

Tokenised shares and bonds under the DLT Act

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Since 2021 Swiss law has allowed companies to issue shares, bonds and other rights as ledger-based securities, which exist only on a distributed ledger and are transferred on it. For issuers, this opens a way to reach investors directly and to make unlisted shares tradable; for investors, the legal position of a token is as secure as that of a traditional security.

1 Ledger-based securities

The Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology (DLT Act) introduced the ledger-based security into the Code of Obligations (Art. 973d ff. CO). A right becomes a ledger-based security through a registration agreement between the issuer and the holders, under which the right may be exercised and transferred only through the ledger. Shares, bonds, participation certificates and other claims can be issued in this form.

2 Requirements for the ledger

The ledger must give the holders, but not the issuer, power of disposal over their rights through technical procedures, must be protected against unauthorised changes by appropriate technical and organisational measures, and must record the content of the rights, the functioning of the ledger and the registration agreement in a way that holders can consult (Art. 973d para. 2 CO). Issuers are liable for damage caused by a ledger that does not meet these requirements.

3 Company law still applies

Tokenised shares remain shares of a Swiss company limited by shares. The company must keep its share register (Art. 686 CO) and the register of beneficial owners (Art. 697I CO), and the rules on general meetings,

transfer restrictions and capital increases apply as for any other share. The articles of association must provide for the issue of ledger-based securities, and existing shares can be converted into this form.

4 Offering and trading

Tokenised securities are securities within the meaning of the Financial Services Act, so that the prospectus rules and their exemptions apply to a public offer (Art. 35 f. FinSA). Secondary trading can take place on a DLT trading facility, a type of financial market infrastructure licensed by FINMA (Art. 73a ff. FinMIA). Issuers and service providers should also check whether the custody of the tokens or other services they offer require a licence.

5 Protection in bankruptcy

If a custodian becomes insolvent, crypto-based assets held for clients can be segregated from the bankruptcy estate, provided that the custodian has committed to keep them available for the client at all times and that they are attributed to the client individually or to a community of clients with an identified share (Art. 242a DEBA). Investors should check that their custody arrangements meet these conditions.

6 What pays off in practice

- **Choose the ledger and the technical provider with the same care as the legal documentation**, since the issuer is liable for the ledger.
- **Draft the registration agreement and the articles together** and keep the share register consistent with the ledger.
- **Plan the investor journey**, from identification of investors to custody and secondary trading, before the first token is issued.

7 How Ressos Legal helps

I have advised on tokens and digital assets since 2017 and assist issuers with the legal structure of tokenised shares and bonds, the registration agreement, prospectus questions and licensing. [Contact me](#) for a first conversation.

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