued shares is concerned, we have developed a way to let each shareholder choose whether to keep the traditional shares or own crypto-tokens representing those shares and have the possibility to trade them on purely crypto platforms. Moreover, conversion is legally and technically possible at any time of traditional shares into their mirroring tokens and back. Think of American Depositary Receipts as an analogy.

A law-compliant way of 'tokenizing' locally issued securities does exist, not requiring any further 'issue' of any instrument in the crypto sphere. The solution is quite technical in legal terms, and we encourage you to solicit the more detailed explanation from our legal team.

## **Issue of utility tokens**

If the rights pertaining to the tokens issued by the project operator are purely utilitarian in nature (Eg. the right to use a certain volume of cloud storage space), their placement may be effected under the Kyrgyz Republic's jurisdiction without limitations reserved for the placement of securities or financial instruments.

If correctly documented, such tokens can be placed and traded via a commodities exchange as a commodity contract. What is required is to precisely describe the token and the attached rights, so that it could be identified with legal certainty, and to explain the way one can acquire and hold the token (otherwise it is impossible to formulate the contract which will be deemed concluded via the exchange).

In addition to the above, the issuer must at all times comply with the law on the protection of consumers (for example, the description of the good or service represented by the token must be adequate and not misleading) and the fair advertising laws of the country (which forbid misleading or

fraudulent advertising).

We can guide you through the whole issue process on a turn-key basis should you wish to undertake the issue.

## **Kyrgyz law's attitude towards blockchain projects**

Except for the traditional reservation that no other currency but the national currency can be used as a means of payment in domestic transactions, Kyrgyz law does not contain specific prohibitions on transactions with blockchain assets.

From the local tax point of view the trading and investment in blockchain assets, the mining of cryptocurrencies etc. is viewed as ordinary commercial activity and is subject to the general taxation (or, potentially, an exemption — if the zero-tax regime of the «High Technologies Park» is used).