
CHAMBERS GLOBAL PRACTICE GUIDES

Blockchain & Crypto-Assets 2026

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Switzerland: Law and Practice

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SWITZERLAND



Law and Practice

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Pestalozzi is a full-service Swiss business law firm that has focused on high-end work for domestic and international clients since 1911. Its lawyers are known for their truly independent approach to advising and representing their clients. The firm guides and supports its clients in their strategic business decisions, anticipates their future challenges and helps them solve their critical issues. Being fully integrated, Pestalozzi encounters no internal limits in shaping

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1. Overview of Blockchain and Crypto-Assets

1.1 Blockchain

1.1.1 Evolution of Uses of Blockchain

Switzerland's Crypto Valley remains one of the world's leading blockchain hubs. According to the CV VC Top 50 Report, the combined valuation of the top 50 blockchain companies in Switzerland and Liechtenstein reached USD461.8 billion in 2025, a 21% increase year-on-year. This is partly associated with increasing regulation Switzerland, but also reflects currently prevailing global geopolitical insecurities, which typically slow down investment activity in non-traditional areas. Nevertheless, the outlook for the Crypto Valley remains optimistic as both established companies and start-ups continue to develop and adapt technologies. In particular, the upcoming AI integration leading to transaction cost efficiency is expected to accelerate growth on blockchain markets.

As in previous years, Zug continues to retain its leading position as a hub for the industry within the Crypto Valley, while Zurich and Liechtenstein have also seen increased venture funding activities. Common use cases include cryptocurrency exchange platforms, tokenisation platforms, custodial and non-custodial wallet services, hot and cold storage solutions, supply chain and trade finance solutions, and DeFi applications. The SIX Digital Exchange (SDX), the world's first fully regulated digital asset exchange, is a flagship example, offering integrated issuance, trading, settlement and custody for digital assets. A significant milestone was reached in March 2025, when the Swiss Financial Market Supervisory Authority (FINMA) granted the first-ever digital ledger technology (DLT) trading facility licence to BX Digital AG, enabling regulated trading and settlement of DLT securities on the Ethereum blockchain. It was the first licence granted based on Switzerland's DLT Act, which entered into force in August 2021.

The development and use of blockchain in Switzerland are influenced by a range of regulatory and legal considerations at both international and domestic level. The most significant domestic development is the proposed amendment to the Financial Institutions Act (FinIA), currently progressing through the legisla-

tive process following a consultation that closed in February 2026. This revision aims to improve the regulatory framework for stablecoins and crypto-assets, enhance Switzerland's competitiveness as a financial centre, and implement international standards. Furthermore, FINMA's evolving guidance on stablecoins and AML requirements will continue to shape how projects are structured. Externally, MiCA remains a key consideration, since Swiss entities serving EU-based customers must comply with it, despite Switzerland not being an EU member.

Switzerland's general technology neutral legal approach means that existing laws apply to blockchain based products and services without specific adaptation. However, the Swiss crypto-specific regulatory environment is evolving and industry-specific laws and regulations are being introduced to foster legal certainty while maintaining a competitive environment.

1.1.2 Regulatory Sandbox

Under Swiss law, only a single regulatory sandbox exists, which can be used by Swiss blockchain-based businesses qualifying as banks.

In order to qualify for this banking sandbox, the blockchain-based business must satisfy the following requirements:

- the acceptance of deposits must not exceed the maximum amount of CHF1 million (even if such deposits are made by more than 20 depositors), provided that such deposits are not invested by the Swiss company and do not bear interest; and
- depositors must be informed (in writing) in advance that the Swiss company is not subject to FINMA supervision and that deposits are not covered by the deposit guarantee scheme.

If these criteria are fulfilled, the deposit-taking activity will not be deemed to be "on a professional basis".

Despite not being a "sandbox" by definition, it is worth mentioning that Swiss licensing requirements apply, in principle, to activities carried out on a "professional basis". The criteria of activities being carried out on a professional basis are defined separately for

banks and other types of financial institutions. In most cases, activities are deemed to be carried out on a professional basis, if pre-defined thresholds are met/exceeded. Activities below such thresholds can be carried out without a FINMA licence (unless otherwise provided by law).

