

Founding with Cryptocurrencies

An incorporation or capital increase is also possible with cryptocurrencies. Cryptocurrencies are considered a commodity and not money. Therefore, such incorporations are classified as qualified and are subject to the auditing obligation.

Cryptocurrencies in the sense of the Civil Code are equated with things and have no cash value. If shareholders wish to contribute the share capital with cryptocurrencies, this is possible. These are qualified incorporations with contributions in kind. Analogously, it applies to capital increases.

Auditing obligation

In the case of a qualified incorporation, the incorporation report must be examined by an auditing expert. This expert examines the contribution in kind in particular with regard to

- λ its ability to be accounted for (capitalization),
- λ realisability and
- λ availability.

Ability to be Accounted for (capitalization)

The tangible asset must be capitalisable, i.e. bring an economic benefit, be reliably measurable and be transferable.

The economic benefit results from the use of the cryptocurrency as a means of payment or from the exchange into fiat money. There is an active market for cryptocurrencies, which means that the value can be expressed in Swiss francs. The information on this can be found in the blockchain itself, and there are even valuation sites for widely used currencies. The holder of the cryptocurrency can dispose of the cryptocurrency using the private key (PIK) and transfer it to other market participants.

Realisability

The contribution in kind must be realisable for the company. This means that the ownership of the contributed cryptocurrency has been effectively transferred and that there are no liens or the like.

Availability

The company must own the wallet in which the cryptocurrencies are stored and have both the public key (PUK) and the private key (PIK). The PUK of the wallet should be mentioned in the contribution in kind agreement and/or recorded in the resolution of the founders.

The PIK is confidential and must be known to the person in charge of managing the cryptocurrencies and the founders. The founders may only access the cryptocurrencies AFTER registration in the commercial register.

Price risk

Cryptocurrencies can be subject to strong price fluctuations. At the time of foundation, i.e. at the time of notarisation, the market value of the cryptocurrencies must cover the value of the contribution in kind (share capital and any premium). In order to do justice to the risk arising from price fluctuations, various procedures are conceivable:

- λ Contribution of cryptocurrency that corresponds exactly to the nominal value of the capital (no fluctuation in value against the Swiss franc possible; maybe possible with a CHF stablecoin)
- λ Contribution of cryptocurrency in the amount of the nominal value plus a security margin. The security margin is finally determined at the time of notarisation and recorded as a share premium.
- λ Contribution of cryptocurrency in the amount of the nominal value plus a security margin. The security margin is finally determined at the time of notarisation and recorded as a liability to the founders.
- λ Contribution of cryptocurrency in the amount of the nominal value plus a security margin. The cryptocurrency is accounted for under market value. As a hidden reserve the security margin is not reflected in the balance sheet of the company.

Conclusion

Setting up a company with cryptocurrencies as a contribution is not that simple. The additional costs resulting from the auditing obligation and the additional expense resulting from covering the price fluctuation risk should not exceed the costs from the exchange of the cryptocurrency into Swiss francs and subsequent cash settlement.