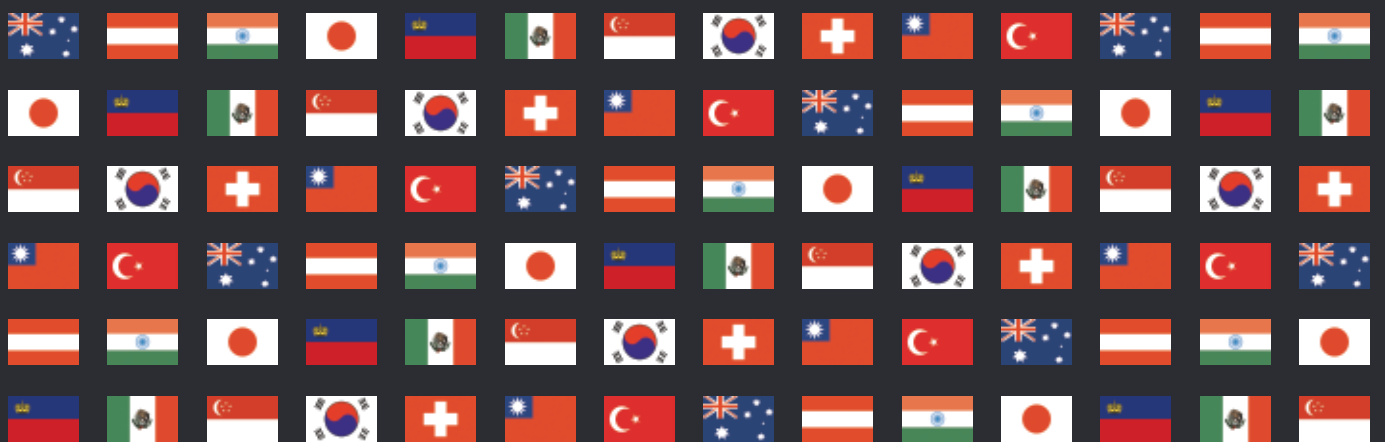


# Cryptoassets & Blockchain 2021



# Liechtenstein

Matthias Niedermüller and Selma Talic

Niedermüller Rechtsanwälte | Attorneys at Law

## GENERAL LEGAL AND REGULATORY FRAMEWORK

### Legal framework

1 | What legal framework governs cryptoassets? Is there specific legislation governing cryptoassets and businesses transacting with cryptoassets?

Unlike other jurisdictions, the Principality of Liechtenstein since January 2020 has a comprehensive legal framework regulating the entire life cycle of cryptoassets of all kinds with the Token and Trusted Technology Service Provider Act (TVTG) also called the Blockchain Act.

The TVTG provides rules for the nature of digital assets as well as the requirements for the provision of professional services in connection with distributed ledger technology (DLT) and provides a comprehensive basis for an entire token economy.

The civil law aspects of the TVTG regulate the rules for the creation, ownership, transfer and deletion of a token and, therefore, the entire life cycle of a token.

One of the unique aspects of the TVTG is, that it in particular defines the civil law aspects of all possible cryptoassets based on the Token Container Model (TCM). The TCM defines a token in a civil law aspect as an own legal instrument. Under the rules of the Blockchain Act, a token is considered as a container of rights that may contain any kind of right or claim of whatever kind. The TCM also allows that the rights contained in a token are not directly affected or altered in nature and can be either subject to Liechtenstein law or any other foreign laws.

By means of the conception as a container of rights the Liechtenstein token can, therefore, indifferently be applied and used to be the bearer any kind of right with regards to any kind of asset.

Also, the TCM of the TVTG is entirely technology neutral and may be applied to any kind of DLT and, therefore, also stays applicable in an environment of ever-changing technology. Therefore, the law does not regulate any specific cryptocurrency as this approach would be too narrow but rather provides for rules on tokens as for a bearer of any kind of rights. Therefore, in this chapter instead of the term cryptoassets, the term token is used as this term under Liechtenstein law covers cryptoassets of any kind.

Further, the rules of the Blockchain Act provide legal certainty on the ownership and transfer of ownership of a token thus providing legal certainty on this central question. The regulation of the civil law aspects of a token provides a clear legal basis for pursuing and asserting rights to a token as well as the rights contained in a token.

Recent proposals of the EU Commission on regulating blockchain technology indicate that the material approach of the Liechtenstein TCM may also be applied on a European level.

Next to regulating the civil law aspects of tokens, a second pillar of the TVTG is the regulation of the provision of services that are relevant to the use of distributed ledger technology in general. The TVTG aims to increase trust in the use of DLT of any kind by setting requirements and

thresholds for all persons or entities that provide services in connection with DLT, as tokens usually contain valuable rights. The law wants to ensure that only persons or entities that meet certain requirements are allowed to provide services in connection with DLT.

The TVTG defines and regulates services in connection with DLT, which may only be provided after registration with the Liechtenstein Financial Market Authority (FMA), which is the regulator for any financial markets services in Liechtenstein. The services defined and regulated are:

- token issuer;
- token generator;
- TT key depository;
- TT token depository;
- physical validator;
- TT protector;
- TT exchange service provider;
- TT verifying authorities;
- TT price service provider; and
- TT identity service provider.

To achieve coherent and consistent legislation, the law also stipulates that for any token issued by a Liechtenstein issuer or any token for which the issuer opted for, Liechtenstein law applies. Also, all tokens issued under Liechtenstein law according to the Blockchain Act are considered to be assets located in Liechtenstein and thus enjoying the protection of Liechtenstein laws.

