

The Swiss legal baseline

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Switzerland chose early to adapt its existing private and financial market law to distributed ledger technology. It did not enact a separate code for crypto-assets. The Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology of 25 September 2020, known as the DLT Act, entered into force in two stages in February and August 2021. It introduced the ledger-based security into the Code of Obligations, a right that is entered in a securities ledger and can be asserted and transferred only through that ledger. It also clarified the segregation of crypto-assets in the bankruptcy of a custodian and created the DLT trading facility as a new licence category under the Financial Market Infrastructure Act.¹

The approach was technology-neutral and functional, which corresponded to the method that FINMA had developed since its guidelines on initial coin offerings of 2018. Tokens were classified according to their economic function as payment tokens, utility tokens or asset tokens, with the existing laws applied to each category. The approach gave legal certainty to issuers and service providers at a time when many other jurisdictions had not yet decided how to treat tokens. It also gave Swiss courts and practitioners a vocabulary that became an international reference, although the European Union later chose a different taxonomy in MiCA.²

The anti-money laundering rules form the second pillar of the baseline. FINMA's guidance of 2019 on payments on the blockchain applied the travel rule to transfers of crypto-assets without a general exemption for small amounts. It required supervised institutions to establish who controls an external wallet before sending assets to it or receiving assets from it. Part E, Chapter III has described this regime and the consequences for clients who wish to bring crypto-assets and digital assets into a traditional bank. For the scenarios of this chapter, its significance lies in the fact that Switzerland already operates one of the stricter regimes for the

identification of parties to crypto transfers, which will matter if tokenised money becomes widespread.³

1 Notes

1. Federal Act of 25 September 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, AS 2021 33; Art. 973d–973i CO (ledger-based securities); Art. 242a SchKG (segregation of crypto-assets); Art. 73a ff. FinMIA (DLT trading facilities). See also Part E, Chapter II. To be verified. ↩
2. FINMA, Guidelines for enquiries regarding the regulatory framework for initial coin offerings, 16 February 2018; FINMA, Supplement on stablecoins, 11 September 2019. See Part E, Chapters II and III. To be verified. ↩
3. FINMA Guidance 02/2019, "Payments on the blockchain", 26 August 2019; Art. 10 AMLO-FINMA. See Part E, Chapter III of this book. To be verified. ↩

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