

# CRYPTOASSETS & BLOCKCHAIN

## Liechtenstein



# Cryptoassets & Blockchain

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights, including into the legal and regulatory framework; use of cryptoassets for investment, financing, trading and payments; cryptocurrency mining; blockchain and other distributed ledger technologies; and recent trends.

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## GENERAL LEGAL AND REGULATORY FRAMEWORK

### Legal framework

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

The Principality of Liechtenstein, since January 2020, has a comprehensive legal framework regulating the entire life cycle of cryptoassets of all kinds through the Token and Trusted Technology Service Provider Act, also known as the Token and Trusted Technology Service Provider Act (TVTG) or the Liechtenstein Blockchain Act. The Liechtenstein Blockchain Act provides rules for the legal nature of cryptoassets as well as the requirements for the provision of professional services in connection with distributed ledger technology (DLT), and it provides a comprehensive basis for an entire token economy.

The civil law aspects of the Liechtenstein Blockchain Act 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 Liechtenstein Blockchain Act is that it defines the civil law aspects of all possible cryptoassets using a Token Container Model (TCM). The TCM defines a token from a civil law aspect as an own legal instrument. Under the rules of the Liechtenstein Blockchain Act, a token is considered as a container of rights that may contain any kind of right or claim. 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.

Due to the legal design and concept as a container of rights, the token can, therefore, be applied invariably and used to be the bearer of any kind of rights with regards to any kind of asset.

The Liechtenstein Blockchain Act, by design, is entirely technology-neutral and may be applied to any type of DLT. Thus, it is designed to also remain applicable and up to date in an environment of ever-changing technology. Thus, the Liechtenstein Blockchain Act does not provide rules for specific cryptocurrencies or cryptoassets but rather a framework of rules for the token as a bearer of any kind of rights and all services related thereto.

Therefore, in this publication, the term token is used instead of the term cryptoassets, as this term under Liechtenstein law covers cryptoassets of all kinds.

The rules of the Liechtenstein Blockchain Act provide legal certainty on the ownership and transfer of ownership of a token and, thus, on an essential legal question. The codification of the civil law qualification of a token as a container of rights is unique and provides the required legal certainty to also pursue and assert rights with regard to the ownership of a token, as well as the right contained in the token.

Next to regulating the civil law aspects of tokens, a second pillar of the Liechtenstein Blockchain Act is the regulation of the provision of services that are relevant to the use of distributed ledger technology in general. The Liechtenstein Blockchain Act 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 Liechtenstein Blockchain Act 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 market services in Liechtenstein. The services defined and regulated are:

- token issuers;
- token generators;
- trusted technology (TT) key depositories;

- TT token depositories;
- physical validators;
- TT protectors;
- TT exchange service providers;
- TT verifying authorities;
- TT price service providers;
- TT identity service providers; and
- TT agents (added in 2021 to close a regulatory gap and take into account the provision of regulated services on behalf of a foreign VT-service provider).

To achieve coherent and consistent legislation, the law also stipulates that for any token of 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 Liechtenstein Blockchain Act are considered to be assets located in Liechtenstein and, thus, enjoy the protection of Liechtenstein laws.

The legal framework of the TCM and the Trusted Technology Services under the Liechtenstein Blockchain Act were implemented into several existing laws to blend new technology into the existing legal framework. In particular, the new rules lead to amendments and implementations in the know-your-customer (KYC) and anti-money laundering (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 and the laws on Alternative Investment Funds.

### **Excursus MiCA Regulation**

In September 2020, the European Commission adopted the digital finance package, including a first draft for a Regulation on Markets in Cryptoassets (the MiCA Regulation), which aims to create a harmonised regulatory framework for the issuance of cryptoassets and services related to cryptoassets in the European Union.

On 5 October 2022, the European Council approved the draft proposal of the MiCA Regulation. As a next step, the proposal was approved by the Committee on Economic and Monetary Affairs (ECON) of the European Parliament on 10 October 2022. Following the approval of ECON, the proposal of the MiCA Regulation is now subject to one final approval from the plenary of the European Parliament. Depending on the duration of the further process, the MiCA Regulation is expected to be published in the official Journal in spring 2023 and enter into force 12 to 18 months afterwards.