Also, the new legal framework of the TCM and the Trusted Technology Services under the TVTG were implemented into several existing laws to blend the new technology into the existing legal framework. In particular, the TVTG rules lead to amendments and implementations in the KYC and AML laws of the Due Diligence Act to provide effective protection against money laundering. Also, there were implementations in the Persons and Companies Act, as well as financial market laws, such as the Banking Act, the laws on Alternative Investment Funds and many others. Overall, DLT and the services associated therewith were implemented into the existing legal framework to enable the use of the new technology in particular in all aspects of the existing financial markets.

### Government policy

2 | How would you describe the government's general approach to the regulation of cryptoassets in your jurisdiction?

The Liechtenstein government recognised the advantages and potential of Blockchain and DLT very early as well as the need and market demand for regulation in this area. In early 2018, the government installed a work group with the task to provide a comprehensive and sustainable legal framework for a long-term regulation of aspects of blockchain technology. At the beginning of 2019, proposals for the

Blockchain Act were discussed and in autumn 2019 the law was passed in the Parliament and entered into force in January 2020.

The government and also in particular the regulator FMA in general take a very progressive and open approach on cryptoassets and DLT and provide substantial support to enable the building of a token economy. The FMA, for instance, dedicated an entire work group to the DLT matters and provides strong support for new projects that relate to blockchain technology in one way or another.

The open and progressive approach of Liechtenstein not only gathered substantial attention in international media. Also, it led to growing interest in setting up new businesses in Liechtenstein and making use of the blockchain-friendly approach and the new regulations with a simultaneous access to the EEA market.

### Regulatory authorities

#### 3 | Which government authorities regulate cryptoassets and businesses transacting with cryptoassets?

The Blockchain Act entrusts the Liechtenstein FMA with the registration and subsequent supervision of TT Service Providers. Any person or entity that intends to provide professional TT Services under the Blockchain Act therefore has to register with the Financial Market Authority. Also the FMA maintains a public register of TT Service Providers which lists the TT Service Providers registered in Liechtenstein. Further the FMA maintains a register of all public Token offerings.

Additionally the FMA is also entrusted with the supervision of the entire financial market services that fall in the scope of Banking Services, E-Money and Payment Services, Asset Management, Securities and Markets, Public Offerings, Money Laundering and Due Diligence provisions. Thus the Financial Market Authority is the regulator entrusted with all aspects of the conventional as well as the digital financial market aspects.

### Regulatory penalties

#### 4 | What penalties can regulators impose for violations relating to cryptoassets?

The TVTG contains an own sanction regime, whereas the sanctions depend on the gravity of the violations.

Severe violations of the TVTG are considered as criminal offences and subject to imprisonment of up to one year or fines to be imposed by the Liechtenstein Princely District Court in criminal proceedings.

Minor violations are considered as administrative violations that are sanctioned by the FMA with fines up to 100,000 Swiss francs. These fines may also be imposed on legal entities.

In both cases, negligent violations are also punishable, whereas the maximum penalty is reduced in such cases.

Besides the sanctions of the TVTG, the provision of services under the TVTG or generally DLT-related services may also fall under the provisions of the Banking Act, the E-Money Act, the Payment Service Provider Act, the Act on Alternative Investment Funds, the Prospectus Act or other Financial Market regulations and may be punishable under these provisions. Under these rules severe violations are considered as criminal offences, whereas minor violations are considered as administrative violations. In particular, the rules of the Banking Act include threat of imprisonment of up to three years' imprisonment or severe fines.

### Court jurisdiction

#### 5 | Which courts have jurisdiction over disputes involving cryptoassets?

In general, the Princely District Court in Vaduz has jurisdictions on disputes involving cryptoassets.

Based on the general rules on jurisdiction the Princely District Court has jurisdiction on all claims that are brought against a company with seat or person with a residence in Liechtenstein.

The TVTG also explicitly determines that for any claims of a tokenholder in connection with his or her legal relation to a token issuer seated in Liechtenstein the Princely District Court is competent.

Further, TVTG determines all tokens that are subject to Liechtenstein law (may it be because they have been issued by a person or entity with residence or seat in Liechtenstein or because Liechtenstein law was opted in) are considered as assets located in Liechtenstein. Based on this, the Princely District Court is also competent for all disputes in connection with tokens that have been issued under Liechtenstein law.

Further, the Princely District Court is competent for all claims of a token holder to declare a token invalid in the case of the loss of a private key and thus has lost the ability to dispose over the token.

### Legal status of cryptocurrency

#### 6 | Is it legal to own or possess cryptocurrency, use cryptocurrency in commercial transactions and exchange cryptocurrency for local fiat currency in your jurisdiction?

Liechtenstein law does not have any restrictions on owning and using cryptocurrencies for transactions. Also, exchange between fiat currencies and cryptocurrencies is permitted. Even official authorities accept payments in some cryptocurrencies and the registered capital for formation of entities may be provided in cryptocurrencies.

However, in the case professional services relating to cryptocurrencies are provided for third parties, the limitations and registration requirements of the TVTG apply. In particular, providing exchange services for tokens that do not qualify as financial instruments under MIFID II rules requires registrations.

Also, depending on the structure of the professional business issuing of Tokens for third parties and providing payment services may require financial market licences of the FMA.

Depending on the rights a token contains and its qualification as a financial instrument under the MIFID II rules, the professional trading of tokens may also require a licence under the Banking Act.