1.1.3 Regulation of Blockchain Technology

Blockchain itself is not specifically regulated in Switzerland. The regulatory approach to blockchain-based industries in Switzerland is characterised by a technology neutral application of existing law. However, regulators continue to monitor the industry's activity and its needs, and increased industry-specific legislative activity has been observed in recent years.

Blockchain activities are generally subject to the same legal and regulatory framework as comparable traditional activities, with targeted adjustments introduced by the DLT Act, which entered into force in 2021. FINMA applies the principle of "same risks, same rules" when supervising blockchain-based business models and engages with market participants within this framework. There are no use cases that are prohibited solely because they are blockchain-based; however, activities such as accepting public deposits, issuing tokens with securities like characteristics or operating payment systems are subject to the relevant licensing and regulatory requirements.

Data protection considerations are a key legal aspect of blockchain-based products and services in Switzerland. Swiss data protection law grants individuals the right to information, as well as the rights to access, correction and deletion of their personal data. In the context of public blockchains, the enforcement of these rights is, however, practically limited due to the absence of a central data controller and the immutable nature of blockchain records. Common mitigation approaches include storing only hash values on chain while keeping personal data off chain, as well as ensuring that users provide informed consent prior to using blockchain-based products or services.

1.1.4 Smart Contracts

Switzerland has no specific laws or binding court decisions on smart contract enforceability. Under prevailing legal doctrine, a smart contract does not qualify

as a contract in the traditional legal sense under the Swiss Code of Obligations (CO). Instead, it is understood as software linked to blockchain-based data sources, which automatically performs the contractual rights and obligations embedded within it when certain conditions are met.

Due to the automated character of a smart contract, the application of civil law principles concerning the formation and execution of traditional contracts to smart contracts raises a number of questions. According to the prevailing doctrine, a computer system lacks the legal personality required to enter into a contract. There may also be legal uncertainty due to the pseudonymity of the users or participants in blockchain networks, and even their legal capacity to initiate transactions that are then automatically executed by the smart contract could be questioned. The legal validity of arrangements related to smart contracts is not, however, *prima facie* excluded. If the objective criteria of a valid contract conclusion are met, smart contracts can be enforceable in Switzerland. However, Switzerland maintains certain formal requirements for certain types of contracts (*wet-in* signatures), which cannot be met by entering into smart contracts. Currently, Swiss doctrine is rather restrictive in this area and contracts not fulfilling the formal execution requirements are typically deemed to be null and void.

1.1.5 Industry and Trade Bodies

In Switzerland, there are several self-regulatory organisations (SROs) that may supervise blockchain-based businesses. In many cases, blockchain-based businesses that qualify as financial intermediaries need a licence from FINMA to operate as a financial institution (eg, a securities firm), as a bank (eg, fintech licence) or as financial market infrastructure (eg, payment system), which includes FINMA supervision in general.

Blockchain-based companies may also qualify as financial intermediaries but do not require any financial market licence for their business activities. In particular, this applies to blockchain-based businesses that provide payment transaction services – ie, carry out electronic transfers for third parties or issue or manage means of payment, for instance (digital) credit cards. In such cases, financial intermediaries must

nevertheless be affiliated with an SRO. Where the blockchain-based company does not hold a FINMA licence, FINMA may only supervise blockchain-based businesses indirectly via the SRO.

The SRO is responsible for monitoring its members' compliance with Swiss AML regulation encompassing, inter alia, AMLA and the SRO's rules and regulations. Beyond SROs, a number of trade associations are active in the Swiss blockchain ecosystem. These bodies have no supervisory powers but can participate in legislative consultation processes and publish non-binding best practice standards, such as the CMTA's Digital Assets Custody Standard and AML Standards for Digital Assets.

1.2 Crypto-Assets

1.2.1 Property Considerations

Under Swiss law, digital assets are generally not subject to traditional property law but follow their own rules. Only ledger-based securities, rights that can only be exercised and transferred via a securities ledger, have been explicitly regulated under the 2021 DLT Act.

The DLT Act does not explicitly answer the general question as to when the transfer of ledger-based securities is final. Signing a blockchain transaction with a private key can constitute a transfer of ownership, though in many cases the transaction is only deemed valid after a validation or staking process. For ledger-based securities, a disposal is legally binding toward third parties if it became irrevocable under the distributed ledger's rules and was entered into the ledger within 24 hours.

