

capital markets
and technology
association.

Digital assets in Switzerland: the legal and regulatory landscape.

June 2023

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01.

Early, strong and continuing political support for digital assets ...

Switzerland stands out as a jurisdiction in which the development of digital assets was identified early as a national strategic priority at a political level.

In 2018, at a speech at a Crypto Finance conference in Zug, Mr Johann Schneider-Ammann, then member of the Swiss federal government and head of the Federal Department of Economic Affairs, Education and Research, coined the term **"Crypto Nation Switzerland"**.





In February 2018, the Swiss Financial Market Supervisory Authority FINMA was among the first regulatory authorities worldwide to provide guidance on how token offerings should be treated from a regulatory perspective. It then laid down the fundamental principle according to which digital tokens do not represent a class of assets of their own, but must be given the regulatory treatment of the assets that they represent.

FINMA's general positive attitude toward digital assets also led it to be among the first regulators to grant banking and securities firm licenses to digital assets specialists.

Strict AML requirements

FINMA has taken steps to implement in Switzerland the recommendations of the Financial Action Task Force (FATF) for virtual assets. In August 2019, it published guidance on the implementation of the so-called "travel rule" for payments on the blockchain. Under this regime, payments carried out through the transfer of digital tokens on a blockchain must be treated in the same manner as interbank cash transfers, and must consequently be accompanied by information regarding both the client and the beneficiary of the transfer. FINMA has thus taken a deliberately uncompromising position for what regards transfers of digital assets between regulated entities and holders of "unhosted wallets", essentially requiring the regulated entity to identify the holder of any unhosted wallet as if it were a client.

A clear and predictable regulatory framework for digital assets

FINMA's 2018 guidelines established the fundamental distinction, later taken over across the world, between "payment", "asset" and "utility" tokens.

Payment tokens are a means of payment and therefore must be issued and transferred in compliance with applicable rules against money laundering and the financing of terrorism.

Asset tokens must generally be treated as securities if they incorporate standardized financial claims, and their issuance and admission to trading on regulated trading venues must consequently be carried out in compliance with the Swiss prospectus regime.

Utility tokens represent claims associated with the sale of goods or services, and remain as such generally out of scope of the Swiss financial market laws and regulation.



In the context of Facebook's now defunct Geneva-based Libra project, FINMA clarified the regulatory regime applicable to issuers of stablecoins.

03.

A unique legislative framework, explicitly incorporating digital assets into the mainstream financial system

In 2020, the Swiss legislature took steps to adapt the various laws to the specificities of the distributed ledger technology.

In September 2020, the Swiss Parliament adopted the Federal Act "On the Adaptation of Federal Law to Developments in Distributed Electronic Ledger Technology", often colloquially referred to as "Lex DLT".

Rather than setting up a bespoke regime for digital assets, the Lex DLT introduced targeted amendments to various existing laws, adapting certain aspects of existing laws to the particularities of cryptocurrencies and other digital assets. The Lex DLT entered into force in 2021.

04.

A unique legislative framework: the "Lex DLT" in a nutshell

Possibility to issue "ledger-based" financial instruments

The Lex DLT makes it possible to issue both (non-standardized) financial instruments and (standardized) securities in the form of "ledger-based" instruments. Ledger-based instruments are claims or rights (including securities) that are associated with digital tokens recorded on a distributed ledger in such a manner that the claim or right cannot be transferred without the corresponding token and vice-versa. The Lex DLT essentially assimilates ledger-based securities to certificated securities.

Possibility to hold ledger-based securities through professional custodians

Ledger-based securities that a professional custodian credits on a client account qualify as "intermediated" (i.e., book-entry) securities. Such securities can then be transferred or encumbered in the same manner as traditional intermediated securities.

Possibility to digitalize securities of foreign (non-Swiss) issuers under Swiss law

Foreign (non-Swiss) issuers can issue ledger-based securities under Swiss law.

Segregation of digital assets (cryptocurrencies and digitalized securities) in the bankruptcy of custodians

All digital assets (including cryptocurrencies) must be treated as third party assets in the bankruptcy of a custodian, provided that certain conditions are met. Assuming that they are adequately allocated to specific clients (which does not need to be reflected in the distributed ledger but can be documented in an internal ledger of the custodian), digital assets must be segregated and transferred to their owners in case of bankruptcy of the custodian, and not be used to satisfy the custodian's creditors.