Once in force, the MiCA Regulation will also be adopted immediately within the whole EEA and, thus, be applicable also in Liechtenstein.

The MiCA Regulation has strong parallels to the Liechtenstein Blockchain Act, in particular the TCM, the licensing requirements of services related to cryptoassets and the particular requirements for cases of public offerings of tokens. It is repeatedly noted in publications and presentations that the Liechtenstein Blockchain Act acted as a role model for the MiCA Regulation. Thus, the Liechtenstein market and players will have accumulated several years of experience in regulating cryptoassets once the MiCA Regulation comes into force. Therefore, the adoption of the MiCA Regulation into the Liechtenstein legal system is unlikely to lead to any major amendments in Liechtenstein. Given that the anticipated exemptions of the MiCA Regulation will, to some extent, be broader than under the Liechtenstein Blockchain Act, there are some facilitations to be expected.

### **Excursus EU DLT sandbox regime**

Also, the EU, as part of the digital finance package, recently adopted the so called DLT-sandbox regime with EU Regulation 2022/858 that shall, for the first time, also enable the operation of DLT-based multilateral trading facilities (DLT-MTF) and settlement systems (DLT-SS). These regulations provide the basis to enable the trading and settlement of tokens that classify as financial instruments under MIFID II (therefore, tokenised securities/security tokens) on a blockchain based trading facility. The new regime is, however, set up only on a trial basis for six years in an environment of lower regulatory hurdles and, thus, aims to allow better exploitation of the development potential of DLT, while still preserving certain requirements for transparency and investor protection.

From 23 March 2023 onwards, certain market participants may apply to the national competent authority for inclusion in the sandbox regime in order to become exempt from certain regulatory hurdles. On the other hand, limitations with regards to the volume of activities will apply.

*Law stated - 18 October 2022*

## **Government policy**

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

The Liechtenstein government recognised early on the advantages and potential of blockchain and DLT 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 Liechtenstein Blockchain Act were discussed, and in autumn 2019 the law was passed in Parliament and entered into force in January 2020.

The government and the regulator, the FMA, generally take a very progressive and open approach to cryptoassets and DLT and provide substantial support to enable the building of a token economy.

The government, with the Office for Financial Market Innovation and the FMA with the Regulatory laboratory and Department for Finance Innovation, created their own departments that are competent to deal with fintech and financial innovation.

The continued open and progressive approach of Liechtenstein got substantial attention in international media and also led to a continuous interest in setting up new blockchain related businesses in Liechtenstein. Besides the regulatory aspects, the flexible corporate law as well as the simultaneous access to the EEA market has also garnered attention. This interest has substantially increased since the enactment of the Liechtenstein Blockchain Act.

*Law stated - 18 October 2022*

## **Regulatory authorities**

Which government authorities regulate cryptoassets and businesses transacting with cryptoassets?

The Liechtenstein Blockchain Act entrusts the FMA with the registration and subsequent supervision of TT service providers. Therefore, any person or entity that intends to provide professional TT services under the Liechtenstein Blockchain Act must register with the FMA. Also, the FMA maintains a public register of TT service providers that lists those registered in Liechtenstein. Further, the FMA maintains a register of all public token offerings.

Additionally, the FMA is entrusted with the supervision of all financial market services that fall within 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 FMA is entrusted with all aspects of the conventional market and



the digital financial market.

For the main criminal offences under Liechtenstein Blockchain Act, the Princely District Court has jurisdiction.

*Law stated - 18 October 2022*

## Regulatory penalties

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

The Liechtenstein Blockchain Act contains its own sanction regime, and the sanctions depend on the gravity of the violations.

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

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

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

Besides the sanctions of the Liechtenstein Blockchain Act, the provision of services in blockchain related businesses 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 Regulation and the Act on the Implementation of the Prospectus Regulation or other Financial Market regulations and may be punishable under these provisions. Under these rules, severe violations are considered criminal offences, whereas minor violations are considered administrative violations. In particular, the rules of the Banking Act include the threat of imprisonment of up to three years or severe fines.