Further entities providing services that relate to cryptocurrencies are subject to strict KYC and AML requirements under the Due Diligence Act for effective combat of money laundering.

### Fiat currencies

#### 7 | What fiat currencies are commonly used in your jurisdiction?

The official fiat currency of the Principality of Liechtenstein is the Swiss Franc. However, also regularly transactions in euro, US dollar and other major currencies are conducted.

### Industry associations

#### 8 | What are the leading industry associations addressing legal and policy issues relating to cryptoassets?

The Liechtenstein government set up a Department for Financial Market Innovation which is dealing with new technologies and their implementation in the legal system of the financial market. This department also collects the demands and feedback of the market with regards to required amendments and implementations.

The leading industry associations are CV Labs Vaduz, Technopark Liechtenstein and the Crypto Country Association.

## CRYPTOASSETS FOR INVESTMENT AND FINANCING

### Regulatory threshold

#### 9 | What attributes do the regulators consider in determining whether a cryptoasset is subject to regulation under the laws in your jurisdiction?

The Token and Trusted Technology Service Provider Act (TVTG) determines which tokens or cryptoassets are subject to Liechtenstein laws and therefore fall under Liechtenstein jurisdiction. According to the rules of the TVTG, Liechtenstein law applies to all tokens that are issued by an issuer with seat or residence in Liechtenstein. Further, Liechtenstein law also applies to those tokens on which the parties of an agreement have opted Liechtenstein laws to be applicable. In this way, the Liechtenstein legislator explicitly provided foreign VT service providers the possibility to contractually declare the TVTG applicable and make use of the benefits of Liechtenstein laws. Consequently, the Princely District Court is competent for civil proceeding disputes in such cases.

Additionally, based on the Token Container Model (TCM) the rights contained in a token determine which additional laws apply on the tokens besides the TVTG, such as securities laws, property laws, laws on alternative investment funds etc.

Besides the rules on applicability of Liechtenstein laws on token, the TVTG also contains rules on the applicability on persons or entities that provide professional distributed ledger technology (DLT) services as defined under the TVTG. In general, all persons or entities with seat or residence in Liechtenstein that provide professional DLT services are subject to the rules of the TVTG.

If the DLT services also include services that fall under other financial market laws, these laws are applicable in addition.

### Investor classification

#### 10 | How are investors in cryptoassets classified and treated differently?

The civil law rules of the TVTG on the nature, ownership and transfer of tokens apply to all types of tokens issued under Liechtenstein, disregarding what rights they contain.

Due to the TCM applied in Liechtenstein, the rights contained in a token determine whether a token is considered as a payment token, utility token or security token. Therefore, generally all tokens are treated identical under the TVTG. However, depending on the material rights contained, the tokens are subject to additional laws.

The applicability of several laws relevant for investors therefore depend on the rights contained and the qualification of a token as a payment token, utility token or security token.

Security tokens: all tokens that contain rights that qualify as rights of certain financial instruments under the regulations of MIFID II as defined on the Banking Act are considered security tokens. Hence all the rules applicable to the specific financial instrument the rights in the token represent, are fully applicable on such tokens, such as rules on public offerings etc.

Utility tokens: all tokens that do not qualify as financial instruments (security tokens) or as payment tokens are considered utility tokens. As the name suggests, there is a utility behind the utility token. A utility token can be seen as an exchange or resource that has a certain functionality like voting rights or access but grants no property rights on companies. A utility token allows, for instance, holders to use and stake (concept of effective and proven use) to make use of the given

output and are best compared with digitalised vouchers that contain rights and claims against the issuer that may be obtained in return for transferring the token and thus using it for its defined purpose. If the tokens can only be used for certain limited services and are not accepted by a larger group of acceptants as a means of payment they usually qualify as a utility token. As the utility token must not contain rights of a financial instruments, the existing financial market rules do not apply on such tokens.

Payment tokens: these are tokens that are accepted as means of payment in a larger group of acceptants in return for goods or services and, therefore, usually constitute E-money. Payment tokens usually do not grant any claims or rights against the issuer of the tokens. Only utility tokens and payment tokens may be traded on non-MIFID II licensed exchanges.

Although the traditional financial markets laws only provide for specific rules for offering securities to retail clients, they do not provide for specific rules with regards to utility tokens.

Therefore, the TVTG closes this gap and provides for additional protective rules for public offerings of any kind of token to non-professionals in public offerings by implementing the requirement for a basic information document (BID), which has to contain similar information on the tokens offered as a prospectus.

### Initial coin offerings

#### 11 | What rules and restrictions govern the conduct of, and investment in, initial coin offerings (ICOs)?

The term initial coin offering is used differently in many countries. Sometimes the term is understood as an initial public offering of utility tokens only. Mostly, the term is used as a general term for initial public token offerings (IPTO) of tokens of any kind. The below refers to initial public token offerings of any kind of token regardless of their classification.

The TVTG provides general rules for initial public offerings of any kind of token that shall protect investors and token issuers alike, increase trust in token offerings and prohibit the abuse of token offerings for unlawful purposes.

The TVTG recognises that ICOs are regularly used as a means for crowdfunding of startup companies and, therefore, imposes different rules depending on the volume of funds raised.

If an IPTO is made with an overall volume of less than 5 million Swiss francs only limited restrictions apply. The issuer in such case only has to notify the Liechtenstein Financial Market Authority (FMA) of the token issuing and provide general basic information to the regulator in this notification. Furthermore, the issuer is subject to the due diligence obligations under Liechtenstein law and has to provide for a comprehensive KYC and AML policy.

