

Ledger-based securities in the financial system

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The DLT Act connected the new category with the existing law on intermediated securities. Intermediated securities are created when ledger-based securities are transferred to a custodian and the corresponding rights are credited to one or more securities accounts. On that transfer the ledger-based securities are immobilized in the securities ledger. A bank can therefore either hold ledger-based securities for its clients on the ledger itself or bring them into its traditional custody chain as intermediated securities.¹ Private international law was amended in parallel. Under Article 145a PILA the question of whether a title represents a claim and whether the claim is transferred by the transfer of the title is governed by the law designated in the title, and in the absence of such a designation by the law of the state in which the issuer has its seat or, failing such, its habitual residence. Because the provision covers titles "in paper or equivalent form", it reaches ledger-based securities and comparable foreign instruments, which matters for the Italian buyer of a Swiss token and for the Lugano holder of a token issued in the European Union.²

Italy followed a different path. Decree-Law No. 25 of 17 March 2023, converted into law by Law No. 52 of 10 May 2023 and known as the *Decreto FinTech*, created a regime for the issuance and circulation of financial instruments in digital form through distributed ledgers. The decree applies the European DLT Pilot Regime, Regulation (EU) 2022/858, which has applied since 23 March 2023, and provides for a register of the persons responsible for the ledgers kept by CONSOB.³ The Swiss ledger-based security is a category of private law open to any right, whereas the Italian regime is a special regime of financial market law for financial instruments. A Lugano issuer that wishes to place tokenized bonds with Italian investors must therefore satisfy both the Swiss rules on the creation of the instrument and the Italian rules on its offer and circulation, together with the European prospectus regime discussed in Chapter E.IV.

1 The DLT trading facility

The second element of the DLT Act is the DLT trading facility (*DLT-Handelssystem*), regulated in Articles 73a to 73f of the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 19 June 2015 (Financial Market Infrastructure Act, FMIA), SR 958.1. Article 73a FMIA defines it as a commercially operated institution for multilateral trading of DLT securities whose purpose is the simultaneous exchange of bids between several participants and the conclusion of contracts based on non-discretionary rules. It must also meet at least one further criterion: it admits as participants other natural persons and legal entities that participate in their own name and for their own account, it holds DLT securities in central custody based on uniform rules and procedures, or it clears and settles transactions in DLT securities based on uniform rules and procedures.⁴ DLT securities are securities in the form of ledger-based securities or of other uncertificated securities that are held in distributed electronic registers and use technological processes to give the creditors, but not the obligor, the power of disposal.

The decisive difference from a stock exchange lies in the participants and in the combination of functions. A stock exchange admits only regulated participants such as banks and securities firms. A DLT trading facility may also admit other natural persons and legal entities that declare that they participate in their own name and for their own account, which allows retail investors to trade directly without a bank as intermediary. It may combine trading with custody and with clearing and settlement, which in the traditional market are divided among a trading venue, a central securities depository and a central counterparty. Article 73f FMIA allows the Federal Council to ease the requirements for small DLT trading facilities that present a low risk for the protection of market participants because of the limited number of participants, trading volume, custody assets or clearing and settlement volume. Such facilities must disclose the easing to their clients.⁵

2 Notes

1. Federal Act on Intermediated Securities of 3 October 2008 (FISA), SR 957.1, Art. 5 lit. h ("ledger-based securities means rights within the meaning of Article 973d of the Code of Obligations"), <https://www.droit-bilingue.ch/de-en/9/95/957.1-5-8.html>, and Art. 6 para. 1 lit. d and para. 3 (creation "when ledger-based securities are transferred to a custodian"; immobilization "in the securities ledger"),

- <https://www.droit-bilingue.ch/de-en/9/95/957.1-6-9.html>, both as amended by the DLT Act with effect from 1 February 2021. ↩
2. Federal Act on Private International Law of 18 December 1987 (PILA), SR 291, Art. 145a, <https://www.droit-bilingue.ch/de-en/2/29/291-145a-169.html> ("represented by an instrument in paper or equivalent form"; law designated in the instrument, otherwise the law of the issuer's seat "or, failing such, its habitual residence"), inserted by the DLT Act with effect from 1 February 2021. ↩
 3. Regulation (EU) 2022/858 of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R0858>; ESMA, "DLT Pilot Regime", <https://www.esma.europa.eu/esmas-activities/digital-finance-and-innovation/dlt-pilot-regime> ("The DLT Pilot Regime has started applying in the EU as of 23 March 2023"). ↩
 4. Art. 73a FMIA, English text at <https://www.droit-bilingue.ch/de-en/9/95/958.1-73a-77.html> ("a commercially operated institution for multilateral trading of DLT securities whose purpose is the simultaneous exchange of bids between several participants and the conclusion of contracts based on non-discretionary rules"; additional criteria). The definition of DLT securities is in Art. 2 lit. bbis FMIA, <https://www.droit-bilingue.ch/de-en/9/95/958.1-2-5.html>, inserted by the DLT Act with effect from 1 August 2021. The English version of Art. 73a para. 1 lit. a refers to "Article 73c paragraph 2 letter e", whereas the admission of other natural persons and legal entities is found in Art. 73c para. 1 lit. e, <https://www.droit-bilingue.ch/de-en/9/95/958.1-73c-79.html>. ↩
 5. Art. 73f FMIA, <https://www.droit-bilingue.ch/de-en/9/95/958.1-73f-82.html> (easing for facilities with "low risk in terms of the protection of financial market participants" because of limited participants, trading volume, custody assets or clearing and settlement volume; duty to "disclose this to their clients"). The admission of other natural persons and legal entities "provided that they declare that they are participating in their own name and for their own account" is governed by Art. 73c para. 1 lit. e FMIA (above). ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/lugano-ledger-based-securities-in-the-financial-system