

## Regulation of investment funds and initial coin offerings (ICOs)

- Regulation • Act No. 240/2013 Coll., on Management Companies and Investment Funds (AMCIF)
- Provisions • Articles 2, 15 and 98 of the AMCIF

Question **Under which circumstances are initial coin offerings (ICOs) subject to the Act on Management Companies and Investment Funds?**

Answer ***Collection of funds from the public for the purposes of joint investment***

Article 98 of the AMCIF (prohibition of clandestine funds) forbids the collection of, and any attempt to collect, funds *from the public* for the purposes of joint investment if the return on the investment is to depend at least partially on the value of, or return on, the assets in which the investment was made, other than under the conditions permitted by the AMCIF. Neither the legal form of the collection of funds nor the form of the assets in which the manager collectively invests the investors' funds is relevant to the assessment of whether the elements of a clandestine fund are accomplished.<sup>1</sup>

**Without relevant authorisation from the CNB to manage a collective investment fund (or compliance with other conditions applying to foreign equivalents thereof), no collection of funds from the public for the purposes of collective investment is permitted, including through the issuance of tokens or ICOs.**

Moreover, under Article 15 of the AMCIF, any person collectively managing funds collected from investors other than the public for the benefit of those investors is obliged to register on the list administered by the CNB. Neither the legal form of the collection of funds nor the form of the assets in which the manager collectively invests the investors' funds is relevant to the assessment of whether the elements of asset administration comparable to asset management under Article 15 of the AMCIF are accomplished.

**A manager who collects funds for the purposes of joint investment for the benefit of investors other than the public via the issuance of tokens or ICOs is therefore also obliged to register under Article 15 of the AMCIF.**

Moreover, registration is sufficient only up to a certain volume of managed assets. For more details, see the separate CNB opinion (available in Czech language only).<sup>2</sup>

***Collection of funds from the public via the issuance of tokens for the purposes of financing the mining of cryptocurrencies***

According to the literature and internet sources, "cryptocurrency mining" can be understood to mean a process of validation of transactions in cryptocurrency networks via machine intensive calculations.<sup>3</sup> Any activity accomplishing these elements can be regarded as providing own services of a non-financial nature. In most instances, it would probably be a case of unregulated trade under Item 56 of Annex A of the Trade Licencing Act (provision of software, counselling in the field of information technology, data processing, hosting and related activities and web portals). However, such an assessment does not fall within the fields of competence of the Czech National Bank.

<sup>1</sup> It should be noted that the AMCIF, and hence also the prohibition of clandestine funds, does not apply, *inter alia*, to the collection of funds from the public for the purposes of financing the own activities of a non-financial or non-investment nature (cf. Article 2(a) of the AMCIF).

<sup>2</sup> [Asset administration comparable to asset management \(Article 15 of the AMCIF\)](#).

<sup>3</sup> See, for example, Antonopoulos, A. *Mastering Bitcoin: Unlocking Digital Cryptocurrencies*, O'Reilly Media 2014, p. 177 et seq.; [Investopedia](#); [Wikipedia](#); Stroukal, D., Skalický, J. *Bitcoin: Peníze budoucnosti*, Ludwig von Mises Institut CZ&SK 2015, p. 80 et seq.

Activity defined in this way falls into the category of activities exempted from the scope of the AMCIF under Article 2(a), as it is primarily a case of the provision of own services of a non-financial nature.

**The collection of funds from the public for the purposes of financing the mining of cryptocurrencies therefore does not constitute accomplishment of the elements of a clandestine fund under Article 98 of AMCIF.**

A person that finances an such activity by collecting funds from investors may not register as an asset manager under Article 15 of the AMCIF.

Importance of the answer for those to whom it is addressed	This answer expresses the opinion of the Czech National Bank's staff members. The courts and the Bank Board of the Czech National Bank may be of a different opinion.
Contact person:	Tomáš Cuník, <a href="mailto:tomas.cunik@cnb.cz">tomas.cunik@cnb.cz</a>