

Practitioner's note: the regulatory analysis of a crypto business in Switzerland

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An adviser who analyses the regulatory position of a crypto business in Switzerland typically proceeds in four steps. The first step is to describe the business model precisely: which tokens are involved, who holds the private keys, which services are provided to whom and how the business earns its revenue. The second step is to classify the tokens under FINMA's categories and to determine whether any of them is a security, a deposit or a fund unit. The third step is to go through the licensing regimes one by one, from the Banking Act through the Financial Institutions Act and the Financial Market Infrastructure Act to the Collective Investment Schemes Act. The fourth step is to examine the obligations under the Anti-Money Laundering Act and the Financial Services Act that apply even where no licence is required.

The result of the analysis is often that the business needs no FINMA licence but must join a self-regulatory organisation, a position that is common for exchange services, brokers of payment tokens and custodians of limited size. Where the analysis leads to a licensing requirement, the business must decide between applying for a licence, restructuring its model or cooperating with a licensed partner. Many Zug companies have chosen the last option, providing the technology and the client interface while a crypto bank or securities firm carries out the regulated activities. The adviser should document the analysis in a memorandum, which the business can present to its bank, its auditors and, if necessary, to FINMA.

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