If the IPTO exceeds the volume of 5 million Swiss francs, additional requirements have to be met. In such a case, the issuer has to register with the FMA as a token issuer and also issue a BID that outlines the main aspects and risks of the offered token and can best be compared with a simplified prospectus under the Prospectus Regulation. If the token is offered to fewer than 150 persons, or the investors have expressly waived their right to receive a BID, no BID is required.

For the registration as a token issuer with the FMA the issuer has to meet several requirements and run through checks of the FMA. The checks include a review of the involved persons and owners (fit and proper review) as well as the ability to successfully conduct the token offering. Further the issuer has to show a functioning corporate governance and internal control system for the purposes of the IPTO. The issuer also has to ensure that there is a business continuity during the token issuing and that the token issuing is conducted in accordance with the BID. Finally, additional capital requirements also have to be met

depending on the offering volume. At an offering volume above 5 million francs a capital of 100,000 francs is required. At an offering volume above 25 million francs a capital of 250,000 francs is required. All these requirements shall ensure that the token offering can be conducted in a legally compliant and transparent manner and investors are protected in the best way possible.

However, Liechtenstein laws do not impose specific restrictions on investors investing in ICOs. However, such restrictions may apply depending on the rights contained in a specific token and the location of the respective buyer.

### Security token offerings

#### 12 | What rules and restrictions govern the conduct of, and investment in, security token offerings (STOs)?

The legal rules for ICOs also generally apply if the IPTO relates to a security token and therefore is considered as a security token offering (STO).

However, given that an STO relates to a financial instrument under MIFID II in addition traditional financial market rules apply. In this regard, in particular for public offerings of security tokens the EU Prospectus Regulation and the national implementing laws have to be followed.

According to these rules, STOs are regularly subject to prospectus requirements in case the relevant thresholds are met. Liechtenstein, unlike several other countries, made use of the possibility to allow public offerings of financial instruments without prospectus requirements up to a volume of 8 million Swiss francs.

Further exemptions from prospectus requirements apply if the STO (1) is only made to qualified investors, or (2) the offering is made to fewer than 150 persons, or (3) the minimum ticket size is above 100,000 francs per investor. Furthermore, in any event private placements are exempted from the prospectus requirements.

If a prospectus is required, there is no additional requirement of publishing a BID under the TVTG.

### Stablecoins

#### 13 | What rules and restrictions govern the issue of, and investment in, stablecoins?

Stablecoins are generally tokens that are fully backed by a set of fiat currencies or other valuable assets and are bound to one or more fiat currency. In this sense, a stablecoin is equivalent to a currency unit and its aim is to achieve the lowest possible volatility. Each issued stablecoin is secured with the same amount of the currency unit. Thus, depending on the amount of the currency unit received, the same amount of stablecoins are issued.

The issuing of stablecoins may be subject to licensing requirements under the existing traditional financial market laws. For instance, the issuing of stablecoins could be considered as issuing of E-money and thus lead to a licensing requirement under the E-Money Act.

The question whether or not a stablecoin constitutes E-money mainly depends on the question whether there is a large group of acceptants and an array of goods and services that may be obtained in return for the use of the coin. Depending on the structure the stablecoin may be E-money within the meaning of the Act and the provisions on E-money as well as payment services would apply. If the structure resembles a financial instrument, other financial market rules may apply. Finally, it has to be decided on a case-by-case basis whether or not licensing requirements apply.

Further, if the stablecoin is also offered in a public token offering the rules outlined on IPTO also have to be considered.

### Airdrops

#### 14 | Are cryptoassets distributed by airdrop treated differently than other types of offering mechanisms?

The distribution by airdrop is usually used as a marketing mechanism and the tokens distributed by airdrop are distributed without any consideration.

The rules of the TVTG also considered the possibility of airdrops as a means of publicly distributing tokens. If the tokens are distributed without consideration, the TVTG considers that there is no offering volume met.

Therefore, mere airdrops generally only require a Liechtenstein issuer to notify the FMA of the fact that tokens are issued and distributed by airdrop.

Further, also the due diligence laws include exceptions for airdrops as in such cases the issuer does not receive funds from 'investors'. Therefore, if the issuer only receives 1,000 francs or less in proceeds not even due diligence requirements to be met.

However, if an airdrop is made for consideration or combined with another offer that collects funds, the above regulations on IPTOs may nonetheless apply.

### Advertising and marketing

#### 15 | What laws and regulations govern the advertising and marketing of cryptoassets used for investment and financing?

Liechtenstein law provides for clear rules for marketing of cryptoassets for investment. If the token is a security token (financial instrument under MIFID II) that shall be offered in a public offering, the limitations of the Prospectus Regulation and the national implementing laws apply. Therefore, it is most relevant what the offering volume is, to whom the offering is made and which minimum ticket sizes the offering has. Depending on the answers, exemptions may apply.

Further, in the case of public offerings of other tokens that are not security tokens, the restrictions of the TVTG apply, in particular the requirement of a BID and eventual registration requirements. Here exemptions may apply.

### Trading restrictions

#### 16 | Are investors in an ICO/STO/stablecoin subject to any restrictions on their trading after the initial offering?

Liechtenstein law does not have any trading restrictions for investors who obtained tokens in an IPTO or in another manner (private placement, airdrop, secondary market, etc). Therefore investors may freely trade tokens in a peer-to-peer manner, regardless of the nature of the token.

