

Collateral and the pledge of crypto-assets

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Crypto-assets are increasingly used as collateral. Clients of crypto banks borrow against their Bitcoin or ether, while traders post crypto-assets as margin on derivatives exchanges. The legal basis of such collateral depends on the nature of the asset. Ledger-based securities can be pledged under Article 973g of the Code of Obligations, which allows collateral to be posted without a transfer of the security if the collateral is visible in the securities ledger and only the collateral recipient can dispose of the security in the event of default.¹ For payment tokens, which are not ledger-based securities, the legal position is less clear. Practitioners use transfers of full title for security purposes or contractual arrangements in which the lender holds the tokens in its own custody.

The enforcement of collateral in crypto-assets is fast in practice. Where the lender holds the tokens, it can sell them on the market when the borrower defaults, often automatically when the value falls below a threshold. The rapid liquidations of 2022 showed the effects of this mechanism in a falling market. Swiss law requires that the realisation of a pledge be carried out in accordance with the contract and the principles of good faith. Where the borrower is a consumer, loans secured by crypto-assets may also fall under the Consumer Credit Act, which imposes requirements on the creditworthiness assessment and the information given to the borrower.

1 Notes

1. Code of Obligations (SR 220), Art. 973g (official English translation, fedlex.admin.ch, consulted via droit-bilingue.ch): collateral may be posted without transfer of the ledger-based security if it is visible in the securities ledger and it is ensured that only the collateral recipient can dispose of the security in the event of default; otherwise the rules of the Civil Code on liens and pledges of certificated securities apply (Arts. 895– 906 CC). ↩

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