The use of digital assets in collateral arrangements is permitted under Swiss law, with general collateral provisions applying. The DLT Act specifically allows a lien over ledger-based securities to be established without transferring them, provided the collateral is visible in the ledger and only the security taker can dispose of the asset in the event of default.

1.2.2 Access to Banking

There are no specific legal restrictions in Switzerland on the banking or payment partners that crypto-asset firms may use. Subject to the fulfilment of customary

AML requirements, crypto-asset services are free to work with any kind of general banking and payment service providers.

1.2.3 ESG/Sustainable Finance

ESG requirements in Switzerland apply equally to digital asset firms. FINMA's focus is currently on climate-related financial risks, seeking to specify the risk management requirements for institutions with regard to climate and other nature-related financial risks.

FINMA's Circular 2026/01 on nature-related financial risks is now in force, clarifying its supervisory practice on the management of climate- and other nature-related financial risks. It applies to banks and licensed entities operating with digital assets. Additionally, the Ordinance on Mandatory Climate Disclosures, in effect since 1 January 2024, requires large public companies, banks and insurers to implement Task Force on Climate-related Financial Disclosures (TCFD) recommendations, covering climate-related risk disclosure and greenhouse gas reduction targets.

1.2.4 Tax

Currently, neither a digital service tax nor any other specific tax legislation applicable to blockchain-based business models or the use of cryptocurrencies has been or is expected to be introduced in Switzerland. Tax laws are, in principle, applied on a technology-neutral basis. A development in tax transparency is underway. Following the OECD's publication of the Crypto-Asset Reporting Framework (CARF) and updated Common Reporting Standard (CRS), the Federal Council submitted a dispatch to Parliament in February 2025 to implement both frameworks in Switzerland, which was approved. This will extend Switzerland's automatic exchange of information regime to crypto-assets for the first time, ensuring they are treated on the same basis as traditional financial assets, and will expand the reporting obligations for crypto-asset service providers accordingly. However, the implementation is still pending.

More generally, the Federal Tax Administration's working paper (2019, updated in 2021) clarifies the treatment of tokens for income, withholding and stamp tax purposes, distinguishing between payment, asset and utility tokens. Tokens are generally treated as assets

subject to cantonal net wealth taxes. Capital gains taxes may apply under certain circumstances.

In sum, the possible tax consequences for the parties involved in cryptocurrency transactions must be analysed on a case-by-case basis under current federal and cantonal tax laws (and existing guidelines). A binding advance tax ruling is recommended for significant transactions.

1.2.5 Insolvency

The general Swiss insolvency regime applies to digital asset firms. The only crypto-specific addition was introduced in 2021 by the DLT Act. Thereby, an explicit legal basis was stipulated for the segregation of crypto-assets held for the beneficial owner by a custodian, in the event of the latter's bankruptcy.

Such segregation of crypto-assets is subject to two prerequisites.

- First, the custodian (ie, the debtor in bankruptcy) must have undertaken towards the beneficial owner (ie, the third-party in bankruptcy) to keep the crypto-assets available for the beneficial owner at all times, meaning that the beneficial owner has uninterrupted power of disposal over the crypto-assets.
- Secondly, the crypto-assets must be individually attributable to the third-party or to a community of owners, and the individual share of the third party of such communal assets must be known.

If the above criteria are met, the beneficial owner has a claim for the surrender of the crypto-assets against the bankruptcy estate of the custodian, however, it should be noted that the cost arising from such surrender must be borne by the beneficial owner, not the bankruptcy estate.

In January 2026, FINMA further clarified these requirements through Guidance 01/2026. Banks may hold crypto-assets as segregable custody assets benefiting from bankruptcy protection, either in individual custody or in collective custody with clear client shares. Where custody is delegated to foreign custodians, equivalent prudential supervision and insolvency protection must be ensured. For collective invest-

ment schemes, crypto-assets must generally be held with a Swiss custodian bank, with delegation to third parties permitted only if equivalent standards are met and investors are appropriately informed.

1.2.6 Industry and Trade Bodies

Please refer to **1.1.5 Industry and Trade Bodies**, which applies equally to the crypto-asset industry.