However, restrictions apply for the provision of services as a secondary market exchange which brings together interested buyers and sellers. Again, the applicable restrictions depend on the nature of the tokens traded.

If the tokens are payment tokens or utility tokens they may be traded on a crypto exchange that may provide its services subject to the registration as a TT Service Provider under the TVTG.

If the tokens to be traded are security tokens and, therefore, financial instruments, the exchange services of a secondary market require the licensing as an investment firm under the Banking Act (eg, as a multilateral trading facility (MTF)).

Currently, Liechtenstein is home to the first MIFID II licensed MTF on which tokenised derivatives and, therefore, security tokens may be traded.

## Crowdfunding

### 17 | How are crowdfunding and cryptoasset offerings treated differently under the law?

There are no particular laws that regulate crowdfunding. Rather the applicable rules depend on whether the offering is made to the public or not, whether the offering is made in the form of tokens or not and whether the product offered is a financial instrument under MIFID II or not. The volume of funds raised in the crowdfunding determines the applicable laws.

Depending on how the crowdfunding is structured, the Prospectus Act, the Blockchain Act and also the KYC/AML regulations of the Due Diligence Act are applicable. In addition, depending on the structuring and the services provided, the rules of the Banking Act, the E-Money Act, the Act on Alternative Investment Funds and other financial market laws may apply and must be followed.

## Transfer agents and share registrars

### 18 | What laws and regulations govern cryptoasset transfer agents and share registrars?

Under Liechtenstein laws, shareholders of Liechtenstein entities and beneficial owners in general have to be recorded. The share register may also be maintained by using DLT registers. Any transfer of ownership may be a relevant transaction under the applicable KYC and AML laws of the Due Diligence Act.

Also, generally in the case of a transfer of cryptoassets the KYC and AML rules of the Due Diligence Act have to be adhered by the involved Service-Providers to provide an effective anti-money laundering regime.

Further, the Blockchain Act defines that certain services in connection with the transfer of cryptoassets require a registration. Depending on the structuring of the services the transfer agent may be required to register as a TT exchange service provider. Other services may also apply such as the service of a TT price service provider.

If the cryptoasset (token) is considered as a financial instrument under MIFID II, the provision of services with regards to these tokens and execution of transfers may also require licensing under the Banking Act as broker or dealer.

## Anti-money laundering and know-your-customer compliance

### 19 | What anti-money laundering (AML) and know-your-customer (KYC) requirements and guidelines apply to the offering of cryptoassets?

The prevention of financial crime and money laundering is one of the key aspects for the long-term functioning of the Liechtenstein financial market. Liechtenstein, as an EEA member state was also one of the first countries to implement the fifth EU Anti Money Laundering Directive ((EU) 2015/849 and (EU) 2015/847). Thus, Liechtenstein law provides for substantial and effective KYC and AML regulations under the Due Diligence Act also for offerings of and transactions with cryptoassets.

The Blockchain Act defines that all issuers of cryptoassets (token issuer) are subject to the KYC and AML rules of the Due Diligence Act and has to provide for a Due Diligence Concept for the execution of the token offering. Token issuers have to identify all token investors and also respect international blacklists and sanction lists. Further information concerning the source of funds of the respective investors has to be collected.

Due to a risk-based approach of the entire KYC and AML rules, the Due Diligence Act allows for application of different rules, depending on the investment volumes, overall volumes, involved countries and involved persons, thus making it more effective.

Being aware of the necessity of automated systems in large-scale offerings of tokens the Due Diligence Act and the FMA as competent supervising authority allow the use of compliant automated systems for onboarding of investors for an offering of tokens and therefore provides the possibility of an effective onboarding also of a large number of investors. In autumn 2020, in one offering conducted in Liechtenstein over 6,000 persons were onboarded in an automated system and over 4,600 persons from 90 countries participated in a token sale.

Liechtenstein laws, therefore, provides for a comprehensive and sophisticated KYC and AML system for offerings of tokens.

## Sanctions and Financial Action Task Force compliance

### 20 | What laws and regulations apply in the context of cryptoassets to enforce government sanctions, anti-terrorism financing principles, and Financial Action Task Force (FATF) standards?

Liechtenstein has implemented highest KYC and AML standards of the fifth Anti Money Laundering Regulation and the FATF standards in the Due Diligence Act. Also, Liechtenstein is a recognised long-term member of the Moneyval Group.

The Liechtenstein Due Diligence Act is applicable to all issuers of cryptoassets as well as transactions with cryptoassets. The Due Diligence Act also implements all major sanctions and blacklistings of EU and other international authorities.

## CRYPTOASSET TRADING

### Fiat currency transactions

#### 21 | What rules and restrictions govern the exchange of fiat currency and cryptoassets?

The exchange of fiat currencies to cryptocurrencies (tokens) as well as the exchange of tokens for tokens is regulated under the Blockchain Act and generally requires registration as a TT exchange service provider.

The Blockchain Act also regulates the service of storing and holding tokens or keys for and on behalf of third persons. The law defines that the holding of the token or the private key for and on behalf of a person constitutes the services of a TT key depositary or TT token depositary that requires the registration under the Blockchain Act.

Besides the registration requirements the TT token depositary is also subject to the Due Diligence Act and has to adhere to the entire know your customer and anti-money laundering requirements under these rules.

