

# THE LIECHTENSTEIN AND SWISS BLOCKCHAIN LEGISLATION

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# LIECHTENSTEIN

## Liechtenstein Blockchain Act (Act on Tokens and Trusted Technologies, TVTG)

- **Adopted by Liechtenstein Landtag on 3 October 2019**
- **Entry into force on 1 January 2020**
- **Comprehensive legal framework for token economy**
- **Content**
  - PART I: Scope and Definitions (art. 1-2)
  - PART II: Private law of tokens (art. 3 – 10)
  - PART III: Regulation of DLT service providers (Art. 11-49)

# LIECHTENSTEIN

- **Scope and Definitions (Art. 1-2)**

- a) “Trustworthy Technologies (TT)”: technologies ensuring the integrity of Tokens, the unambiguous assignment of Tokens to a TT-identifier as well as the transfer of Tokens;”
- b) “TT systems”: transaction systems enabling a secure transfer and custody of Tokens ... using Trustworthy Technologies.“
- c) „Token“: an information in a TT system which:
  1. may represent claims against or corporate rights in a person, rights in rem| or other absolute or relative rights, and
  2. is assigned to one or several TT identifiers.“

Blockchain or DLT

Token as a container

# LIECHTENSTEIN

- **Private Law of Tokens (Art. 3-10)**
  - Scope/private international law (art. 3 and 4)
    - Issue of Tokens by Issuers in Liechtenstein or
    - Choice of Liechtenstein law by parties to an agreement relating to tokens
    - Token is deemed to be located in Liechtenstein if Liechtenstein law applies
  - Possession and Ownership in relation to Tokens (art. 5)
    - Holder of private key has possession of the Token
    - The possessor of the Token is presumed to be its owner

# LIECHTENSTEIN

- **Private Law of Tokens (Art. 3-10)**

- Disposition of Tokens (Art. 6)

2) The disposition of a Token requires:

- a) the completion of the transfer in accordance with the rules of the TT System; limited real rights may be created without a transfer provided it is recognizable for third parties and the time of the creation can be determined unambiguously;
- b) the transferor and the transferee want to transfer ownership of or create a limited real right in the Token; and
- c) the transferor has power to dispose of the Token.

Non possessory  
security interests

“dinglicher Vertrag”/  
abstraction principle

“nemo plus”

# LIECHTENSTEIN

- **Private Law of Tokens (Art. 3-10)**
  - Effects of a Disposition (Art. 7)

1) The disposition of a Token effects the disposition of the right represented by the Token.

2) If the effects referred to in para. 1) do not occur by operation of law, the obligor shall take appropriate measures in order to ensure that:

- a) the disposition of the Token effects, directly or indirectly, the disposition of the right represented by the token; and
- b) to prevent competing dispositions in relation to the right represented by the Token.

Coordination of digital and real-world disposition

e.g., by setting-up SPVs, appointing trustees, etc.

# LIECHTENSTEIN

- **Private Law of Tokens (Art. 3-10)**
  - Legitimation and Liberation (Art. 8)
    - 1) The person identified by the TT System as the owner of the Token is deemed to be the lawful holder of the right represented by the Token.
    - 2) The obligor shall be discharged by paying the person identified by the TT System as the owner of the Token, unless he knew or ought to have known that this person was not the lawful holder of the right represented by the Token.
  - Protection of innocent acquirer (Art. 9)
  - Mortification of Tokens (Art. 10)