Treatment of cryptocurrencies as "deposits" for licensing purposes

Despite the fact that cryptocurrencies are generally not deemed "deposits" for regulatory purposes (subject to bankruptcy segregation conditions being met), having custody of cryptocurrencies or other payment tokens in collective custody in a professional capacity is nonetheless deemed a regulated activity subject to a licensing requirement under the Swiss banking law.

Possibility to authorize trading platforms for digital assets

The Lex DLT creates a new regulatory regime for so-called "DLT trading facilities", a hybrid regulatory form that combines activities otherwise typical of securities exchanges, brokers and central securities depositories. It also makes it possible to establish Swiss-regulated securities firms for the sole purpose of operating an organized trading facility (OTF) for ledger-based securities. Contrary to EU legislation, Swiss law does not condition the admission of securities on trading venues to the presence of a CSD.



The Capital Markets and Technology Association (CMTA) is a not-for-profit organization organized under Swiss law and established in Geneva, Switzerland, for the purpose of facilitating the use of new technologies in the capital markets.

Founded by Lenz & Staehelin, the Swiss law firm, Swissquote, the Swiss online bank, and Temenos, the Swiss banking software provider, with the support of the *Ecole Polytechnique Fédérale de Lausanne*, one of Switzerland's two federal institutes of technology, CMTA currently has over 40 members from the banking, fintech, technological and legal sectors.

Standard-setting activity

CMTA has adopted various industry "standards" ("how-to" documents) for the issuance, trading and custody of digital assets

March 2023

Digital Assets Custody Standard V2

A set of industry developed requirements and recommendations for technology solutions to enable secure custody and management of digital assets.

December 2021

Share tokenization standard

A step-by-step guide to tokenizing equity securities in Switzerland.

October 2018

AML Standards for Digital Assets

Guidance for businesses and financial intermediaries on handling digital assets in compliance with Swiss AML regulations.

Smart contracts publishing

CMTA publishes open-source smart contracts that can be used for the digitalization of financial instruments and the trading of digital securities

November 2022

CMTA Token (CMTAT)

Framework enabling the tokenization of equity and debt securities in compliance with Swiss law.

January 2023

RuleEngine for CMTAT

RuleEngine contract for the CMTAT framework, which can be deployed alongside the CMTAT to validate conditional transfers.

December 2022

DvP Smart Contract

CMTA's Delivery versus Payment (DvP) Smart Contract makes it possible to simultaneously swap tokens on the Ethereum blockchain.

Certification solutions

CMTA provides certification solutions to issuers of ledger-based securities and custodians of digital assets

The `cmta.tokenized shares` label documents the fact that equity securities of Swiss companies were validly issued as ledger-based securities.

The `cmta.dacs` label confirms a custodian's compliance with CMTA's Digital Asset Custody Standard.



06.

The Swiss digital securities scene today





The Swiss financial industry generally shows a marked interest for digital assets, which it considers as a way to modernize excessively complex and costly market infrastructures and attract new clients.

Legally robust digitalization regime

Various mainstream issuers (including a bank) have issued equity securities in the form of digital tokens recorded on a public Blockchain.



Growing interest for digitalized debt instruments

2023	2023	2022	2021
			
3-month notes	1.625% CHF 100 m bonds due 2029	2.33% CHF 375 m bonds due 2025	0.125% CHF 150 m bonds due 2026

Various regulated trading platforms for digitalized securities



SDX (licensed as a stock exchange and a CSD)	TDX (licensed as an OTF operated by Taurus SA, a regulated sec. house)	BX Digital (Börse Stuttgart has applied for a DLT trading platform license)
		

Digital assets platforms

21Shares ETP provider	Aktionariat AG Digital securities	daura Digital securities	Mt. Pelerin Asset tokenization	Taurus Digital assets
				

Digital assets specialists licensed as banks

FINMA has granted banking licenses to firms having a business model focusing primarily on digital assets

	
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Industry support for a digital Swiss franc

In March 2023, the Swiss Bankers Association, the Swiss banking industry's main trade body, announced a project for the introduction of a digital Swiss franc as a stablecoin to be issued by Swiss banks.

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