Further, depending on the qualification of the respective tokens that shall be traded as utility token, security token or payment token further rules and licensing requirements may apply, such as the Banking Act, E-Money Act or the Act on Alternative Investment Funds.

### Exchanges and secondary markets

#### 22 | Where are investors allowed to trade cryptoassets? How are exchanges, alternative trading systems and secondary markets for cryptoassets regulated?

Liechtenstein law applies the Token Container Model (TCM) on any kind of cryptoassets. Therefore, a token is merely a container of certain rights. Due to this material approach of the Blockchain Act the rights contained in the token then define, which restrictions on holding and transferring of the token may have to apply.

Generally, Liechtenstein law does not prohibit trading of tokens between the respective tokenholders on a peer to peer basis outside a regulated trading environment. However, the rules of the smart contract of the respective token may provide other limitations.



The question of whether and where investors or tokenholders are allowed to trade certain tokens in a regulated secondary market environment also very much depends on the legal qualification of a token as a utility token or security token (financial instrument).

Utility tokens may be traded in the regulated environment of a crypto exchange (such as Binance or Bittrex). If the services of a crypto exchange are provided in Liechtenstein registration under the Blockchain Act as TT exchange service provider and other services may be applicable and the KYC and AML requirements have to be met. Such crypto exchanges, however, must not allow listing and trading of tokens that are considered as financial instruments under MIFID II.

Any token that qualifies as a financial instrument under MIFID II (eg, shares, bonds, derivatives) must only be traded on a licensed multi-lateral trading facility (MTF). The provision of such services as an MTF requires a licence as an investment firm under the Banking Act. The Liechtenstein FMA in April 2020 granted the first MTF licence in Europe for a blockchain-based MTF that allows the trading of derivatives and, therefore, financial instruments.

## Custody

### 23 | How are cryptoasset custodians regulated?

Due to the material approach of the TCM of the Blockchain Act the answer depends on the legal qualification of the token as utility token or security token.

Generally, the Blockchain Act requires the registration as a TT key custodian for all persons or entities that hold private keys or tokens for and on behalf of third parties. If the tokens are entirely transferred also a registration as a TT token custodian may be required.

If the token held for a third party is considered as a financial instrument under MIFID II an additional licensing under the Banking Act may be required depending on the exact services and business model.

## Broker-dealers

### 24 | How are cryptoasset broker-dealers regulated?

Due to the material approach of the TCM of the Blockchain Act, the answer depends on whether the tokens traded with are considered as a financial instrument due to the rights contained therein or not. Regularly, however, only the professional dealing as a broker dealer, which is not only on the own account, may be subject to regulatory registration or licensing requirements.

If the relevant tokens are utility tokens and therefore no financial instruments, providing the service as a broker dealer is subject to the registration requirements of the Blockchain Act. Depending on the type of services provided and the business model a registration as TT exchange service provider or other services may apply.

If the relevant tokens are considered as financial instruments under MIFID II, the provision of the services as a broker dealer and the professional trading on own account additionally may require a licence as an investment firm under the Banking Act.

In any case, the provision of services as a broker dealer is subject to the regulations of the KYC and AML regulations of the Due Diligence Act.

## Decentralised exchanges

### 25 | What is the legal status of decentralised cryptoasset exchanges?

Liechtenstein laws in general and the Blockchain Act in specific are constructed in a technology neutral manner. Therefore, Decentralised Exchanges (DEX) are generally accepted under Liechtenstein laws.

Again, the legal status of a DEX depends on the legal qualification of the tokens that shall be listed and traded on the DEX.

If the tokens are utility tokens, the DEX is subject to the regulations of the Blockchain Act and registration as a service provider under the Blockchain Act may be required (eg, as a TT Exchange Service Provider).

If the tokens are considered as financial instruments a licence as investment firm under the Banking Act will be required additionally.

In both cases, usually also the KYC and AML requirements of the Due Diligence Act would have to be adhered to.

## Peer-to-peer exchanges

### 26 | What is the legal status of peer-to-peer (person-to-person) transfers of cryptoassets?

Generally, Liechtenstein laws do not impose restrictions on peer-to-peer-transfers of all kinds of tokens (utility tokens, payment tokens or security tokens) owned by the respective peers.

However, depending on whether there is also a provision of services included or the peer to peer trading is conducted in an organised manner or on behalf of other persons a registration under the Blockchain Act and in case of security tokens even a licence under the Banking Act or in the case of payment tokens under the Payment Service Act may be required.

In any event, however, private peer to peer trading limitations may apply based on the rules set out in the smart contract of the respective token.

## Trading with anonymous parties

### 27 | Does the law permit trading cryptoassets with anonymous parties?

Liechtenstein law does not impose regulatory limitations on private (non-professional) trading with cryptoassets (tokens) with anonymous counterparties. However, the general anti money laundering rules of the Liechtenstein Criminal Law has to be regarded. Persons knowingly trading with tokens that stem from criminal offences may face criminal investigations and even seizures of assets.

Since the KYC and AML regulations of the Due Diligence Act are generally applicable on professional trading with any kind of tokens, trading with anonymous counterparts generally is excluded. However, on a regulated exchange regularly only the TT Exchange Service Provider has knowledge of both counterparts of a trade whereas the trading parties not necessarily know the counterpart.

## Foreign exchanges

### 28 | Are foreign cryptocurrency exchanges subject to your jurisdiction's laws and regulations governing cryptoasset exchanges?