2. Regulation

2.1 Regulators and International Alignment

FINMA is the most relevant regulatory body to businesses or individuals using blockchain technology or operating fintech companies in Switzerland. As supervisor and regulator, FINMA is responsible for protecting investors and creditors. It also ensures the proper functioning of the Swiss financial market and may, therefore, publish guidelines, information for individuals or public warnings. In the field of blockchain and fintech, FINMA can be approached for a pre-assessment concerning tokens or business models. Applying a risk-based approach when dealing with institution's requests, FINMA is able to adapt its practice immediately in order to take increased market risks into account.

Switzerland has implemented Financial Action Task Force (FATF) recommendations on virtual assets and VASPs, applying the same AML obligations to crypto-assets as to fiat currency. In 2021, the AML Ordinance was amended to lower the customer identification threshold for crypto exchange transactions from CHF5,000 to CHF1,000, going beyond minimum FATF standards. FINMA has also confirmed that blockchain-based payment systems and stablecoins are assessed against international standards, such as the Principles for Financial Market Infrastructures (PFMI).

2.2 Crypto-Asset Regulatory Frameworks

FINMA distinguishes between three token categories:

- payment tokens (cryptocurrencies used as means of payment);
- utility tokens (providing access to a digital application or service); and

- and asset tokens (representing debt or equity claims on the issuer).

This token categorisation and the treatment of tokens by FINMA are rather straightforward from the perspective of the Swiss financial market laws. FINMA's focus is on the economic function and purpose of a token (substance over form), and follows the principle of "same risks, same rules", while taking into account the specific features of each project.

There is no crypto-specific regulatory framework in Switzerland. Existing financial market laws apply on a technology-neutral basis, with the 2021 DLT Act filling identified gaps. Depending on the business model, the Banking Act, the FinIA, the Financial Market Infrastructure Act (FMIA), the Collective Investment Schemes Act and/or the AML Act may apply.

Any activity crossing defined thresholds, such as accepting public deposits, operating a trading platform, managing assets, or providing payment services, triggers licensing requirements. AML obligations apply broadly to anyone professionally transferring or managing crypto-assets.

No specific crypto activities are outright prohibited, but operating without the required licence is unlawful.

No major crypto-specific regulations have recently come into force recently, but a significant domestic development is underway. In October 2025, the Federal Council opened a consultation on a proposed amendment to the FinIA, aimed at improving conditions for innovative fintech business models, enhancing Switzerland's attractiveness as a financial centre, and implementing international standards. The Federal Council proposes introducing two new categories of financial institutions under the FinIA:

- Payment Institutions, replacing the existing "fintech licence" under the Swiss Banking Act (BankA); and
- Crypto Institutions, authorised to provide custody, trading and other services relating to crypto-based assets with trading characteristic.

Additionally, payment institutions are granted exclusive authority to issue stable, crypto-based means of payment.

The consultation ran until February 2026, with the proposed regulation targeting stablecoins and crypto-assets specifically.

2.3 Regulated Firms and Legal Wrappers

The regulatory consequences do not fundamentally change merely because the activity is carried out through a legal wrapper, such as a fund or regulated firms and/or investment funds with exposure to crypto-assets. In the absence of specific legal definitions for a specific digital asset (eg, DLT-based securities or crypto-assets), digital assets must be classified according to the categories provided for traditional assets. In line with the principle of technology neutrality, the existing rules applicable to traditional asset categories must also be applied by companies operating with digital assets.

2.4 Token Issuance

Switzerland has a well-established initial coin offering (ICO) industry. Before launching, project owners must assess which Swiss financial market laws apply, as an ICO may trigger licensing requirements under the Banking Act, the FinIA, the FMIA, the Collective Investment Schemes Act and/or the AML Act. The applicable requirements depend heavily on how the token is classified, as a payment, utility or asset token.

There are no mandatory white paper requirements specific to crypto-asset issuances in Switzerland. However, if the tokens qualify as securities, the Financial Services Act's prospectus requirements may apply. Marketing materials must comply with the Swiss Unfair Competition Act, and if tokens qualify as collective investment schemes, the Collective Investment Schemes Act's disclosure rules apply. For any significant issuance, obtaining a binding tax ruling and conducting a pre-assessment with FINMA is considered best practice.

