THE VIRTUAL CURRENCY REGULATION REVIEW

THIRD EDITION

Editors
Michael S Sackheim and Nathan A Howell

THE LAWREVIEWS

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Editors
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PREFACE

We are pleased to introduce the third edition of *The Virtual Currency Regulation Review* (the *Review*). The increased acceptance and use of virtual currencies by businesses and the exponential growth of investment opportunities for speculators marked late 2019 and early 2020. In 2019, it was reported that several of the largest global banks were developing a digital cash equivalent of central bank-backed currencies that would be operated via blockchain technology, and that Facebook was developing its own virtual currency pegged to the US dollar – Libra – to be used to make payments by people without bank accounts and for currency conversions. In 2019, the US House of Representatives' Committee on Financial Services held a hearing on the potential impact of Libra in which one witness testified that Libra posed a fundamental threat to the ability of sovereign nations to maintain distinct monetary policies and respond to currency crises.

The *Review* is a country-by-country analysis of developing regulatory initiatives aimed at fostering innovation, while at the same time protecting the public and mitigating systemic risk concerning trading and transacting in virtual currencies. In February 2020, the International Organizations of Securities Commissions (IOSCO) published a final report titled 'Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms'. The final report describes issues and risks identified to date that are associated with the trading of cryptoassets on cryptoasset trading platforms (CTPs). In relation to the issues and risks identified, the report describes key considerations and provides related toolkits that are useful for each consideration. The key considerations relate to: (1) access to CTPs; (2) safeguarding participant assets; (3) conflicts of interest; (4) operations of CTPs; (5) market integrity; (6) price discovery; and (7) technology. IOSCO advised that these seven key considerations (and the related toolkits described in the report) represent specific areas that IOSCO believes jurisdictions could consider in the context of the regulation of CTPs.

Fortunes have been made and lost in the trading of virtual currencies since Satoshi Nakamoto published a white paper in 2008 describing what he referred to as a system for peer-to-peer payments, using a public decentralised ledger known as a blockchain and cryptography as a source of trust to verify transactions. That paper, released in the dark days of a growing global financial market crisis, laid the foundations for Bitcoin, which would become operational in early 2009. Satoshi has never been identified, but his white paper represented a watershed moment in the evolution of virtual currency. Bitcoin was an obscure asset in 2009, but it is far from obscure today, and there are now many other virtual currencies and related assets. In 2013, a new type of blockchain that came to be known as Ethereum was proposed. Ethereum's native virtual currency, Ether, went live in 2015 and opened up a new phase in the evolution of virtual currency. Ethereum provided a broader platform, or protocol, for the development of all sorts of other virtual currencies and related assets.

In 2020, the global outbreak of the novel coronavirus (or covid-19) impacted virtually every person on the planet and had severe and sudden effects on every major economy. At the time of writing, the pandemic is ongoing and, while some locations are pushing past their respective 'peaks' of infection, cities that are central to the global financial markets, such as New York City, remain under strict lockdown orders, with many workers in the financial services sector working remotely. It is unclear when these cities will return to a version of 'normal'. In the midst of all this chaos, there is a natural experiment under way in the cryptocurrency markets. We are perhaps learning what happens when our governments are strained and their competence is questioned. Since mid-March 2020, when the pandemic hit the United States in earnest (it had already been raging in China, Italy, Iran, etc.), the price of Bitcoin has gone up in essentially a straight line – from approximately US$5,000 to almost US$10,000 as at mid-May. Now, to be fair, this follows a significant price decline preceding March, but it is at least interesting to observe that the most widely held cryptocurrency is weathering a significant economic storm with apparent ease.

When we first launched the *Review* three years ago, we were optimistic but sceptical about whether virtual currencies would be widely and consistently in commercial use. However, the virtual currency revolution has come a long way and has endured a sufficient number of events that could or should have been fatal for the asset class. Our confidence in the long-term viability of virtual currency has only increased over the previous year. Virtual currencies and the blockchain and other distributed ledger technology on which they are based are groundbreaking, and are being deployed right now in many markets and for many purposes. As lawyers, we must now endeavour to understand what that means for our clients.

Virtual currencies are borderless: they exist on global and interconnected computer systems. They are generally decentralised, meaning that the records relating to a virtual currency and transactions therein may be maintained in a number of separate jurisdictions simultaneously. The borderless nature of this technology was the core inspiration for the *Review*. As practitioners, we cannot afford to focus solely on our own jurisdictional silos. For example, a US banking lawyer advising clients on matters related to virtual currency must not only have a working understanding of US securities and derivatives regulation; he or she must also have a broad view of the regulatory treatment of virtual currency in other major commercial jurisdictions.

Global regulators have taken a range of approaches to responding to virtual currencies. Some regulators have attempted to stamp out the use of virtual currencies out of a fear that virtual currencies such as Bitcoin allow capital to flow freely and without the usual checks that are designed to prevent money laundering and the illicit use of funds. Others have attempted to write specific laws and regulations tailored to virtual currencies. Still others – the United States included – have attempted to apply legacy regulatory structures to virtual currencies. Those regulatory structures attempt what is essentially 'regulation by analogy'. In some countries, a virtual currency, which is not a fiat currency, may be regulated in the same manner as money; in other countries, virtual currency may be regulated similarly to securities or commodities. We make one general observation at the outset: there is no consistency across jurisdictions in their approach to regulating virtual currencies. Perhaps the efforts of IOSCO will help to change that going forward, but there is currently no widely accepted global regulatory standard. That is what makes a publication such as the *Review* both so interesting and so challenging.

The lack of global standards has led to a great deal of regulatory arbitrage, as virtual currency innovators shop for jurisdictions with optimally calibrated regulatory structures that provide an acceptable amount of legal certainty and virtual currency scofflaws shop for jurisdictions with regulatory structures that provide no meaningful regulation. While some market participants are interested in finding the jurisdiction with the lightest touch (or no touch), most legitimate actors are not attempting to flee from regulation entirely. They appreciate that regulation is necessary to allow virtual currencies to achieve their potential, but they do need regulatory systems with an appropriate balance and a high degree of clarity. The technology underlying virtual currencies is complex enough without adding layers of regulatory complexity into the mix.

It is perhaps ironic that the principal source of strength of virtual currencies – decentralisation – is the same characteristic that the regulators themselves seem to be displaying. There is no central authority over virtual currencies, either within or across jurisdictions, and each regulator takes an approach that seems appropriate to that regulator based on its own narrow view of the markets and legacy regulations. Again, we are hopeful that IOSCO's efforts will help to encourage the emergence of optimal regulatory structures over time. Ultimately, the borderless nature of these markets allows market participants to 'vote with their feet', and they will gravitate towards jurisdictions that achieve the right regulatory balance of encouraging innovation and protecting the public and the financial system. It is much easier to do this in a primarily electronic and computerised business than it would be in a brick-and-mortar business. Computer servers are relatively easy to relocate; factories and workers are less so.