*Law stated - 18 October 2022*

## Court jurisdiction

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

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

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

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

Further, the Liechtenstein Blockchain Act determines that all tokens that are subject to Liechtenstein law (because they have been issued by a person or entity with residence or a 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 case of the loss of a private key and, thus, the loss of the ability to dispose of the token opens the possibility of getting a replacement from the issuer.

*Law stated - 18 October 2022*

## Legal status of cryptocurrency

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 the formation of entities may be provided in cryptocurrencies.

If professional services relating to cryptocurrencies are provided for third parties, the limitations and registration requirements of the Liechtenstein Blockchain Act apply. In particular, providing exchange services for tokens that do not qualify as financial instruments under the rules of the Markets in Financial Instruments Directive (MiFID II) requires registration in case the business model fulfils certain requirements.

Also, depending on the exact business model of the project, the issuing of tokens for third parties and providing payment services may require a financial market licence from the FMA.

Depending on the rights a token contains and its qualification as a financial instrument under 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 the effective combatting of money laundering.

*Law stated - 18 October 2022*

## Fiat currencies

What fiat currencies are commonly used in your jurisdiction?

The official fiat currency of the Principality of Liechtenstein is the Swiss franc. However, regular transactions in euros, US dollars and other major currencies are also conducted.

*Law stated - 18 October 2022*

## Industry associations

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

The Liechtenstein government set up the Office for Financial Market Innovation, which deals 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 the Crypto Country Association and CV Labs Vaduz as well as Technopark Liechtenstein.

*Law stated - 18 October 2022*

## CRYPTOASSETS FOR INVESTMENT AND FINANCING

## Regulatory threshold

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 (Liechtenstein Blockchain Act) determines which tokens or cryptoassets are subject to Liechtenstein laws and, therefore, fall under Liechtenstein jurisdiction. According to the rules of the Liechtenstein Blockchain Act, Liechtenstein law applies to all tokens that are issued by an issuer with a seat or residence in Liechtenstein. Further, Liechtenstein law also applies to those tokens to 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 Liechtenstein Blockchain Act 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 Liechtenstein Blockchain Act, such as securities laws, property laws and laws on alternative investment funds.

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

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

*Law stated - 18 October 2022*

## Investor classification

How are investors in cryptoassets classified and treated differently?

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

Due to the Token Container Model, the rights contained in a token determine whether a token is considered a payment token, utility token or security token. Therefore, generally, all tokens are treated identically under the Liechtenstein Blockchain Act. Depending on the material rights contained, the tokens are subject to additional laws.

The applicability of several laws relevant for investors, therefore, depends 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 the 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.

## 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 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 acceptors as a means of payment, they usually qualify as a utility token. As the utility token must not contain the rights of financial instruments, the existing financial market rules do not apply on such tokens.

## Payment tokens

These are tokens that are accepted as a means of payment in a larger group of acceptors 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.

The Liechtenstein Blockchain Act closed this gap and provides for 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.

## Outlook

Also, the MiCA Regulation will provide for specific rules for the public offering of tokens that do not qualify as financial instruments.

*Law stated - 18 October 2022*

## Initial coin offerings

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 (IPTOs) of tokens of any kind. The below refers to initial public token offerings of any kind of token regardless of their classification.

The Liechtenstein Blockchain Act contains general rules for IPTOs 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 Liechtenstein Blockchain Act recognises that ICOs are regularly used as a means for crowdfunding for start-up companies and, therefore, imposes different rules depending on the volume of funds raised.

If the volume of the IPTO is made for less than 5 million 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 must provide for a comprehensive know-your-customer (KYC) and anti-money laundering (AML) policy.

If the volume of the IPTO exceeds the volume of 5 million francs, additional requirements must be met. In such a case, the issuer must register with the FMA as a token issuer and 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 must meet several requirements and run through checks of the FMA. The checks include a review of the involved persons and owners (a fit and proper review) as well as the ability to successfully conduct the token offering. Further, the issuer must show a functioning corporate governance and internal control system for the purposes of the IPTO. The issuer also must ensure that there is business continuity during the token issuing and that the token issuing is conducted in accordance with the BID. Finally, additional capital requirements must also 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 investing in ICOs. However, such restrictions may apply depending on the rights contained in a specific token and the location of the respective buyer.

