

Practitioner's note: issuing tokenised shares in a Zug company

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A Zug company that wishes to issue its shares as ledger-based securities should consider the following points. The articles of association must provide for the issue of shares as ledger-based securities and must refer to the registration agreement, an amendment that the general assembly must adopt. The company must choose a ledger that meets the requirements of Article 973d of the Code of Obligations and document its functioning. Most companies use a public blockchain together with a smart contract provided by a specialised platform. The company must also keep a share register and a register of beneficial owners as required by company law. The ledger can serve as the share register only if it contains the required information or if the company links it to a separate record.

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The transfer of registered shares is often restricted by the articles. A company that wishes to restrict transfers must implement the restriction in the smart contract, for example by requiring the company's approval of each transfer. Because holders of ledger-based securities have the same rights as other shareholders, the company must provide for the exercise of voting rights and the payment of dividends, including the deduction of withholding tax. The company should inform its shareholders about the functioning of the ledger and the risks of losing access to their tokens, since its liability under Article 973i depends on the quality of that information. Finally, the company should consider whether the offer of its shares triggers the prospectus requirement of the Financial Services Act, although in most cases the exemptions for small offers or offers to a limited number of investors will apply.

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