Foreign cryptocurrency exchanges providing cross-border services also in Liechtenstein may become subject to licensing requirements in Liechtenstein if they actively provide services in Liechtenstein. In particular, if the tokens traded on the exchange are considered as financial instruments under MIFID II.

Foreign exchanges providing services as an MTF in another country may only provide the services in Liechtenstein after passporting.

Also, cryptocurrency exchanges publicly offering tokens in Liechtenstein that constitute financial instruments may become subject to prospectus requirements of the Prospectus Regulation or other banking and investment services under the Banking Act.

The Liechtenstein FMA also constantly monitors the activity of foreign cryptocurrency exchanges in Liechtenstein.

## 29 | Under what circumstances may a citizen of your jurisdiction lawfully exchange cryptoassets on a foreign exchange?

Currently, there are no restrictions for Liechtenstein-resident persons to exchange cryptoassets on a foreign cryptocurrency exchange, even if the tokens traded constitute financial instruments. However, the cryptocurrency exchange itself may be subject to licensing requirements in Liechtenstein.

### Taxes

## 30 | Do any tax liabilities arise in the exchange of cryptoassets (for both other cryptoassets and fiat currencies)?

Only natural persons resident in Liechtenstein and legal entities with seat in Liechtenstein in general are subject to Liechtenstein tax laws. Given the small size of the country and the position as a financial hub, the corporate tax laws are more relevant.

In addition, Liechtenstein tax laws take a material approach regarding trading with cryptocurrencies. Depending on the rights contained in the respective token and the qualification of the token as utility token, payment token or security token, different tax rules apply.

As Liechtenstein law does not have capital gains tax on profits from trading with participations, profits from trading with such tokens are tax free. Utility tokens are considered as regular commodities, and trading profits would be considered as trading income that is subject to regular taxation (12.5 per cent for legal entities, subject to further deductions). Payment tokens are considered as currencies and trading profits are also considered as trading income subject to regular taxation.

## CRYPTOASSETS USED FOR PAYMENTS

### Government-recognised assets

## 31 | Has the government recognised any cryptoassets as a lawful form of payment or issued its own cryptoassets?

Liechtenstein, besides being a member of the EEA, is in a customs union with Switzerland and has the Swiss Franc adopted as legal currency. Switzerland so far has not issued its own cryptocurrency as legal tender and neither has Liechtenstein.

However, some cryptocurrencies such as Bitcoin are already widely accepted as a means of payment by enterprises and shops. Thereby Bitcoin is considered as foreign currency. The Liechtenstein tax authority publishes exchange rates between several common cryptocurrencies (BTC and ETH) and the Swiss franc for tax purposes.

Cryptocurrencies are also accepted by the Ministry of Justice to provide the initial capital contribution for the formation of legal entities.

### Bitcoin

## 32 | Does Bitcoin have any special status among cryptoassets?

Bitcoin has no particular legal status. It is considered as a payment token and for tax purposes as a foreign currency for which the tax authority publishes applicable exchange rates.

### Banks and other financial institutions

## 33 | Do any banks or other financial institutions allow cryptocurrency accounts?

In Liechtenstein, several banks already provide cryptocurrency accounts as well as mere custody of tokens. The number of banks and other financial institutions to provide such services is expected to grow considerably in the coming year due to the open regulation.

As the country is in a customs union with Switzerland in particular, Swiss banks are also relevant for the Liechtenstein market and regularly provide services. Also, some Swiss banks already provide cryptocurrency accounts for their clients.

## CRYPTOCURRENCY MINING

### Legal status

## 34 | What is the legal status of cryptocurrency mining activities?

There is no specific regulation of mining activity of cryptocurrencies in Liechtenstein. Mining cryptocurrencies on own account and own name does not trigger licensing requirements.

However, depending on the business model professional mining on behalf of third parties or with certain participation models may constitute TT services under the Blockchain Act or even services subject to licensing under the Banking Act or trigger prospectus requirements. Licensing requirements of the E-Money Act or the Act on Alternative Investment Funds may become applicable in some business models used for professional mining activities.

### Government views

## 35 | What views have been expressed by government officials regarding cryptocurrency mining?

Liechtenstein has taken a very crypto-friendly approach and promotes blockchain technology with the Liechtenstein Blockchain Act. So far, no express opinion on cryptocurrency mining has been made. However, in the case of professional services, depending on the business model, several licensing requirements of the financial market regulations may apply.

### Cryptocurrency mining licences

## 36 | Are any licences required to engage in cryptocurrency mining?

Private mining on own account does not require a licence. However, professional mining may require licences depending on the respective business model.

### Taxes

## 37 | How is the acquisition of cryptocurrency by cryptocurrency mining taxed?

Tokens obtained from mining are subject to regular income tax on natural persons or taxation on the profits of legal entities.

Holdings in cryptocurrencies are always considered as assets and are regarded as assets for the benefit of taxation.

## BLOCKCHAIN AND OTHER DISTRIBUTED LEDGER TECHNOLOGIES

### Node licensing

## 38 | Are any licences required to operate a blockchain/DLT node?

Operating a node in Liechtenstein does not require any licensing.

However, depending on the business model and the data obtained and processed, the node operator may provide services as a TT service provider and require registration. Data processing may also be subject to the rules of the General Data Protection Regulation.



## Restrictions on node operations

### 39 | Is the operation of a blockchain/DLT node subject to any restrictions?

Operating a node in Liechtenstein does not require any licensing.