The third edition of the *Review* provides a practical analysis of recent legal and regulatory changes and developments, and of their effects, and looks forward to expected trends in the area of virtual currencies on a country-by-country basis. It is not intended to be an exhaustive guide to the regulation of virtual currencies globally or in any of the included jurisdictions. Instead, for each jurisdiction, the authors have endeavoured to provide a sufficient overview for the reader to understand the current legal and regulatory environment at a high level.

Virtual currency is the broad term that is used in the *Review* to refer to Bitcoin, Ether, Tethers and other stablecoins, cryptocurrencies, altcoins, ERC20 tokens, digital, virtual and crypto assets, and other digital and virtual tokens and coins, including coins issued in initial coin offerings. We recognise that in many instances the term 'virtual currency' will not be appropriate, and other related terms are used throughout as needed. In the law, the words we use matter a great deal, so, where necessary, the authors of each chapter provide clarity around the terminology used in their jurisdiction and the legal meaning given to that terminology.

Based on feedback on the first and second editions of the *Review* from members of the legal community throughout the world, we are confident that attorneys will find the updated third edition to be an excellent resource in their own practices. We are still in the early days of the virtual currency revolution, but it does not appear to be a passing fad. The many lawyers involved in this treatise have endeavoured to provide as much useful information as practicable concerning the global regulation of virtual currencies.

The editors would like to extend special thanks to Ivet Bell (New York) and Dan Applebaum (Chicago), both Sidley Austin LLP associates, for their invaluable assistance in organising and editing the third edition of the *Review*, and particularly the United States chapter. The assembly of this third edition is made all the more remarkable by the fact that

many of the authors and contributors are working from home, with dogs barking in the background and children at their feet. Special thanks go out to all those dogs and children for being as tolerant as possible as we try to conduct the work of busy lawyers and also produce this *Review*.

Michael S Sackheim and Nathan A Howell
Sidley Austin LLP
New York and Chicago
August 2020

Chapter 24

SWITZERLAND

Olivier Favre, Tarek Houdrouge and Fabio Elsener[1]

I INTRODUCTION TO THE LEGAL AND REGULATORY FRAMEWORK

i Market size

Switzerland is the home of the crypto valley in Zug, near Zurich, and has an active community of enterprises working in the crypto space. While it is difficult to attribute a rank to Switzerland in the fast-moving global crypto community, Switzerland has taken the role of a pioneer in this area and is one of the most important jurisdictions for initial coin offerings (ICOs) and securities token offerings (STOs).[2] The choice of Switzerland as place of incorporation for the Libra Association is testament to the attraction of Switzerland as a home for innovative ventures in the blockchain business.

ii Legal framework

Switzerland has a favourable and attractive legal framework regarding cryptoassets, although it does not have a separate legal framework for them. For cryptocurrencies, it already provides a regulatory framework that allows the issuance and trading of such assets, provided that anti-money laundering (AML) rules are complied with.

Switzerland is in the process of further improving the regulatory framework for asset tokens. The Federal Council proposed a new bill on 27 November 2019 regarding various amendments to Swiss laws to take into account the potential offered by the distributed ledger technology (the DLT Bill) that would introduce DLT rights as the digital alternative to certificated securities. DLT rights should be exclusively transferable through the blockchain. According to the DLT Bill, Switzerland would also introduce a new type of licence category for trading venues, where DLT rights could be traded. Moreover, the DLT Bill would provide for segregation rights for cryptoassets held in custody by a third party (e.g., a wallet provider), in case of bankruptcy of such third party. The Federal Council proposes these improvements to the legal framework for distributed ledger and blockchain applications as amendments to current Swiss laws, without creating a separate regulatory regime for such technology. The National Council as the chamber of the Swiss Parliament deliberating the matter first approved the DLT Bill on 17 June 2020 without making material changes to the proposal of the Federal Council. The next step will be the approval by the Council of States as the second chamber of the Swiss Parliament. For further information, see Section X.

1 Olivier Favre and Tarek Houdrouge are partners and Fabio Elsener is a senior associate at Schellenberg Wittmer Ltd.

2 See https://ico.tokens-economy.com/statistics/ for a comparison of the ICO and STO activities per country.

The Swiss Financial Market Supervisory Authority (FINMA) has repeatedly stated that it will not distinguish between different technologies used for the same activity: that is, it will apply the principle of 'same business, same rules' to any kind of new technology. FINMA adheres to this principle at present when applying Swiss financial market laws to cryptoassets and blockchain-based applications and this will also apply going forward with the proposed new legislation on DLT rights.

iii Regulatory classification of tokens

On 16 February 2018, FINMA published guidance on how to apply Swiss financial markets laws in its guidelines regarding the regulatory framework for ICOs (the ICO Guidelines).[3] In the ICO Guidelines, FINMA clarifies how to classify cryptocurrencies and other coins or tokens (collectively with cryptocurrencies, tokens) or other assets registered on distributed ledgers under Swiss law.

According to the ICO Guidelines, FINMA distinguishes the following categories of tokens:

a payment tokens or cryptocurrencies, which are intended only as means of payment and that do not give rise to any claims against the issuer;

b utility tokens, which provide rights to access or use a digital application or service, provided that such application or service is already operational at the time of the token sale; and

c asset tokens, which represent an asset, for instance a debt or equity claim against the issuer or a third party, or a right in an underlying asset.

FINMA has further clarified that tokens may also take a hybrid form including elements of more than one of these categories. These hybrid tokens must comply cumulatively with the regulatory requirements applicable to each relevant token category. FINMA acknowledges that a token's classification may change over time. For the purpose of assessing the regulatory implications of an ICO, the moment of the token issuance is relevant. However, the initial classification may change post-ICO. In the event of any secondary market trading activity with tokens, their classification in the moment of the relevant trading activity must be taken into account.

In addition, FINMA published its views on the regulatory classification of stable tokens (i.e., tokens backed by an underlying asset such as a pool of fiat currencies or other assets) in a supplement to the ICO Guidelines dated 11 September 2019. FINMA specified that stable tokens are not considered a separate type of token category under Swiss regulation and that, depending on the rights attached to stable tokens, these would usually classify as asset tokens or as hybrid between payment tokens and asset tokens.

Payment tokens do not qualify as legal tender or other means of payment under Swiss law. However, the Swiss Federal Council has clarified that payment tokens may be used as private means of payment if the parties to a transaction agree on the use of payment tokens as the applicable means of payment for such a transaction. In addition, the issuance of payment tokens requires compliance with the Swiss AML rules (see Section V).

