

Cryptocurrency Regulations in Switzerland

Educational Series

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Regulatory overview

- Switzerland, according to its Federal Council report, classifies cryptocurrency as a "digital representation of a value which can be traded on the Internet but not accepted as legal tender anywhere". Therefore, Switzerland regards cryptocurrency as assets (property), and cryptocurrency and related exchanges are legal in Switzerland, subject to regulations.
- There are currently no cryptocurrency-specific regulations in relation to trading and offering in Switzerland, but cryptocurrency remains subjected to relevant existing regulations such as tax, money laundering and securities regulation.

Regulatory overview (continued)

- Recognizing the barriers of the existing regulatory framework to new financial technology such as cryptocurrency, regulatory amendments were made by the Switzerland government to create “regulatory sandbox” in support of the development of such technology.
- Overall, Switzerland is one of the countries that adopts a progressive approach towards cryptocurrency and its blockchain technology, and has relaxed its regulatory framework to balance the technological development and protection of the public from the associated risks.

Securities framework

- Securities in Switzerland is governed by the Swiss Financial Market Supervisory Authority ("FINMA") under the Financial Market Infrastructure Act ("FMIA").
- FMIA defines securities as "standardised certificated or uncertificated securities, derivatives and intermediated securities which are suitable for mass standardised trading, meaning they are publicly offered for sale to more than 20 investors".
- Essentially, assets that represent debt or equity claim on the issuer with investment purposes are securities. Accordingly, whether a cryptocurrency is deemed as securities depends on its categorization as a Payment Token, Utility Token, or Asset Token as per guidelines published by FINMA.

Securities framework (continued)

- **Payment Tokens** are tokens which are intended to be used, now or in the future, as a means of payment for acquiring goods or services or as a means of money or value transfer. Payment Tokens give rise to no claims on their issuer. Examples include Bitcoin and Ether which FINMA does not perceive as securities.
- **Utility Tokens** are tokens which sole purpose is intended to provide access digitally to an application or service by means of a blockchain-based infrastructure.
- **Asset Tokens** represent assets such as a debt or equity claim on the issuer. Asset tokens promise, for example, a share in future company earnings or future capital flows. In terms of their economic function, therefore, these tokens are analogous to equities, bonds or derivatives. Tokens which enable physical assets to be traded on the blockchain also fall into this category.

Securities framework (continued)

- According to FINMA's categorical definitions of cryptocurrency, those that fall under Asset Tokens will be deemed as securities, as Asset Tokens are regarded as standardised uncertified securities or derivatives as defined by FMIA - "rights which, based on a common legal basis (articles of association/issuance conditions), are issued or established in large numbers and are generically identical". Therefore, issuers of Asset Tokens may be subject to prospectus requirements under the Swiss Code of Obligations.

Deposit and Banking Act

- Banking Act governs the deposit of money in banking institutions. Generally, the issuing of tokens is not associated with claims for repayment on the issuer and thus such tokens will not fall within the definition of a deposit and banking license is not required.
- However, if there are liabilities with debt capital character, such as promises to return capital with a guaranteed return such as lending tokens (e.g. BitConnect), the funds raised are treated as deposits and the issuer likely will need to obtain a banking license.

Payment tokens and anti-money laundering

- Those who issue or manage a means of payment in Switzerland is a financial intermediary subject Switzerland's Anti-Money Laundering Act ("AMLA").
- Issuer, operator of exchanges, and custodian wallet providers of Payment Token, as a means of payment under the blockchain infrastructure, are therefore subject to the AMLA. This may be the case at the time of the ICO or only at a later date.

Regulatory development

- FINMA, as noted in its published strategic goals for the period 2017 to 2020, aims to further support innovative business model in the area of financial services by removing unnecessary regulatory obstacles and introducing specifically-tailored authorization categories.
- Cryptocurrency and its underlying blockchain technology appear to be welcomed in Switzerland, which has propelled Switzerland as a major player in this space. With a balancing approach, Switzerland will continue to crack down and issue warning to the public in relation to fraudulent crypto-related projects and companies to promote a healthy environment for genuine projects to grow.

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