*Law stated - 18 October 2022*

## Security token offerings

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 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, particularly for public offerings of security tokens, the EU Prospectus Regulation and the national implementing laws must be followed.

According to the MiFID II 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 francs.

Further exemptions from prospectus requirements apply if the STO:

- is only made to qualified investors;
- the offering is made to fewer than 150 persons; or
- 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 Liechtenstein Blockchain Act.

*Law stated - 18 October 2022*

## Stablecoins

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 is issued.

Depending on the exact setup, 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 the issuing of e-money and, thus, lead to a licensing requirement under the E-Money Act.

The question of whether or not a stablecoin constitutes e-money mainly depends on whether there is a large group of acceptors 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 E-Money 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, whether licensing requirements apply will be decided on a case-by-case basis.

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

*Law stated - 18 October 2022*

## Airdrops

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

Distribution by airdrop is usually used as a marketing mechanism and the tokens distributed by airdrop are done so without any consideration.

The rules of the Liechtenstein Blockchain Act also considered the possibility of airdrops as a means of publicly distributing tokens. If the tokens are distributed without consideration, the Liechtenstein Blockchain Act 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.

The due diligence laws also 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, even due diligence requirements do not need 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.

*Law stated - 18 October 2022*

## Advertising and marketing

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

Liechtenstein law provides for clear rules for the marketing of cryptoassets for investment. If the token is a security token (financial instrument under MiFID II), which shall be offered in a public offering, the limitations of the Prospectus Regulation and the national implementing laws apply. Therefore, the most relevant considerations are: 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 Liechtenstein Blockchain Act apply, in particular the requirement of a BID and eventual registration requirements. Here, exemptions

may apply.

*Law stated - 18 October 2022*

## Trading restrictions

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 or 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 that brings together interested buyers and sellers. Again, the applicable restrictions depend on the nature of the tokens traded.

If the tokens are payment or utility tokens, they may be traded on a crypto exchange that may provide its services subject to registration as a trusted technology (TT) service provider under the Liechtenstein Blockchain Act.

If the tokens that shall 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)).

The Central Securities Depository Regulation (CSD-Regulation), which is applicable across the entire EEA Market, requires that all transferrable securities need to be booked into a Central Securities Depository System. This also applies in case the transferrable securities are tokenised. However, in practice, tokenised transferrable securities could not be booked into the existing CSD system given that the existing CSD systems do not use blockchain technology. Thus, the EU, with Regulation EU 2022/858 (EU-DLT Sandbox Regulation), implemented a new DLT sandbox regime that finally provides the legal basis for running blockchain based exchanges for tokenised financial instruments. This EU-DLT Sandbox Regulation is also applicable in Liechtenstein as an EEA member state.

*Law stated - 18 October 2022*

## Crowdfunding

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 (1) the offering is made to the public, (2) the offering is made in the form of tokens and (3) the product offered is a financial instrument under MiFID II. The volume of funds raised in the crowdfunding determines the applicable laws.

Depending on how the crowdfunding is structured, the Prospectus Act, the Liechtenstein Blockchain Act and the KYC and AML regulations of the Due Diligence Act, are applicable. In addition, depending on the structuring, the business model 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.

*Law stated - 18 October 2022*

## Transfer agents and share registrars

What laws and regulations govern cryptoasset transfer agents and share registrars?

Under Liechtenstein laws, shareholders of Liechtenstein entities and beneficial owners in general must 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 must be adhered to by the involved service providers to provide an effective anti-money laundering regime. Further, the Liechtenstein Blockchain Act defines that certain services in connection with the exchange 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 is considered a financial instrument under MiFID II, the provision of services and execution of transfers may also require licensing under the Banking Act as broker or dealer.

*Law stated - 18 October 2022*

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

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. As an EEA member state, Liechtenstein was one of the first countries to implement the Fifth EU Anti-Money Laundering Directive ((EU) 2015/849 and (EU) 2015/847). Thus, Liechtenstein law also provides for substantial and effective KYC and AML regulations under the Due Diligence Act for offerings of, and transactions with, cryptoassets.