3 FINMA, Guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs) (available at https://www.finma.ch/en/~/media/finma/dokumente/dokumentencenter/myfinma/1bewilligung/fintech/wegleitung-ico.pdf?la=en).

iv Enquiries to FINMA

Notwithstanding the guidance provided by FINMA, given that this field is new and the structures of token offerings are always evolving, regarding the application of the ICO Guidelines in real-life projects, it is normal practice to seek a confirmation from FINMA to the effect of obtaining a no-action comfort from the regulator.

FINMA offers the possibility to file such no-action enquiries in order to confirm the regulatory interpretation.

II SECURITIES AND INVESTMENT LAWS

i Relevance for asset tokens and certain types of utility tokens

Swiss securities laws are relevant for the issuance of asset tokens or any hybrid form of tokens involving the functionality of asset tokens (e.g., a stable token or a utility token regarding the use of a platform that is not fully developed).

However, payment tokens and utility tokens that do not represent any claims against an issuer or a third party are not subject to Swiss securities laws, as they do not represent any rights.[4] Such payment tokens and utility tokens should be classified as intangible digital assets sui generis for the time being.[5]

ii Issuance of tokens representing rights against an issuer or a third party

To the extent that asset tokens or utility tokens representing any claims against an issuer or third parties are governed by Swiss law, according to the view expressed by FINMA as well as according to the prevailing view in the Swiss market, these tokens should qualify as uncertificated securities according to Article 973c of the Swiss Code of Obligations (CO).[6] The creation of these uncertificated securities requires a decision from the competent corporate body as well as the registration of the first holders of the uncertificated securities in a register held by the issuer. This register is not subject to any form requirements, and therefore it is possible to qualify the distributed ledger as such a register.

If the token sale involves a financial institution pursuant to Article 4(2) of the Swiss Federal Intermediated Securities Act (FISA) acting as custodian for intermediated securities, the tokens can be issued as intermediated securities.[7] The advantage of creating intermediated securities would be that the entitlements in the tokens could be transferred by book-entry in the custody accounts of the custodians involved according to the rules of the FISA. However, given that token sales are usually structured in a way that does not involve a securities custodian, we will not cover the further requirements to be taken into account for the issuance of tokens in the form of intermediated securities.

4 Swiss LegalTech Association, Regulatory Task Force Report, 27 April 2018, p. 25 (available at http://www.swisslegaltech.ch/wp-content/uploads/2018/05/SLTA-Regulatory-Task-Force-Report-2.pdf).

5 cf. Federal Council report, Legal framework for distributed ledger technology and blockchain in Switzerland (footnote 3) pp. 54 and 66; Federal Council, Report on virtual currencies, 25 June 2014, 7 (available at http://www.news.admin.ch/NSBSubscriber/message/attachments/35361.pdf).

6 Swiss LegalTech Association, Regulatory Task Force Report (footnote 4), p. 26; ICO Guidelines, p. 4; see also Eggen, 'Was ist ein token?', AJP 2018, p. 558 et seqq., p. 563 et seq.; Blockchain Taskforce, position paper on the legal classification of ICOs, April 2018, p. 8 et seq. (available at https://blockchaintaskforce.ch/wp-content/uploads/2018/06/Blockchain-Taskforce-White-Paper-Annex1.pdf).

7 Swiss LegalTech Association, Regulatory Task Force Report (footnote 7), p. 26 et seq.

iii Transfer requirements for tokens

Under Swiss law, payment tokens and utility tokens that do not represent any claims against an issuer or third parties can be validly created and transferred in accordance with the terms of the respective distributed ledger. A transfer can therefore be validly made by executing a transaction between two wallets.

However, asset tokens and utility tokens representing enforceable rights against an issuer or a third party require, in addition to a valid transfer on the relevant distributed ledger, that the rights represented in such tokens are validly created and transferred to the transferee. Depending on the types of rights represented in the tokens, this could be a written form requirement for the transfer of such rights under Swiss law. Regarding the transfer of tokens representing uncertificated securities (see Section II.ii), the rules of assignments pursuant to the CO must currently be complied with, which require a declaration of assignment in writing by the assignor. To the extent that the tokens were registered with a financial institution acting as securities custodian, such securities could be issued as intermediated securities under the FISA, and it would be sufficient to transfer the securities by way of book entry between the custodians involved in the transaction without a transfer by way of an assignment. However, on the basis that no custodians are involved, the written form requirements for a transfer of uncertificated securities must be complied with for a valid transfer.

Under Swiss law, a written form requires that the parties must either provide a wet-ink signature, which can be delivered through a scan, or a certified electronic signature according to Article 14(2bis) CO. We are not aware of any distributed ledger that would currently support such certified electronic signatures; therefore, a written form requirement can, to date, not be substituted by a transaction of tokens on a distributed ledger.

As the transfer of uncertificated securities is subject to a written form requirement, to validly transfer the rights attached to asset tokens and utility tokens representing exercisable rights against an issuer or a third party under Swiss law, a work-around is needed. One solution is the use of terms and conditions of the tokens specifying that the transfer of such tokens to a new token holder shall be construed as a transfer of the contractual relationship in which the new token holder assumes the entire contractual position from the old token holder. Such transfers may be made in the form of a three-party agreement between the issuer, the old and the new token holder. For the purpose of this transfer, it could be argued that all participants of a distributed ledger, including the old and new token holder and the issuer, implicitly agree by participating in the distributed ledger to such a method of transferring tokens. However, it would be prudent to provide, at least, that the issuer must keep a record of the current token holders and acknowledges any transfer to a transferee before any transferee may exercise any rights resulting from the tokens.

With regard to the DLT Bill, the Federal Council proposed the introduction of DLT rights as a new type of right that may be created with a registration on a distributed ledger and that could be transferred according to the terms of the respective distributed ledger without having to meet further requirements of Swiss law. Asset tokens or utility tokens could be issued as DLT rights (see Section X).

iv Classification of tokens as securities

According to Article 2(b) of the Financial Market Infrastructure Act (FMIA), securities are certificated or uncertificated securities, derivatives or intermediated securities, which are standardised and suitable for mass trading. According to Article 2(1) of the Financial Market

Infrastructure Ordinance, 'standardised and suitable for mass training' means, in this context, that the instruments are offered for sale publicly in the same structure and denomination, or that they are placed with 20 or more clients under identical conditions.

FINMA has clarified in the ICO Guidelines that it will apply these rules in connection with tokens constituting uncertificated securities (see Section II.i) as follows:[8]

a Payment tokens do not qualify as securities given that they are designed to be used as means of payment according to FINMA. Payment tokens cannot fall under the definition of securities as they do not represent any rights that are exercisable against the issuer or third parties.

b Utility tokens can qualify as securities if the platform where they can be used is not operationally ready at the time of the token sale, or if the tokens represent rights that may be enforced against the issuer or a third party. These utility tokens are deemed to have an investment purpose. FINMA further clarified that a case-by-case analysis is needed to clarify whether or not a utility token can be used for its intended purpose. In particular, it specifies that proof of concepts or beta versions of platforms or applications on which the utility tokens cannot (yet) be used would not suffice to fall outside of the definition of securities for the purposes of the FMIA. However, on the basis that the qualification of tokens may change over time, it is possible that utility tokens qualifying as securities will fall outside of this definition once the platform where the tokens shall be used becomes fully functional for its intended purpose.

c Asset tokens qualify as securities provided that they have been offered publicly or to 20 or more persons for sale.