2.5 Market Abuse

Switzerland's market abuse framework is set out in the FMIA, which prohibits insider trading (Article 142 FMIA) and market manipulation (Article 143 FMIA).

The FINMA enforces these provisions against all market participants – both individuals and legal entities – regardless of whether they are subject to prudential supervision. Prohibited behaviour includes trading on material non-public information and any conduct designed to create artificial prices or mislead the market.

The key distinction compared to traditional securities is one of scope. The FMIA market abuse provisions apply to financial instruments within the scope of the FMIA. Crypto-assets that do not qualify as securities – such as pure payment tokens like bitcoin – may fall outside the specific FMIA market abuse regime. Where crypto-assets do qualify as securities – such as certain asset tokens – the full FMIA market abuse regime applies in the same way as for traditional securities.

Recent regulatory discussions involving FINMA have highlighted increasing attention to potential market abuse risks in crypto markets, although no dedicated crypto-specific market abuse regime has been introduced to date.

2.6 Non-Compliance

FINMA enforces Swiss financial market laws actively. In 2024, FINMA carried out 235 investigations relating to the unauthorised acceptance of public deposits, including by fintech business models. Also, FINMA carried out 232 investigations related to unauthorised financial intermediation, lack of SRO affiliations and unauthorised fintech business models (separate data on the fintech sector was not provided by FINMA).

FINMA's enforcement activities may, in particular, result in criminal reports to law enforcement agencies, activity bans, withdrawals of licences, the opening of bankruptcy proceedings or the publication of orders against institutions.

FINMA is willing to consistently take action against financial service providers in the fintech area that violate or circumvent supervisory laws, such as the banking, securities or AML regulations.

FINMA is willing to take action against foreign firms providing services into Switzerland without

the required authorisation. In 2024, FINMA issued requests for administrative assistance from foreign countries to prosecute in 34 cases.

FINMA's enforcement stance is unlikely to soften. It has signalled a continued willingness to act against firms that violate or circumvent supervisory laws in the fintech and crypto space. The growing influence of MiCA for Swiss firms serving EU customers may also indirectly drive further regulatory alignment domestically.

3. Licensing and Set-Up Requirements

3.1 Licensing Requirements

Neither blockchain technology nor cryptocurrencies are currently governed by any sector-specific laws or regulations. Therefore, existing laws and regulations apply to the new blockchain technology and, respectively, blockchain-based business models. Consequently, before a blockchain-based business model is implemented or digital assets are marketed, the project owner should be aware that several statutes may apply in Switzerland (in addition to foreign laws).

Licensing requirements are triggered when a blockchain or crypto-asset business crosses defined activity thresholds, such as accepting public deposits, managing assets, operating a trading platform, or providing payment services. The applicable licence depends on the business model and token classification, and may include a banking licence, securities firm licence, DLT trading facility licence, fintech licence or payment system authorisation.

Swiss licensing requirements apply to activities carried out on a professional basis in or from Switzerland. Foreign firms targeting Swiss clients or operating from Switzerland may trigger Swiss licensing requirements regardless of where they are formally incorporated, if they maintain a permanent physical presence in Switzerland.

3.2 Set-Up Requirements

Swiss licensing requirements are highly activity driven and depend on the specific regulated activity and corresponding licence category. Entities whose busi-

ness falls within the scope of banking regulation must obtain a full banking licence, which entails extensive regulatory requirements, including minimum capitalisation, robust governance structures, fit and proper criteria for key individuals, comprehensive risk management frameworks, and adequate organisational arrangements. Comparable prudential and organisational requirements apply to securities firms licensed under the FinIA.

A simplified fintech licence is available to entities that accept public deposits of up to CHF100 million, provided such deposits are neither invested nor interest bearing. This regime entails reduced capital and organisational requirements compared to a full banking licence. Firms that professionally provide custody or safekeeping of crypto-assets for clients are generally required to hold at least a fintech licence.

Licensing of DLT trading facilities is governed by the FMIA. FINMA has issued specific admission, operational and technical requirements for such facilities, including mandatory reviews of smart contract code and requirements regarding operational resilience and business continuity.