Also, recently, the report of MONEYVAL, after a comprehensive assessment of Liechtenstein, confirmed that Liechtenstein has a very effective system for combatting financial crime and money laundering.

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

Due to a risk-based approach of the entire KYC and AML rules, the Due Diligence Act allows for the application of different rules, depending on the investment volumes, overall volumes, involved countries and involved persons, 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 the competent supervising authority, allow the use of compliant automated systems for the onboarding of investors for an offering of tokens and, therefore, also provide the possibility of effective onboarding of a large number of investors. In autumn 2021, in a public offering conducted in a project of one firm's clients, over 67,000 persons were onboarded in an automated system and over 46,000 persons from 90 countries participated in a token sale.

In 2022, several new projects started their blockchain-related businesses in Liechtenstein. Among those were large players from the banking and finance sectors, listed companies and multinational enterprises as well as dozens of companies in the blockchain applications sector. All found Liechtenstein to be a reliable and sustainable place to conduct business. It is expected that this trend will continue in the months and years to come.

*Law stated - 18 October 2022*

### **Sanctions and Financial Action Task Force compliance**



## 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 the highest KYC and AML standards of the Fifth EU Anti-Money Laundering Regulation and the FATF standards in the Due Diligence Act.

In 2021 and 2022, a team of evaluators from the European Council's Committee of Experts on the Evaluation of Anti-Money Laundering and Countering the Financing of Terrorism (MONEYVAL) conducted routine assessments of Liechtenstein, which included visits to the country in August and September 2021. Liechtenstein is a recognised long-term member of MONEYVAL.

These assessments are conducted regularly to assess the technical compliance and effective implementation of international standards in the area of AML and countering the financing of terrorism, in line with the 2013 FATF methodology. The entire blockchain sector was subject to thorough review from a compliance and money laundering perspective.

In June 2022, the MONEYVAL report confirmed that Liechtenstein has a very effective system to combat money laundering and to counter the financing of terrorism and, thus, is a very reliable member of the FATF countries.

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

*Law stated - 18 October 2022*

## CRYPTOASSET TRADING

### Fiat currency transactions

## 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 Liechtenstein Blockchain Act and generally requires registration as a trusted technology (TT) exchange service provider.

The Liechtenstein 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 registration under the Liechtenstein Blockchain Act. Besides the registration requirements, the TT token depositary is also subject to the Due Diligence Act and must adhere to all the know-your-customer (KYC) and anti-money laundering (AML) requirements under these rules.

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

*Law stated - 18 October 2022*

### Exchanges and secondary markets

## 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 on any kind of cryptoassets. Therefore, a token is merely a

container of certain rights. Due to this material approach of the Liechtenstein Blockchain Act, the rights contained in the token define which restrictions on the holding and transferring of the token must be applied.

Generally, Liechtenstein law does not prohibit the trading of tokens between respective token holders 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 token holders are allowed to trade certain tokens in a regulated secondary market environment 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 Liechtenstein Blockchain Act as a TT exchange service provider and other services may be applicable, and the KYC and AML requirements must be met. Such crypto exchanges, however, must not allow the listing and trading of tokens that are considered financial instruments under the Markets in Financial Instruments Directive (MiFID II).

Any token that qualifies as a financial instrument under MiFID II (eg, shares, bonds, derivatives) must only be traded on a licensed multilateral trading facility (MTF). The provision of such services as an MTF requires a licence as an investment firm under the Banking Act. However due to the requirement of the CSD-Regulation and the lack of blockchain based CSD suppliers, to date there is no MTF existing that offers the trading of tokenised financial instruments.

The new EU Regulation for the DLT sandbox regime (Regulation EU 2022/858) now provides the legal basis for allowing the trading of tokenised financial instruments due to exemption from certain regulatory requirements. However, due to its nature as a mere sandbox regime, some limitations in terms of volume apply.

*Law stated - 18 October 2022*

## **Custody**

### **How are cryptoasset custodians regulated?**

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

Generally, the Liechtenstein 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, registration as a TT token custodian may also be required.

If the token is considered a financial instrument under MiFID II, additional licensing under the Banking Act may be required depending on the exact services and business model.