FINMA has stated that any enforceable rights of investors to receive or acquire tokens in the future resulting from a presale, for instance under a simple agreement for future tokens, qualify as securities if the rights have been offered publicly or on identical terms to more than 20 persons. On the other hand, the rights issued in the context of a presale do not constitute securities if the terms used in the presale are not standardised or different terms are used with each investor: for example, by varying the amount of rights, the pricing or any lock-up provision.

v Prospectus requirement

Regardless of the classification of tokens as securities, in respect of any tokens constituting a digital representation of rights that are exercisable against an issuer, the question arises of whether the tokens are subject to a prospectus requirement under the Swiss Financial Services Act (FinSA), which entered into force in January 2020. Under the FinSA, a prospectus requirement applies, generally speaking, for all public offerings of securities, including tokens qualifying as securities (see Section II.iv). During the transition period lasting until 1 December 2020, issuers may alternatively prepare a prospectus pursuant to the old prospectus regime that was in place prior to the adoption of the FinSA.

In addition, as regards financial instruments offered to retail investors, the FinSA introduced an obligation to prepare a key investor document as an additional disclosure document in a similar way as currently applicable in the European Union pursuant to the

8 cf. Section 3.1 of the ICO Guidelines.

Packaged Retail and Insurance-based Investment Products Regulation. This new obligation will also apply to certain types of tokens qualifying as financial instruments (e.g., asset tokens with the economics of a structured product or a derivative).

vi Regulatory implications of classification of tokens as securities

If tokens qualify as securities, they are subject to the regulatory framework of the FinSA and the Financial Institutions Act (FinIA). According to this regulatory framework, a licence as a securities firm is required for any brokerage activities on behalf of clients (other than institutional clients) regarding such tokens and any market-making activities regarding such tokens.[9] Furthermore, underwriting such tokens and issuing tokens that qualify as derivatives are subject to a licence requirement as a securities firm or bank, if such activities are conducted on a professional basis.[10] A licence requirement is triggered in each case if these activities are executed on a professional basis.

Moreover, the qualification of tokens as securities has implications on the licence requirements under the FMIA for any secondary trading platform where such tokens can be traded.

III LAWS ON COLLECTIVE INVESTMENTS

As regards any investments in tokens through collective investment schemes or funds or in regard to the issuance of tokens representing units in collective investment schemes, the rules of the Swiss Collective Investment Schemes Act (CISA) and its implementing ordinances must be taken into account. For the purposes of the CISA, a collective investment scheme is a pool of assets raised from investors for the purpose of being invested collectively managed on behalf of the investors. The regulation of the CISA applies irrespective of the legal structure that has been chosen for the collective investment scheme or fund.

As a result, the issuance of tokens, as well as any business activity in relation to tokens (regardless of their classification) by which assets accepted from clients for investment purposes are pooled (i.e., there is no segregation of the investments for each investors), or where the clients' assets are managed by a third party on behalf of those clients, could be subject to the requirements of the CISA and the FinIA, and must be analysed from the perspective of the Swiss regulation of collective investment schemes.

Commercial undertakings generally do not fall within the scope of the CISA. However, it is only possible to draw the line between a commercial undertaking and a collective investment scheme on a case-by-case basis.

IV BANKING REGULATION

According to the Swiss Banking Act (SBA), a banking licence requirement is triggered if a company conducting primarily a financial activity accepts deposits from the public (i.e., from more than 20 persons) or publicly advertises this activity. According to the Swiss Banking Ordinance (SBO), entering into any liabilities would generally qualify as a deposit-taking activity, unless one of the exceptions defined in Article 5(2) and (3) SBO applies.

9 Article 41 FinIA.

10 cf. Article 44(1)(c) and (d) FinIA.

In the context of token sales, the most relevant exemptions are the following:

a to the extent that the liabilities are debt securities issued as standardised products suitable for mass trading and are documented with an offering prospectus including the information required under the CO, the liabilities do not qualify as deposits; and

b to the extent that the liabilities arise from client funds held on settlement accounts with securities firms, asset managers or similar financial intermediaries, provided that such funds are used to settle client transactions, no interest is paid on the funds and – except for accounts with securities firms – the settlement occurs within 60 days at the latest.

Further, Swiss law provides for a sandbox exemption pursuant to Article 6(2) SBO. According to this exemption, the acceptance of deposits from the public (i.e., from more than 20 persons) up to a maximum amount of 1 million Swiss francs is permitted without a banking licence, provided that no interest income is generated with the deposited amounts and the investor has been informed before accepting the deposit that the accepting person or entity is not subject to prudential supervision by FINMA, and that the investments are not protected by any deposit protection scheme.

Moreover, entities accepting deposits from the public up to a maximum of 100 million Swiss francs, provided that these deposits are not reinvested and they are not interest-bearing, may request a banking licence 'light'. Compared to a full banking licence, certain carve-outs apply regarding organisation, risk management, compliance, the qualifications of the regulatory auditor and the capitalisation requirements. The banking licence light has been available since 1 January 2019. It may be an interesting option for entities active in the crypto space that intend to take deposits from the public in an amount below the cap of 100 million Swiss francs.

When providing storage services regarding tokens, the following question arises: under what circumstances does the activity require a banking licence or a banking licence light? This would be relevant when the storage provider can dispose of the private keys of its clients. In this event, a banking licence may be needed where the cryptoassets are held in a way that does not allow a client to set aside the cryptoassets in the insolvency of the custodian. It is proposed in the DLT Bill to expand the segregation provisions for cryptoassets held by custodians for their clients under certain circumstances (see Section X for more details). This will have the effect that storage service providers will presumably not require a banking licence to the extent that they operate within the scope of these new segregation provisions.

With regard to brokerage services provided in respect of tokens, this activity could be subject to a banking licence if the service provider accepts fiat currencies or tokens on own accounts respectively public keys in connection with such services. In this event, the service provider would need to rely on the settlement account exemption mentioned above. However, this exception is not available to cryptocurrency traders that execute an activity comparable to foreign exchange traders (i.e., that expose their clients to similar bankruptcy risks as foreign exchange traders do).