Given the complexity and supervisory expectations associated with Swiss licensing procedures, early engagement with FINMA is both common practice and strongly recommended.

3.3 Change of Control

Under Swiss law, there are no specific change in control requirements applicable to digital asset firms. Instead, digital asset firms are subject to the same general rules as other firms outside the blockchain and cryptocurrency industry. If the business model is subject to licensing requirements in Switzerland, change in controls regularly trigger notification or authorisation requirements.

3.4 Passporting

Swiss licences typically cannot be passported into other jurisdictions. As Switzerland is neither a member of the EU nor the EEA, Swiss firms do not benefit from EU passporting rights – meaning a FINMA licence does not grant automatic access to EU markets. Swiss companies wishing to serve EU clients

must typically set up a separate EU subsidiary to benefit from MiCA passporting rights across EU member states or implement EU requirements as minimum standards.

Switzerland has entered into the Berne Financial Services Agreement (BFSA) with the United Kingdom, which establishes a reciprocal framework enabling Swiss and UK financial service providers to offer cross border investment services to professional clients and certain high net worth individuals without establishing a local presence, within a defined and limited scope of services. For Swiss service providers, the agreement facilitates the provision of selected investment services into the United Kingdom, and vice versa, subject to compliance with the applicable conditions of the agreement.

Financial service providers wishing to rely on the Berne Financial Services Agreement must conduct prior notification or registration with the competent supervisory authority in the host state. The agreement is based on mutual reliance on home-state regulation and supervision and does not provide for passporting or unrestricted market access beyond its expressly defined scope.

4. Cross-Border Services

4.1 Marketing

Switzerland does not have a specific cross-border regime for crypto-asset services, but foreign firms targeting Swiss clients may trigger Swiss licensing requirements depending on the nature and scale of their activities. Since Switzerland is not an EU or EEA member, MiCA does not apply directly, but Swiss firms serving EU-based customers must comply with MiCA requirements when operating in the EU.

The rules applicable to marketing of digital assets are dependent on the initial qualification of the digital assets. In general, marketing activities in Switzerland are subject to the conduct rules under the Swiss Unfair Competition Act.

In addition, specific financial market regulatory provisions, particularly the special requirements of the

Swiss Financial Services Act and the Swiss Collective Investment Schemes Act may apply if the digital assets qualify as financial instruments or collective investment schemes (particularly asset tokens). Depending on the nature and scope of the activity (sole marketing, offer, service provision), such requirements may solely consist in the obligation to designate marketing material as such or expand to comprehensive regulatory conduct rules, such as prospectus requirements and affiliation obligations.

4.2 White Labelling

In Switzerland, white-labelling is permitted in principle but subject to strict conditions. A FINMA-licensed entity must remain fully responsible for the regulated activity and cannot “rent out” its licence. The licensed institution must act as the contractual counterparty and retain effective control over compliance, including AML and risk management.

Outsourcing is allowed only where it does not impair supervision and key functions remain with the licence holder. Consequently, white-labelling does not enable unlicensed firms to independently provide regulated services in Switzerland.

5. Decentralised Finance

5.1 Ability to Use DeFi

DeFi applications are among the recognised use cases in Switzerland, and there is no outright prohibition on DeFi activity. CeFi firms in Switzerland may interact with or utilise DeFi protocols, but they remain fully subject to regulatory requirements. Swiss regulators emphasise that firms cannot avoid regulation by using decentralised structures. If a regulated activity is performed, the regulatory framework still applies irrespective of the technology applied.

5.2 DeFi Structures

Switzerland does not recognise decentralised autonomous organisations (DAOs) as a standalone legal form. DeFi projects therefore operate through traditional Swiss legal entities acting as a legal wrapper for on-chain governance structures. Dominating structures are particularly the Swiss foundation (Articles

80-89 Civil Code), association (Articles 60-79), and GmbH structures under the CO.

With the Ethereum Foundation, Cardano Foundation, Tezos Foundation, Web3 Foundation domiciled in Zug, the Swiss foundation is the dominating legal structure to operate DAO in Switzerland.

