

New Swiss DLT regulation as of 2021

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DLT Framework Comment

On 25 September 2020 Parliament approved new regulations for Blockchain and Distributed Ledger Technology (DLT).⁽¹⁾ The goal of this new legal framework is to further establish and increase Switzerland's reputation as a leading, innovative and sustainable location for fintech and DLT companies.

DLT framework

DLT allows shared data management and, in particular, shared accounting among participants that do not know or do not trust each other's identity.

The new DLT framework provides advanced regulatory solutions and amends 10 federal acts, including:

- the Swiss Code of Obligations;
- the Federal Act on Debt Enforcement and Bankruptcy;
- the Federal Act on International Private Law; and
- other legal acts in the fields of financial markets anti-money laundering.

The new DLT framework contains the following noteworthy features:

- A new authorisation for trading venues focusing on digital assets (DLT trading facilities) is introduced in the Financial Market Infrastructure Act. Its purpose is to offer services in trading, clearing, settlement and custody with DLT-based assets. DLT trading facilities will be allowed to admit as participants not only regulated financial market players, but also other legal entities and private customers (provided that they meet the requirements of the Swiss Code of Obligations and trade in their own name and for their own account). Entities with this authorisation will therefore be able to operate so-called 'organised trading facilities' that only banks, securities firms and other authorised or recognised trading venues are currently permitted to do.
- The new regulation entails a regulatory framework for custody providers which clarifies the regulatory treatment of custody service providers for digital assets. In particular, it clarifies the treatment of digital assets in a bankruptcy event of a custodian in favour of clients. This framework makes the provision of (pooled) custody services without a banking licence requirement significantly easier.
- The new regulation introduces a new type of digital securities, the so-called 'uncertificated register securities'. Only rights that can be securitised and are freely transferable may be registered and transferred digitally. Together with the new rules for corporations looking to issue shares in a tokenised form, it will enable, through the electronic registration of rights, the creation and trading of these securities without legal uncertainties and with the same protection and functionality as a traditional security.

On the basis of the DLT framework, a blanket ordinance⁽²⁾ aims to introduce the legislative amendments into the federal legislation. On 19 October 2020 the Federal Department of Finance initiated the consultation of the cantons, political parties and other interested groups on the blanket ordinance. This process will run until 2 February 2021.

The amendments to the acts and ordinances are tentatively expected to enter into force on 1 August 2021, except for the amendments to the Financial Services Act and the Financial Institutions Act, which have already been adopted by Parliament as part of the DLT framework. They will enter into force earlier.

Comment

These new legal developments should be welcomed overall. Indeed, the legislature took a pragmatic approach, recognising the growing and widespread use of DLT and crypto-based assets. Moreover, the new law offers helpful solutions that should reassure market actors by bringing about more legal certainty and comfort (eg,

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through the removal of barriers for DLT applications and the implementation of abuse-mitigating measures). Because Switzerland already has a world-class and pioneering infrastructure for financial markets, these qualities should allow it to remain at the forefront of the DLT and fintech scene.

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Endnotes

(1) The DLT framework is available in [German](#), [French](#) and [Italian](#).

(2) Available in [German](#), [French](#) and [Italian](#).

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