V ANTI-MONEY LAUNDERING

i Applicable rules

Under Swiss law, AML regulation consists of the Swiss Anti-Money Laundering Act (AMLA) and the Anti-Money Laundering Ordinance (AMLO). The AMLA applies, inter alia, to financial intermediaries. In addition to entities subject to prudential supervision, in brief, anyone accepting, holding or depositing assets belonging to other persons or assisting in the investment of such assets on a professional basis qualifies as a financial intermediary according to Article 2(3) AMLA. Further, the AMLA contains a non-exhaustive list of activities that are considered financial intermediation. In the context of ICOs and tokens, the issuance of means of payment that cannot be used exclusively with the issuer,[11] providing services related to payment transactions in the form of money and asset transmission services,[12] and money exchange services,[13] are relevant financial intermediation activities.

A financial intermediary in the sense of the AMLA must be affiliated with an authorised AML self-regulatory organisation (SRO). Further, a financial intermediary has to comply with the obligations defined in the AMLA, including, without limitation, identification and know your customer (KYC) obligations relating to the contracting party and its beneficial owner, and has to file reports to the Money Laundering Reporting Office in cases of suspected money laundering or terrorism financing.

ii ICOs

Depending on the classification of the tokens to be issued within an ICO, the issuance can qualify as financial intermediation activity. FINMA provides clarity in its ICO Guidelines on this matter, as outlined below.

a The issuance of payment tokens is classified as an issuance of means of payment and therefore constitutes a financial intermediation activity pursuant to the AMLA.

b The issuance of utility tokens that comprise some form of payment function on the designated application or platform, for example the ability to use the utility tokens to pay for services used on such platform, usually qualifies as issuance of means of payment and therefore constitutes a financial intermediation activity pursuant to the AMLA. However, the issuance of utility tokens does not qualify as financial intermediation if a utility token does not have any form of payment function or if the payment function is exceptionally considered as an ancillary function of the utility tokens.[14] To benefit from such an exception, it is required that such utility tokens' main purpose is to provide access rights to a non-financial application, that the entity providing the payment functionality is also the entity operating the non-financial application and that the access to the non-financial application could not be granted without including the ancillary payment functionality embedded in the utility token. However, note that FINMA applies this exception very restrictively, and in practice, any utility token with some sort of payment function is considered as a financial intermediation within the scope of the AMLA.

c The issuance of asset tokens does not qualify as financial intermediation activity pursuant to the AMLA, provided that the asset tokens are classified as securities, and provided further that they are not issued by a bank, securities firm or certain other prudentially supervised entities. However, in practice, issuers of asset tokens are often

11 cf. FINMA Circular 2011/01, Financial intermediation according to AMLA, n 64.

12 cf. Article 4(2) AMLO.

13 cf. Article 5(1)(a) AMLO.

14 ICO Guidelines, Section 3.6; FINMA Circular 2011/01, Financial intermediation according to AMLA, n 13 et seq.

required to conduct some KYC and identification processes on a voluntary basis owing to the compliance requirements of the banks to which the proceeds of the ICO will be transferred.[15]

The issuance of rights to acquire tokens in the future within a pre-ICO does not constitute a financial intermediation activity, provided that the issuer is not a bank, securities firm or certain other prudentially supervised entities. However, the subsequent issue of tokens that qualifies as issuance of a means of payment under the AMLA (i.e., payment tokens and, subject to the mentioned exceptions, utility tokens) to pre-ICO investors qualifies as financial intermediation. In consequence, the obligations arising from the AMLA are triggered in the moment of issuance.

FINMA specifies in connection with ICOs that fall within the scope of the AMLA that the obligations arising under the AMLA (e.g., KYC) can be outsourced to financial intermediaries in Switzerland that are affiliated with an SRO or under FINMA supervision, provided that any funds from the ICO are accepted via such financial intermediary: that is, any tokens or fiat currencies paid by investors have to be transferred to the public keys or accounts of the outsourcing partner before being transferred on to the relevant issuer.

iii Exchange and intermediation services

Exchanging fiat currencies against tokens or vice versa or exchanging two different tokens constitutes a financial intermediation activity subject to the AMLA.

If a service provider offers the exchange services directly (i.e., acts as an exchanging counterparty to its clients), this activity qualifies as money exchange under the AMLO. For these services, a *de minimis* threshold of 5,000 Swiss francs applies, and transactions below this threshold are exempted from KYC or identification obligations under the AMLA.[16]

If a service provider offers exchange services with the involvement of a third party (e.g., an exchange platform for tokens), or if the service provider intermediates services relating to the transfer or exchange of tokens or fiat currencies and is involved in the payment process, such services qualify as money and asset transmitting services pursuant to Article 4(2) AMLO and the service provider qualifies as a financial intermediary under the AMLA.

Moreover, FINMA has specified in relation to the provision of payment service providers by institutions under its supervision that transfers of cryptoassets to external wallets (i.e., to wallets administered by third parties) are only allowed if the recipient wallet address belongs to one of its own clients, which has to be verified.[17] FINMA justifies this approach by the fact that there are currently no possibilities on blockchains to provide identifying information on the sender and recipient of a transaction similar to traditional wire transfers (e.g., via SWIFT).

15 cf. Swiss Bankers Association, SBA guidelines on opening corporate accounts for blockchain companies, September 2018 (available at https://www.swissbanking.org/library/richtlinien/leitfaden-der-sbvg-zur-eroeffnung-von-firmenkonti-fuer-blockchain-unternehmen/sbvg_leitfaden_kontoeroeffnung_d.pdf/?set_language=en).

16 cf. Article 51(1)(a) FINMA Anti-Money Laundering Ordinance for entities that are subject to FINMA supervision or the relevant regulations of the SROs.

17 cf. FINMA Guidance 02/2019, Payments on the blockchain, 26 August 2019.

iv Storage services

A storage services provider qualifies as a financial intermediary if it has the power to dispose of the private keys of the stored tokens (custodian wallets). Further, this activity could trigger a banking licence requirement (see Section IV).

VI REGULATION OF EXCHANGES

i Tokens qualifying as securities

Exchanges for securities are regulated under the FMIA, which distinguishes between a stock exchange, a multilateral trading facility (MTF) and an organised trading facility (OTF). Stock exchanges and MTFs are trading venues allowing for the multilateral trading of securities, where trades are entered into on the basis of non-discretionary rules. Stock exchanges, as opposed to MTFs, further require a listing of securities, that is, a formal application process in order to be admitted on the stock exchange. Stock exchanges and MTFs qualify as financial infrastructures and require a FINMA licence according to Article 4 FMIA.

An OTF is a trading facility providing either for a multilateral trading of securities according to discretionary rules or of other financial instruments according to discretionary or non-discretionary rules, or for bilateral trading between the participants and the operator of the OTF. According to Article 43 FMIA, OTFs can only be operated by supervised banks, securities firms, stock exchanges or MTFs that are authorised by FINMA to operate an OTF. Note that the term other financial instruments comprises in particular derivative instruments that do not qualify as securities.