legitimation

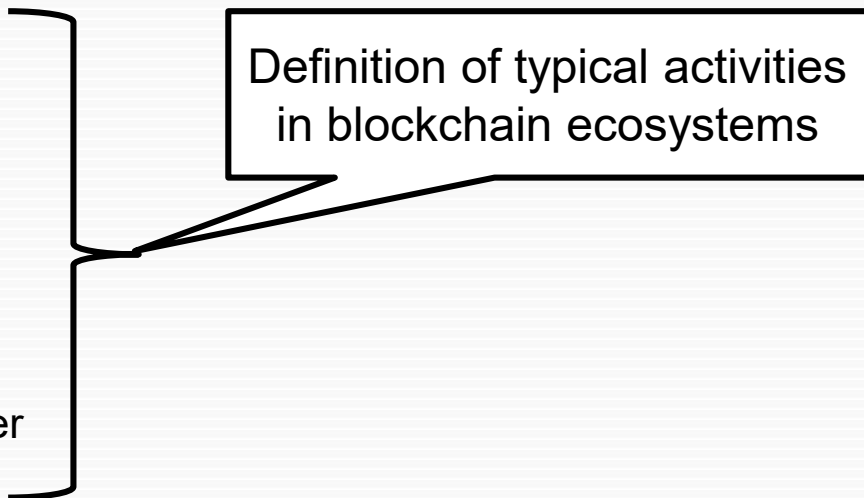


Discharge of obligor

# LIECHTENSTEIN

- **Regulation of TT Service Providers (Art. 11-49)**

- TT Service Providers (Art. 2(i))
  - Token Issuer
  - Token Producers
  - Wallet Providers
  - Token Custodians
  - Physical Validator
  - Token Exchanges
  - TT Auditor
  - TT Price Information Provider
  - TT Identity Provider



Definition of typical activities  
in blockchain ecosystems



# LIECHTENSTEIN

- **Regulation of TT Service Providers (Art. 11-49)**
  - Registration with FL FMA
    - Conditions & requirements
      - Fit and proper
      - Minimum capital
      - Organisation
      - Risk management and internal controls
  - Subject to financial market (or other) regulation
  - Transparency: Minimum information for token issues (KIID) (if no prospectus must be published)

# SWITZERLAND

## **Federal act on the adaption of federal law to developments in the technology of distributed electronic registers**

- Federal Council Report on legal foundations of DLT and Blockchain in Switzerland (with a focus on the financial sector) (December 2018)
- Preliminary draft submitted to public consultation in March 2019 (until July 2019)
- Draft will be submitted to the parliament before end of 2019
- No comprehensive legal framework for DLT- or Token economy, focus on removal of obstacles in existing legislation
- Entry into force not before the end of 2020

# SWITZERLAND

## Content

- **Private law**
  - Framework for digital securities (“DLT-Wertrechte”)
  - Integration in general securities law (book 5 of the Code of Obligations)
- **Insolvency law**
  - segregation of cryptocurrencies and DLT Securities
- **Financial market regulation**
  - DLT trading systems



# SWITZERLAND

## Digital Securities (“DLT-Wertrecht”)

- **Same functionalities as paper securities**
  - Transfer according to rules of DLT system
  - Legitimation and liberation
  - Good-faith acquisition
- **Minimum requirements for DLT systems**
- **Digital securities are not intermediated securities (Federal Intermediated Securities Act)**

# CONCLUSIONS

- **Issuance, custody, transfer and trading of securities promising use cases for blockchain technology**
- **Robust legal framework necessary (but not sufficient) condition**
- **Use of traditional securities law concepts goes a long way to resolving legal issues in the DLT context**
- **Key issues**
  - Minimum requirements for DLT systems
  - Mortification
  - Interface with intermediated securities law

# LEGISLATIVE MATERIALS

## Liechtenstein

Vernehmlassungsbericht der Regierung betreffend die Schaffung eines Gesetzes über auf vertrauenswürdigen Technologien (VT) beruhende Transaktionssysteme (Blockchain-Gesetz; VT-Gesetz; VTG) (28. August 2018)

Bericht und Antrag (BuA) der Regierung an den Landtag des Fürstentums Liechtenstein betreffend die Schaffung eines Gesetzes über Token und VT-Dienstleister (Token- und VT-Dienstleister-Gesetz; TVTG), BuA 54/2019.

Stellungnahme der Regierung zu den anlässlich der ersten Lesung im Landtag aufgeworfenen Fragen, BuA 93/2019)

## Switzerland

Schweiz. Bundesrat, Rechtliche Grundlagen für Distributed Ledger-Technologie und Blockchain in der Schweiz, Eine Auslegeordnung mit Fokus auf dem Finanzsektor Bern, 14.12.2018 (zit. Bundesrat, DLT-Bericht).

Eidg. Finanzdepartement, Vorentwurf eines Bundesgesetzes zur Anpassung des Bundesrechts an Entwicklungen der Technik verteilter elektronischer Register vom 22. März 2019.

Eidg. Finanzdepartement, Bundesgesetz zur Anpassung des Bundesrechts an Entwicklungen der Technik verteilter elektronischer Register, Erläuternder Bericht zur Vernehmlassungsvorlage (22.3.2019)

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