A Swiss foundation is established under the Swiss Civil Code by executing a deed of incorporation, endowing the foundation with assets (minimum capital of CHF50,000), appointing one or more founders (who need not be Swiss residents), and registering the foundation in the Commercial Register. The foundation must have a registered office in Switzerland and a foundation board composed of one or more members, at least one of whom must be resident in Switzerland, and it is subject to supervision by the competent cantonal foundation supervisory authority (and, where applicable, FINMA). Reporting and accounting are mandatory, while an audit is only required if certain size or fundraising thresholds are exceeded, and the foundation’s purpose is generally irrevocable once established.

Other requirements apply in case of establishment of other types of legal structures in Switzerland.

5.3 Liability

In Switzerland, there is currently no Federal Supreme Court case law specifically addressing accountability and liability for harm caused by DeFi. Nevertheless, as in other areas of Swiss law, DeFi-related harm is assessed on the basis of the general rules of civil liability, which apply in a technology neutral manner irrespective of the decentralised or automated nature of the underlying system.

Legal claims may arise on both a contractual and a non-contractual basis. Where a legal relationship exists between the user and an identifiable operator of a DeFi platform (for example through terms of use governing access to a trading interface or protocol), liability may be assessed primarily under contract law (Articles 97 et seq CO). In the absence of a contractual relationship, potential claims are typically limited to non-contractual liability, in particular tort liability under Article 41 of the CO or, depending on the cir-

cumstances, unjust enrichment. Such non contractual claims are subject to stricter requirements, notably the need to establish an unlawful act, fault, damage and a causal link, and they often face significant hurdles in identifying a legally responsible party where control is diffuse or anonymous.

6. Payments and Stablecoins

6.1 Payments

In Switzerland, payments for goods and services made with cryptocurrencies are generally permitted, and there are no specific cryptocurrency-related limits.

For such payments, the general principles of Swiss civil law apply, notably contract law. Therefore, the limitations that do apply are to be found in the CO, which sets out the material and formal requirements for the valid entry into and performance of agreements such as purchase agreements, service agreements and employment agreements.

6.2 Stablecoins

6.2.1 Fiat Currency and Algorithmic Stablecoins

Switzerland does not have specific stablecoin legislation, but FINMA distinguishes between different stabilisation mechanisms in its supervisory practice. Stablecoins backed by fiat currency deposits with a fixed redemption right may trigger banking regulation, and if they also qualify as a payment system of significant importance, the FMIA may additionally apply. Algorithmic stablecoins, where stabilisation depends on a basket of currencies or commodities managed by the operator, may be classified as collective investment schemes. In both cases, FINMA considers AML obligations to be “almost always” applicable.

6.2.2 Stablecoin Regulation

There is no bespoke stablecoin framework in Switzerland, existing financial market laws are applied on a technology-neutral, substance-over-form basis. Depending on the project structure, stablecoin issuers may fall under banking regulation, financial market infrastructure regulation, collective investment schemes regulation and/or AML obligations. FINMA has issued specific guidance on stablecoin projects, notably setting minimum requirements for the use of bank default guar-

antees as an alternative to obtaining a banking licence – including that each customer must have a direct claim against the guaranteeing bank and that the guarantee must cover all public deposits at all times.

6.2.3 Backing Assets

FINMA has issued minimum requirements for issuers using bank default guarantees to avoid a banking licence. These require that:

- each customer has a direct claim against the guaranteeing bank;
- the guarantee covers all public deposits including any interest earned;
- total deposits never exceed the guarantee limit, and
- the guarantee allows for uncomplicated and rapid enforcement by depositors.

FINMA has also noted that paying interest on stablecoin deposits increases the risk of triggering banking regulation.

6.2.4 Special Considerations

Switzerland does not have a specific systemic risk framework for stablecoins.

7. Tokenisation and Real-World Assets

7.1 Treatment

Switzerland applies its technology-neutral approach to tokenised assets, meaning they are regulated in the same way as their non-blockchain equivalents, based on their economic function. Asset tokens representing debt or equity claims are treated as securities and subject to the same rules as traditional securities. The 2021 DLT Act introduced ledger-based securities as an explicit legal category, allowing rights to be issued, transferred and held on a blockchain while remaining subject to the same regulatory framework as conventional securities.

The SDX is a practical example of this approach in action – operating as a fully regulated financial market infrastructure for digital assets under the same framework as traditional exchanges and central securities depositories.

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