A trading venue for asset tokens and utility tokens that qualify as securities would need to be licensed as a stock exchange or MTF or, if the trading activity qualifies as the operation of an OTF, the operator would require a licence as a bank or securities firm with an approval from FINMA to operate an OTF.

ii Other tokens

In regards to the regulation of exchanges for payment tokens and utility tokens that do not qualify as securities, there are no licence requirements under Swiss law to operate such business in addition to ensuring compliance with Swiss AML requirements (see Section V). However, as the operation of such exchanges usually implies the acceptance of fiat currencies or such tokens on accounts or public keys of the exchange operator, a banking licence requirement could be triggered as an acceptance constituting an acceptance of deposits from the public (see Section IV).

Similar to the provision of brokerage services, an exchange may benefit from the exemption for settlement accounts if the clients' funds accepted on own accounts or public keys are used solely for the execution of trades on the exchange, are not interest-bearing and are transferred on within 60 days. Further, this exemption would only be applicable if the clients were not exposed to an increased bankruptcy risk similar to clients of a foreign exchange trader (see Section IV).

Further, an exchange can benefit from the sandbox exception pursuant to Article 6(2) SBO if fiat currencies and tokens with a value of less than 1 million Swiss francs are accepted from the exchange participants and if the participants are informed of the absence of any prudential supervision over the exchange operator and any protection from a deposit protection scheme.

In any event, the operation of an exchange for tokens constitutes a money and asset transmitting service pursuant to Article 4(2) AMLO. Therefore, an exchange operator qualifies as a financial intermediary that is, in particular, subject to the affiliation obligation with an SRO or a licence requirement by FINMA as a financial intermediary.

VII REGULATION OF MINERS

i Role of mining in virtual currency

In an unrestricted decentralised network (such as the Ethereum or Bitcoin blockchain), the mining of the native tokens of the relevant distributed ledger, usually a payment token, plays an essential role in the record-keeping of transactions on the distributed ledger as there is no central authority monitoring transactions. To secure financial transactions and ensure that there is no fraud, the miners (or crypto miners) must verify transactions and add them to the distributed ledger.

The work of the miners is open to the entire ecosystem of the distributed ledger: everybody can potentially participate on this network and mine tokens. For each block of transactions, miners use mathematical protocols to verify transactions and validate them before sharing the result across the entire network. This process creates virtual currency as the miners are awarded with new virtual currency for their mining activity.

ii Regulatory framework

There is currently no specific legislation addressing the regulatory status of miners in Switzerland. Mining of tokens (self-issuance of tokens) does not trigger a licence requirement under Swiss law provided that the miner does not perform any activity falling within the scope of the regulated activities described in Sections II to VI.

The self-issuance of tokens qualifying as securities is generally not subject to a licence requirement as a securities firm under the FinIA. This conclusion also holds true in the unlikely event that the tokens would qualify as derivatives provided that there is no offer of these derivatives to the public on a professional basis.

iii FINMA scrutiny and enforcement proceedings in connection with mining

FINMA generally has a favourable approach towards blockchain technology, but it monitors cautiously all market participants to ensure that the Swiss blockchain network remains free of fraud, in particular in the context of ICOs. It regularly highlights the risks involved for investors, and is committed to take actions against ICO business models violating or circumventing regulatory laws.

A recent example is the launch in July 2018 of enforcement proceedings by FINMA against Envion AG, a Swiss mining company, for a breach of Swiss financial regulations in the context of its ICO. This resulted in FINMA ruling that the company conducted a deposit-taking activity without being duly licensed as a bank[18] and ordering that the company enter bankruptcy liquidation.

18 https://www.finma.ch/en/news/2019/03/20190327---mm---envion/.

As the regulatory status of activities in connection with the mining of tokens may raise some issues, a no-action letter from FINMA, for example with regards to specific activities of a miner, is always advisable to obtain legal certainty that the contemplated activity complies with all regulatory laws (see Section II.iv).

VIII REGULATION OF ISSUERS AND SPONSORS

i Issuers

In regards to the legal form for issuers of tokens, two types of forms are generally used: a foundation and a joint-stock corporation.

A foundation offers the complete independence and control of the board of the foundation as there are no shareholders. However, its assets must be used in line with the purpose of the foundation as stated in the deed of foundation. Therefore, the distribution of profits is limited to that purpose and it is not possible to distribute profits to the founders. In addition, every foundation is further subject to governmental supervision. Note that certain tax exemptions are available for foundations or stock corporations with public or non-profit purposes alike. However, the conditions for obtaining such exemptions are very restrictive and are usually not met by entities pursuing an ICO.

In the context of an ICO, to the extent that there is, at least partially, a commercial purpose, and the issuer is not pursuing a non-for-profit purpose, the legal form of the Swiss foundation is most of the time not suitable. Its rigid structure does not allow for the flexibility that is generally needed, in particular as the founders have no ownership or any other control over the foundation's assets or funds and have no legal means to influence the foundation's conduct of business. Instead, a joint-stock corporation is the more suitable type of corporate form for issuers of ICOs.

An issuer of an ICO incorporated as a joint-stock corporation must have – unless it is incorporated with a contribution in kind – a paid-in capital of 50,000 Swiss francs (with a minimum share capital of 100,000 Swiss francs) deposited with a Swiss bank. However, following the incorporation, there is no restriction as to the place where the account is held. The issuer may also have an account with a foreign bank.

The issuer must comply with the regulatory requirements, to the extent applicable to the issuer, as set out in Sections II to VI.

Depending on the classification of the tokens issued, an issuer of tokens may be subject to the AMLA if it carries out financial intermediation activities (see Section V.ii). In the context of ICOs and tokens, the issuance of means of payment that cannot be used exclusively with the issuer, the provision of services related to payment transactions in the form of money and asset transmitting services or money exchange services are, for example, financial intermediation activities (see Section V).

ii Sponsors

As long as there is no activity performed falling into the scope of the regulated activities described in Sections II to VI, the sponsorship of tokens – including the marketing, publicity and promoting of tokens – is currently not subject to licence requirements in Switzerland.

However, this is subject to the following:

a licence requirement under the SBA or the FinIA: if the sponsored company has a foreign regulatory status as a bank or securities firm because it has the relevant regulatory status under the foreign legislation, it carries out activities qualified as banking or securities dealing under Swiss legislation or it uses the terms bank or securities firm in its company name, any marketing activities in or from Switzerland for such foreign bank or broker-dealer – provided that such activities are performed by individuals engaged in Switzerland, on a professional and permanent basis – may bring the foreign bank or broker-dealer within the scope of a FINMA branch office or representative office licensing requirement; or

b prospectus requirement: the public offering of tokens, if they qualify as securities in accordance with the FinSA or alternatively, and only until 1 December 2020, in accordance with the CO.