*Law stated - 18 October 2022*

## **Broker-dealers**

### **How are cryptoasset broker-dealers regulated?**

Due to the material approach of the TCM of the Liechtenstein Blockchain Act, the answer depends on whether the tokens being traded are considered as financial instruments due to the rights contained therein or not. Generally, however, only the professional acting as a broker-dealer (on account for others or on its own account) is subject to regulatory registration or licensing requirements.

If the relevant tokens are utility tokens and, therefore, not financial instruments, providing service as a broker-dealer is subject to the registration requirements of the Liechtenstein Blockchain Act. Depending on the type of services provided and the business model, registration as a 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 may additionally 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.

*Law stated - 18 October 2022*

## Decentralised exchanges

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

The Liechtenstein Blockchain Act is constructed in a technology-neutral manner. Therefore, decentralised exchanges (DEXs) are generally accepted under Liechtenstein laws. However, it depends on the details of the business model whether the exchange is actually considered decentralised.

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 Liechtenstein Blockchain Act and registration as a service provider under the Liechtenstein Blockchain Act may be required (eg, as a TT exchange service provider).

If the tokens are considered financial instruments, an investment firm licence under the Banking Act will also be required.

In both cases, the KYC and AML requirements of the Due Diligence Act generally must be adhered to.

*Law stated - 18 October 2022*

## Peer-to-peer exchanges

### 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, the following may be required:

- a registration under the Liechtenstein Blockchain Act;
- in the case of security tokens, a licence under the Banking Act; and
- in the case of payment tokens, a licence under the Payment Service Act.

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.

*Law stated - 18 October 2022*

## Trading with anonymous parties

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

Liechtenstein law does not impose regulatory limitations on private (non-professional) trading of cryptoassets (tokens) with anonymous counterparties. However, the general AML rules of the Liechtenstein Due Diligence Act, Due Diligence Ordinance and Criminal Code must be regarded. Persons knowingly trading with tokens that stem from criminal offences may face criminal investigations and even the seizure of assets.

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

*Law stated - 18 October 2022*

## Foreign exchanges

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

Foreign cryptocurrency exchanges providing cross-border services in Liechtenstein may become subject to licensing requirements if they actively provide services in Liechtenstein, particularly if the tokens traded on the exchange are considered 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 the prospectus requirements under the Prospectus Regulation or other banking and investment services under the Banking Act.

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

*Law stated - 18 October 2022*

### 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.

*Law stated - 18 October 2022*

## Taxes

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

In general, only natural persons resident in Liechtenstein and legal entities with a seat in Liechtenstein are subject to

Liechtenstein tax laws. Given the small size of the country and the position as a financial hub, 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 a utility token, a payment token or a 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 regular commodities and trading profits would be considered trading income that is subject to regular taxation (12.5 per cent for legal entities, subject to further deductions).

Payment tokens are considered currencies and trading profits are also considered as trading income subject to regular taxation.

*Law stated - 18 October 2022*

## **CRYPTOASSETS USED FOR PAYMENTS**

### **Government-recognised assets**

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

Liechtenstein, besides being a member of the European Economic Area, is in a customs union with Switzerland and adopts the Swiss franc 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 (Bitcoin and Ethereum) 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.

*Law stated - 18 October 2022*

### **Bitcoin**

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.

*Law stated - 18 October 2022*

### **Banks and other financial institutions**

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 providing such services has grown substantially since the implementation of the Liechtenstein Blockchain Act. Also, an increasing amount of Swiss financial institutions and banks provide services for Liechtenstein blockchain projects.

As the country is in a customs union with Switzerland, Swiss banks are also relevant for the Liechtenstein market and

regularly provide services. Also, some Swiss banks already provide cryptocurrency accounts for their clients.

*Law stated - 18 October 2022*

## CRYPTOCURRENCY MINING

### Legal status

What is the legal status of cryptocurrency mining activities?

There is no specific regulation of the mining activity of cryptocurrencies in Liechtenstein. Mining cryptocurrencies on own account and in 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 trusted technology services under the Liechtenstein 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.

