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The Digital Regulator

Switzerland boosts DLT/blockchain framework conditions

Abstract

On 27 November 2019 the Swiss Federal Council adopted the dispatch on the framework conditions for DLT/blockchain that aims to increase legal certainty, remove barriers to entry for applications based on DLT/blockchain and reduce the risk of abuse.

This step provides Switzerland with a very advanced, fundamental and comprehensive legal framework, achieved by adapting existing laws instead of introducing a specific technology-related law. The dispatch proposes specific amendments to nine federal acts, covering civil securities, insolvency and financial market laws. The Swiss Parliament is expected to examine the proposal for the first time in early 2020.

Other noteworthy regulatory developments include the Basel Committee on Banking Supervision (BCBS) anticipating work on the prudential treatment of crypto assets (of obvious relevance to emerging crypto banks and banks dealing with crypto assets), the likelihood that in Germany, banks will be given authorisation to offer the sale and storage of cryptocurrencies (poised to boost cryptofinance in Germany), growing crypto legal certainty in England (demonstrating the regulatory commitment to crypto) and the prospect that in Singapore, cryptocurrency-based derivatives will be listed on the regulated exchange (which would further consolidate the country's position as a prime cryptofinance hub).

Switzerland further improves framework conditions for DLT/blockchain companies

- ✔ *The Swiss Federal Council has adopted the DLT/blockchain dispatch.* On 27 November 2019[link1] the Swiss Federal Council published a draft bill aimed to further improve the framework conditions for DLT/blockchain firms and applications[1]. The dispatch proposes specific amendments to nine federal acts, covering civil securities, insolvency and financial market law. It introduces DLT/blockchain uncertificated securities in the Swiss Code of Obligations that serve the same functions as traditional securities or centrally registered bookentry securities, and sets out rules for their establishment, transfer and cancellation. Such assets will then enjoy protection similar to that granted to traditional certificated securities. This step fundamentally increases legal certainty regarding the ownership and transfer of DLT/blockchain-based assets as well as facilitating digitisation/tokenisation without excessive prescription. The dispatch further regulates the segregation of crypto-based assets in the event of bankruptcy in the Federal Law on Debt Collection and Bankruptcy and harmonises the provisions of the law on the insolvency of banks accordingly, significantly improving legal certainty for market participants. The draft bill also introduces DLT/blockchain trading facilities as a new regulatory licence category in the Financial Market Infrastructure Act, defined as a professionally operated venue for the multilateral trading of DLT/blockchain securities – allowing such platforms to trade, store and transfer crypto-based securities to regulated financial market players and private customers.

- ✓ *The dispatch further consolidates Switzerland's primacy as a crypto/blockchain nation.* The dispatch provides Switzerland with the best possible framework conditions for it to continue to evolve as a leading, innovative and sustainable location for blockchain companies. It strengthens the Swiss capital market and increases opportunities and funding sources for Swiss companies in all sectors of the economy, especially for SMEs. The rules help to level the legal playing field between token offerings and traditional capital market transactions. They also deliver a robust regime for the tokenisation of instruments such as shares and bonds, which in turn ensures more professional issuance of digital assets and related cryptofinance processes, complemented by relevant secondary trading facilities – often seen as the missing link for the development of tokenised markets.

- ✓ *Entry into force after a parliamentary debate and adoption.* In a report issued on 14 December 2018, for the first time the Federal Council identified the need to enhance legal certainty, to remove specific hurdles for blockchain applications and to limit the risks of the technology being abused for fraudulent purposes. It then instructed the Federal Department of Finance and the Federal Department of Justice and Police to draw up a legislative proposal – which was presented on 22 March 2019 in the form of a document open for consultation until the end of June 2019. The dispatch released on 27 November 2019 has considered up to 80 responses. It is expected to be examined by the Swiss Federal Parliament for the first time in early 2020. Both parliamentary chambers will give their opinion on the text before promulgation. The time needed until final adoption will depend on the nature of the parliamentary debate. The Act could enter into force in 2021.

Other noteworthy developments

The BCBS is working on the prudential treatment of crypto assets

- The BCBS announced the publication of a discussion paper[link1] on the prudential treatment of crypto assets and the seeking of views from stakeholders on a wide range of issues. The BCBS will also assess the implications for banks and supervisors of a sudden increase in the role and use of crypto assets, including stablecoins[link1]. The decisions of the BCBS will affect all banks dealing with crypto assets in various quantitative (capital and liquidity rules) and qualitative (e.g. risk management organisation, disclosure) dimensions.

Germany soon to allow its banks to offer the sale and storage of cryptocurrencies

- The new law implementing the fourth EU Money Laundering Directive in Germany takes into account the fact that electronic money products are increasingly considered to be a substitute for bank accounts. It opens the door for German banks to handle cryptocurrencies directly, without needing to use a third-party custodian. The law[link1] passed by the German federal parliament is expected to be signed off soon by the nation's 16 states. Once passed, the law is likely to boost cryptofinance in Germany.

UK increases crypto legal certainty

- A legal statement by the UK Jurisdiction Taskforce recognises crypto assets as tradable property and smart contracts as enforceable agreements under English law. This statement[link1] was compiled after six months of consultation and offers new clarity with regard to the regulation of crypto assets. This development shows the commitment of the UK community to the development of its cryptoeconomy.

Singapore may allow cryptocurrency-based derivatives on regulated exchanges

- The Monetary Authority of Singapore (MAS) is looking into the possibility of allowing cryptocurrency-based derivatives[link1] to be traded on regulated platforms, in response to the increasingly high demand for cryptocurrency and cryptocurrency-related products. Such a move would further consolidate Singapore's primary position as a cryptofinance hub.

The Financial Action Task Force (FATF) has initiated a consultation on digital identity

- The FATF has issued draft guidance[link1] to clarify how digital identity systems can be used for customer due diligence. Areas of focus include specific money laundering/terrorist financing risks that arise from the use of digital identity systems for Customer Due Diligence (CDD), and the role of digital ID systems in ongoing due diligence or transaction monitoring.

Conclusion

The key digital regulatory development in the past few weeks has clearly been the issuance of the DLT/blockchain dispatch by the Swiss Federal Council. The parliamentary debate will take place in 2020. The industry wishes a swift adoption and promulgation of the draft bill. The rules provide Switzerland with a very advanced, fundamental and comprehensive legal framework in the area of DLT/blockchain applications. The approach followed is strictly technologically neutral, pragmatic and flexible. Regulatory developments in nearby countries such as Germany and the UK, in other countries (such as Singapore) and by international regulators such as the BCBS and FATF shows continuous strong momentum towards the development of a cryptofinance and DLT/blockchain economy while at the same time sharpening the difference between a handful of leading countries and the rest of the world.

[1] We already wrote on the dispatch in the preceding issues of The Digital Regulator.

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