IX TAX

In August 2019, the Swiss Federal Tax Administration (FTA) published a working paper on the tax treatment of cryptocurrencies and ICOs for wealth, personal income and corporate income tax purposes as well as for withholding tax and stamp duty purposes. The practice described in this working paper is set out below. However, it should be noted that this is only a snapshot and that not all tax questions relating to cryptocurrencies or ICOs have yet been addressed and answered conclusively. Consequently, it is possible that the practice of the tax authorities described below may continue to develop and may change. It is therefore highly recommended to obtain advance tax rulings from the responsible tax authorities before performing an ICO .

Further, the following explanations are limited to the tax consequences for issuers who have issued coins or tokens with monetary rights against any counterparty in the form of asset tokens and utility tokens.

Finally, the tax treatment of the tokens at investor level as well as the tax treatment of cryptocurrencies in the form of pure digital means of payment (native tokens or payment tokens) is not addressed.

i Taxation of asset tokens

Asset tokens represent rights of the investor in relation to the issuer, which consist of fixed compensation or of a certain, predetermined participation of the investor in a reference value (e.g., earnings before interest and taxes (EBIT)) of the issuer's business. The tax classification of asset tokens thus depends largely on the civil law structure of the legal relationship.

Until now, asset tokens have been divided into the following three subcategories for tax purposes:

a Debt tokens: these tokens represent the legal or factual obligation of the issuer to repay all or a substantial part of the investment and, where applicable, to make an interest payment.

b Equity tokens: these tokens do not require the issuer to repay the investment. The entitlement of the investor refers to a cash payment, which is measured by a certain ratio to profit or liquidation result, or both.

c Participation tokens: these tokens do not include any obligation of the issuer to repay the investment. The investor's entitlement refers to a proportional share of a certain reference value of the issuer (e.g., EBIT, licence income or sales).

In the following, the tax treatment of these three types of asset tokens for the issuer is described, assuming that the issuer is a corporation with tax residence in Switzerland.

Debt tokens qualify as bonds for tax purposes and are therefore treated as follows:

a Corporate income tax: the funds received from collective fundraising do not constitute taxable income and are recognised as liabilities in the issuer's balance sheet. Any interest payments to the investors are generally business expenses and are therefore tax deductible.

b Withholding tax: both periodic and one-off interest payments on debt tokens are subject to withholding tax at 35 per cent. Whether, and if so to what extent, a refund of such withholding tax is possible depends on the individual investor.

c Stamp duties: the issue of debt tokens is exempt from the securities transfer tax. In contrast, secondary market dealings in debt tokens are generally subject to the securities transfer tax at a rate of up to 0.15 per cent of the purchase price of the debt tokens; however, this is only if a securities dealer in Switzerland or Liechtenstein, as defined in the Stamp Duty Act, is a party or acts as an intermediary to the transaction and no exemption applies.

Equity tokens are regarded as derivative financial instruments for tax purposes and are therefore treated as follows:

a Corporate income tax: funds raised through the issuance of equity tokens qualify as taxable income and are recognised as income in the issuer's income statement. If the issuer has made a contractual commitment to implement a specific project, a provision can be booked as an expense, which reduces the taxable income accordingly. Provisions that are no longer required after completion of the project development are to be released to the income statement. Payments to the investors based on their entitlement to a certain share of the profit or liquidation result (or both) generally qualify as tax-deductible expenses. However, this assumes that the investors are known at the time of payment, that the issuer's shareholders do not hold more than 50 per cent of the issued tokens and that the payments to the token holders do not exceed 50 per cent of EBIT. If these conditions are not met, there is a taxable hidden profit distribution.

b Withholding tax: equity tokens or payments thereof are not subject to withholding tax; however, if the issuer's shareholders hold more than 50 per cent of the issued tokens and the payments to the token holders amount to more than 50 per cent of EBIT, the FTA assumes – as already mentioned above – a hidden profit distribution, which is subject to withholding tax. In the event of any tax evasion, the FTA also reserves the right to levy withholding tax.

c Stamp duties: the issue of equity tokens is not subject to the issuance stamp tax, as the equity tokens do not qualify as participation rights within the meaning of the Stamp Duty Act. In the case of equity tokens purchased by the issuer's shareholders, the question arises of whether the payment represents a taxable contribution or not. This depends on whether or not the purchase price paid for the equity tokens represents a corresponding consideration. If there is such consideration, there is no taxable contribution; however, without such consideration, there is a taxable contribution subject to 1 per cent issuance stamp tax.

d Participation tokens are also considered derivative financial instruments for tax purposes, which is why they are treated in the same way as equity tokens for tax purposes. Reference is made accordingly to the above explanations on the taxation of equity tokens.

ii Taxation of utility tokens

For the purpose of the tax analysis below, it is assumed that the issuer undertakes to use the funds received from the sale of utility tokens exclusively for developing the digital service and to enable investors to access or use the service. The issuer has no further obligations to the investors. Utility tokens are basically to be classified as a contractual relationship between the issuer and the investor. The mandate is that the issuer must act in accordance with the contractual agreement between itself and the investors. Accordingly, utility tokens are treated as follows for tax purposes:

a Corporate income tax: funds raised through the issuance of utility tokens qualify as taxable income and are recognised as income in the issuer's income statement. If the issuer has made a contractual commitment to implement a specific project, a provision can be booked as an expense, which reduces the taxable income accordingly. Provisions that are no longer required after completion of the project development are to be released to the income statement.

b Withholding tax: claims arising from contractual relationships are not subject to withholding tax. Accordingly, the right to use the digital services does not constitute income subject to withholding tax.

c Stamp duties: the issue of utility tokens is not subject to the issuance stamp tax, as the utility tokens do not qualify as participation rights within the meaning of the Stamp Duty Act.

In the case of utility tokens purchased by the issuer's shareholders, the question arises of whether the payment represents a taxable contribution or not. This depends on whether or not the purchase price paid for the utility tokens represents a corresponding consideration. If there is such consideration, there is no taxable contribution; however, without such consideration, there is a taxable contribution subject to 1 per cent issuance stamp tax.

Utility tokens do not qualify as taxable securities within the meaning of the Stamp Duty Act, which is why neither the issuance of, nor secondary market dealings in, utility tokens are subject to securities transfer tax.

X LOOKING AHEAD

As mentioned in Section I, if adopted by the Council of States (the second chamber of the Swiss Parliament as currently proposed), the DLT Bill will introduce DLT rights as a new type of asset representing rights registered on distributed ledgers that may be exercised against the issuer or third parties (e.g., asset tokens or utility tokens). The DLT rights are designed to be the digital equivalent of certificated securities, provided that the right is linked to a DLT registration – as opposed to a certificate – in a way that it may not be exercised or transferred outside such distributed ledger. Any rights that could be issued as certificated securities may be issued as DLT rights, for example: (1) fungible contractual claims (e.g., debt claims); (2) non-fungible contractual claims (e.g., rights arising from a licence agreement); (3) membership rights that can be issued as certificated securities (e.g., rights of shareholders of joint-stock corporations); and (4) rights *in rem* that can be issued as certificated securities (e.g., mortgage certificates). However, DLT rights could not constitute: cryptocurrencies and other tokens that do not represent any rights against the issuer or a third person; or property rights in movable assets or real estate.