## DAO liabilities

### 40 | What legal liabilities do the participants in a decentralised autonomous organisation (DAO) have?

The status of a DAO and its members has to be assessed on a case-by-case basis depending on the effective business model.

The organisation could constitute a civil law partnership depending on the organisational structure of the DAO.

## DAO assets

### 41 | Who owns the assets of a DAO?

The ownership of the assets has to be defined on a case-by-case basis depending on the rights of the participants of the DAO. The assets could be owned either per capital or on a joint ownership basis. The latter would only allow disposal by unanimous decision.

## Open source

### 42 | Is DLT based on open-source protocols or software treated differently under the law than private DLT?

There is no different treatment of open source protocols and private DLT from a regulatory standpoint. However, private distributed ledger technology software may constitute intellectual property that may be protected.

## Smart contracts

### 43 | Are smart contracts legally enforceable?

Based on the Liechtenstein Token Container Model, there are different rights which may be asserted and have to be enforced.

Primarily, the ownership rights on a token as a container of certain rights may be asserted with Liechtenstein courts under Liechtenstein law, as tokens qualify as assets located in Liechtenstein. However, several questions remain to be adjudicated, such as the enforcement of the rights to a token. In the case of transactions and claiming rights to a token, the lack of identification of the counterparty may lead to practical problems.

Further, a tokenholder may assert the rights contained and represented in a token with Liechtenstein courts as the token represents an asset located in Liechtenstein. The applicable law depends on the rights contained in the token. Depending on the definition of the rights contained in the token, a tokenholder may also assert his or her rights contained in the token in other venues. Generally, the counterparty of the rights contained in the token is known, so the identification of the counterparty should not be problematic.

## Patents

### 44 | Can blockchain/DLT technology be patented?

In Liechtenstein the rules of the Swiss Patent Law are applicable based on a bilateral treaty between Liechtenstein and Switzerland (Patent Protection Treaty).

Under Swiss Law, computer programs in the broadest sense enjoy copyright protection and software, which meets certain requirements of complexity and sophistication, is automatically protected by Swiss copyright laws, therefore also without specific registration. Therefore,

sophisticated DLT technology and software, in particular DLT protocols, are automatically protected by Swiss copyright laws.

A registration of software as a patent in general is not possible or only practicable under very strict limitations. However, given the protection under Swiss copyright laws, this additional protection is not required.

## UPDATE AND TRENDS

### Recent developments

### 45 | Are there any emerging trends, notable rulings or hot topics related to cryptoassets or blockchain in your jurisdiction?

Liechtenstein was one of the first countries in the world to enact a comprehensive blockchain regulation with the Liechtenstein Blockchain Act, which came into force on 1 January 2020. The law, in particular, contains unique civil law rules and defines the token as an own legal instrument and container of rights that falls under Liechtenstein laws.

Since the enactment of the Blockchain Act, interest in the Liechtenstein Blockchain business has grown. In particular a large number of token issues of security token and utility token have been conducted. Further, there is growing interest in setting up other blockchain-related businesses such as broker dealer businesses and other businesses licensed under Markets in Financial Instruments Directive II.

In April 2020, the Liechtenstein FMA granted the first multilateral trading facility (MTF) licence for a blockchain-based MTF (DLT-MTF). Also, in summer 2020, the first public offering of a token under the Blockchain Act was conducted successfully with over 4,600 investors in 90 countries.

Liechtenstein has established as one of the major jurisdictions for conducting blockchain businesses in a safe, regulated and blockchain-friendly environment.

Recent EU proposals for regulating cryptocurrencies have shown that the EU may follow the material Liechtenstein Token Container Model as implemented in the Token and Trusted Technology Service Provider Act.

### Coronavirus

### 46 | What emergency legislation, relief programmes and other initiatives specific to your practice area has been implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Like many other countries, Liechtenstein also enacted various laws to combat the health threats of the coronavirus pandemic. In alignment with the Swiss government, Liechtenstein also implemented restrictions on meetings movement, etc, depending on the current situation. As of December 2020, restaurants are closed, personal meetings are restricted and mask-wearing is compulsory. Furthermore, home office work is used frequently. To absorb the economic effects of the pandemic, back in March 2020, the parliament implemented a relief package of more than 100 million Swiss francs for enterprises in need, which will be expanded if required. In particular, unemployment payments have been expanded.

To further ensure the functioning of the legal system, parliament implemented a law ensuring that the extension of procedural deadlines is possible under covid-19 and that court hearings may also be held by way of video conferencing if the parties agree on it. Further, the law implements the possibility that general meetings and board meetings may validly be conducted by means of video conferencing even if the statutes would not foresee this.

Due to the implemented restrictions the Regulator also avoids onsite inspections in regulated entities and meetings and inspections with the Regulator are conducted via video conferencing. If onsite inspections are required this is conducted with particular safety measures.

Unlike other business areas that are affected by forced closures as they depend on personal contact, covid-19 only had limited effects on blockchain-related business due to its decentralised nature and the fact that people in this sector were already accustomed to working remotely with people located in different places. In particular, projects related to blockchain infrastructure were boosted by covid-19 as the need for such infrastructure became more apparent. As our firm mostly has international clients our firm was also not affected by the pandemic.

## Other titles available in this series

Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Domains & Domain Names	Islamic Finance & Markets	Public Procurement
Agribusiness	Dominance	Joint Ventures	Public-Private Partnerships
Air Transport	Drone Regulation	Labour & Employment	Rail Transport
Anti-Corruption Regulation	e-Commerce	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security			
Procurement			
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)