*Law stated - 18 October 2022*

### Government views

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. Crypto mining is generally permitted. In the case of professional services, depending on the business model, registration requirements under the Liechtenstein Blockchain Act may apply. Also, depending on the business model licensing requirements under the financial market, laws may apply.

*Law stated - 18 October 2022*

### Cryptocurrency mining licences

Are any licences required to engage in cryptocurrency mining?

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

*Law stated - 18 October 2022*

### Taxes

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.

*Law stated - 18 October 2022*

## BLOCKCHAIN AND OTHER DISTRIBUTED LEDGER TECHNOLOGIES

### Node licensing

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 trusted technology service provider and require registration. Data processing may also be subject to the rules of the General Data Protection Regulation.

*Law stated - 18 October 2022*

### Restrictions on node operations

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

Operating a node in Liechtenstein does not require any licensing.

*Law stated - 18 October 2022*

### DAO liabilities

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

The status of a DAO and its members is 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.

*Law stated - 18 October 2022*

### DAO assets

Who owns the assets of a DAO?

Ownership of the assets is 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.

*Law stated - 18 October 2022*

### Open source

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 DLT software may constitute intellectual property that may be protected.

*Law stated - 18 October 2022*

## Smart contracts

### Are smart contracts legally enforceable?

Based on the Liechtenstein Token Container Model, there are different rights that may be asserted and must 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 issues remain unresolved, 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 token holder 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 token holder 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.

*Law stated - 18 October 2022*

## Patents

### 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 (the Patent Protection Treaty).

Under Swiss Law, computer programs in the broadest sense enjoy copyright protection, and software that meets certain requirements of complexity and sophistication is automatically protected by Swiss copyright laws, which means it does not require specific registration. Therefore, sophisticated DLT technology and software, in particular DLT protocols, are automatically protected by Swiss copyright laws.

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

*Law stated - 18 October 2022*

## UPDATE AND TRENDS

### Recent developments

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

After a strong year in 2021, in 2022, a further increasing number of international blockchain related projects selected Liechtenstein as their jurisdiction of choice to implement their blockchain businesses, conduct private sales and public sales, as well as expand their business activities.

After increased demand for the setup of crypto foundations for decentralised layer 1 and 2 network protocols, an increased number of projects providing decentralised applications (DApps) have chosen Liechtenstein. Besides this, an increasing number of financial market actors are interested in using blockchain technology and are setting up structures for this purpose in Liechtenstein. This, in particular, applies to the worldwide active crypto companies that


















have started choosing Liechtenstein as a hub for entering into the EEA market. Also, it is to be noted that the largest Liechtenstein Bank, LGT Bank, registered as crypto custodian and started offering crypto custody services for selected clients.

Thus, there is an increasing development that projects from the technology side are moving more towards the financial market side and well known and established players of the financial market side are moving towards the blockchain technology side.

Therefore, Liechtenstein has further strengthened its position as a major jurisdiction for conducting blockchain business in a safe, regulated and blockchain-friendly environment. This is, in particular, due to the pioneering legislation of the Liechtenstein Blockchain Act that has proved to be the role model for several other jurisdictions.

*Law stated - 18 October 2022*

## Jurisdictions

	<b>Austria</b>	Schoenherr
	<b>Cyprus</b>	Kinanis LLC
	<b>France</b>	Nomos
	<b>India</b>	AZB & Partners
	<b>Italy</b>	Lexia Avvocati
	<b>Japan</b>	Nishimura & Asahi
	<b>Liechtenstein</b>	Niedermüller Rechtsanwälte   Attorneys at Law
	<b>Luxembourg</b>	CMS Luxembourg
	<b>Mexico</b>	Ramos, Ripoll & Schuster
	<b>Portugal</b>	Morais Leitão, Galvão Teles, Soares da Silva & Associados
	<b>Singapore</b>	RHTLaw Asia LLP
	<b>South Korea</b>	Bae, Kim & Lee LLC
	<b>Switzerland</b>	MLL Meyerlustenberger Lachenal Froriep Ltd
	<b>Taiwan</b>	Lee and Li Attorneys at Law
	<b>Turkey</b>	SRP Legal
	<b>USA</b>	Nelson Mullins Riley & Scarborough LLP