According to the DLT Bill, DLT rights would be issued by:

a entering into an agreement regarding the registration of the DLT rights on the distributed ledger between the issuer and the first holder of the DLT rights (the Registration Agreement), which can also be incorporated within the general terms and conditions of a DLT right; and

b a registration of the DLT rights on the distributed ledger. Pursuant to the terms of the Registration Agreement, the DLT rights may only be exercised and transferred via the distributed ledger.

For these purposes, the distributed ledger must meet the following requirements:

a it must create a link between the DLT rights and the distributed ledger in the sense that the holders of the DLT rights (but not the debtor) must have the power to dispose of the DLT rights;

b it must protect the integrity of the DLT rights by appropriate technical and organisational measures against unauthorised access and changes;

c the terms of the DLT rights, the terms of operation of the distributed ledger and the terms governing the registration must be recorded on, or be accessible through, the distributed ledger; and

d the creditors of the DLT rights have to be able to consult independently the integrity of the entries in the distributed ledger relating to the DLT rights.

DLT rights can only be transferred by a transfer of the relevant tokens on the distributed ledger, namely by sending the tokens from the public key of the transferor to the public key of the transferee. The transfer would occur as soon as the tokens are registered on the public key of the transferee according to the rules of the distributed ledger. Furthermore, DLT rights may be used as a basis for the creation of intermediated securities pursuant to FISA if they are immobilised by a securities custodian for this purpose.

The DLT Bill would amend the Swiss bank insolvency rules and the rules of the Swiss Debt Collection and Bankruptcy Act applicable to insolvency proceedings in a way that allows clients of banks and of custodians not regulated as banks to set aside cryptoassets held on public keys by a bank or custodian for the client in the insolvency of a bank or custodian, provided that the cryptoassets are held on a segregated basis for each client or collectively for several clients, provided that the individual balance of each such client is determinable.

These proposals will effectively remedy the hurdle of a written form for the transfer of asset and utility tokens representing rights against the issuer or a third party (see Section II.iii). The proposed segregation right in relation to tokens will improve the protection of investors in case of bankruptcy of a service provider (e.g., custodian wallet providers).

As currently proposed, the DLT Bill would also introduce a new licence category for trading platforms, where DLT rights can be traded. The current types of licences for securities trading (i.e., stock exchanges and MTFs) are not suitable to trade DLT rights. They are only accessible by regulated participants and not by retail clients directly. Furthermore, they require the involvement of separate central counterparties and central securities depositories for the purpose of clearing and settlement of transactions. This would not allow post-trading activities, which are integrated into the trading platform. The proposed licence category for a trading venue for DLT rights would provide the regulatory framework for trading venues, where asset tokens may be traded on a non-discretionary basis.

Finally, further legislative developments will have to be monitored in the future as the supervisory authorities are paying more attention to the compliance of token issuances with securities and financial markets laws generally.[19]

19 For a recent example in Switzerland, reference is made to the FINMA enforcement proceedings regarding the Envion ICO (see https://www.finma.ch/en/news/2019/03/20190327---mm---envion).

Appendix 1

ABOUT THE AUTHORS

OLIVIER FAVRE

Schellenberg Wittmer Ltd

Olivier Favre is a partner in Schellenberg Wittmer's banking and finance group in Zurich. Olivier focuses on derivatives, structured finance and capital markets transactions, and advises clients on financial services, securities, commodities, fund and insurance regulation. He also advises clients on fintech solutions and their legal implementation. He acts for a broad range of clients, including financial institutions, buy-side firms, issuers, insurance companies and industry associations. He is an authorised representative at the SIX Swiss Exchange.

Olivier obtained a doctorate degree in law from the University of Zurich in 2003 (iur, 2003) and a master's degree in law from Harvard Law School (LLM, 2004). For his doctorate thesis, he received the Issekutz Award for outstanding achievements in business law from the University of Zurich.

Prior to joining Schellenberg Wittmer in 2009, Olivier practised as a lawyer in London, specialising in OTC derivatives and structured finance transactions, fund products and capital markets transactions. From 2004 to 2007, he was an associate in Allen & Overy LLP's London-based derivatives practice group. From 2007 to 2009, he was legal counsel in the derivatives and structured finance group at Goldman Sachs International in London.

TAREK HOUDROUGE

Schellenberg Wittmer Ltd

Tarek Houdrouge is a partner in Schellenberg Wittmer's banking and finance, and corporate and commercial group in Geneva. He is co-head of the banking and finance team in Geneva and head of the firm's African regional desk.

Tarek's main areas of expertise are banking and finance, transactions and corporate law, combining banking and finance expertise with an M&A practice. He advises banks and financial institutions on regulatory matters and clients on financing and M&A, in particular involving regulated financial institutions. Tarek's practice also covers commercial contracts and commercial transactions, including restructuring, private equity and joint ventures.

Following his Swiss Bar admission in 2006, Tarek obtained a master of laws from Northwestern University School of Law (Chicago) in 2010 and was admitted to the New York State Bar in 2011. Prior to joining Schellenberg Wittmer, where he has been a partner since 2017, Tarek worked at another big business law firm in Geneva.

FABIO ELSENER

Schellenberg Wittmer Ltd

Fabio Elsener is a senior associate in Schellenberg Wittmer's banking and finance group in Zurich. Fabio focuses on fintech and financial markets regulation, structured finance and capital markets transactions. He advises clients on the legal and regulatory implementation of blockchain and other fintech solutions, as well as on financial services, financial instruments, and fund and banking regulation. He also regularly advises clients on financing and capital markets transactions. His clients include financial institutions, insurance companies and fintech companies.

Prior to joining Schellenberg Wittmer after his Swiss Bar admission in 2016, Fabio Elsener gained experience in the Enforcement Division of the Swiss Financial Market Supervisory Authority (FINMA) and in the legal department of a fintech mortgage company. He completed a secondment as a legal counsel at a Swiss private bank.

SCHELLENBERG WITTMER LTD

15bis, rue des Alpes
PO Box 2088
1211 Geneva 1
Switzerland
Tel: +41 22 707 8000
Fax: +41 22 707 8001
tarek.houdrouge@swlegal.ch

Löwenstrasse 19
PO Box 2201
8021 Zurich
Switzerland
Tel: +41 44 215 5252
Fax: +41 44 215 5200
olivier.favre@swlegal.ch
fabio.elsener@swlegal.ch

www.swlegal.ch

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