

The token classification in practice

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

FINMA's classification of tokens into payment tokens, utility tokens and asset tokens remains the starting point of every analysis, although its application has become more refined since 2018. FINMA looks at the economic function of the token and at the rights that it confers at the time of issue. A token that is sold before the platform on which it will be used exists is treated as an asset token, since the buyer is paying for a future service whose value depends on the success of the project in the same way as the value of a participation. FINMA has also clarified that a utility token which in addition has an investment purpose at the time of issue is treated as a security.¹

The classification decides which laws apply. For asset tokens, the securities laws apply: the prospectus rules of the Financial Services Act, the licensing requirements for securities firms under the Financial Institutions Act where a firm deals in them professionally for its own account or for clients, and the rules on trading venues under the Financial Market Infrastructure Act. For payment tokens, the Anti-Money Laundering Act is central, together with the Banking Act where a provider holds tokens for clients in a way that creates claims against it. Utility tokens that are not securities are in principle outside financial market law, although a provider that deals in them may still be a financial intermediary under the Anti-Money Laundering Act.

In practice, many tokens are hybrids. A governance token of a decentralised finance protocol may give its holders voting rights over the protocol's parameters, a share of its fees and access to its services. The analysis must then consider each function separately, with the most restrictive classification usually prevailing. The market has responded to this logic by designing tokens with limited functions, so that tokens conferring a right to profits have become rare among projects that wish to avoid securities

law. FINMA answers requests for a ruling on the classification of a specific token and publishes statistics on these enquiries in its annual reports.²

1 Notes

1. FINMA, press release of 16 February 2018: utility tokens are not treated as securities if their sole purpose is to confer digital access rights to an application or service and if the utility token can actually be used in this way at the point of issue; if a utility token additionally or only has an investment purpose at the point of issue, FINMA will treat such tokens as securities. ↩
2. FINMA, Annual Report 2018, dossier "Developments in FinTech", finma.ch: 155 detailed queries on the ICO regulatory framework received by the end of 2018. FINMA, Annual Report 2019, dossier "Innovation and supervision 2019", finma.ch: 94 enquiries in connection with ICOs in 2019 compared with 184 in the previous year. ↩

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/zug-the-token-classification-in-practice