
BLOCKCHAIN: REPORT OF THE SWISS FEDERAL COUNCIL

Switzerland is one of the leading location for blockchain related businesses worldwide. Within Switzerland, the Canton of Zug plays a pioneering role. On 14 December 2018, the Federal Council presented the report of the "Blockchain / ICO" working group of the Federal Department of Finance to the public.

The working group has examined the extent to which legal adjustments are to be made in Switzerland in the area of blockchain technology and distributed ledger technology (DLT). The working group came to the conclusion that there is no need for a separate blockchain law, but that legislative adjustments should be made in various areas of law. Such efficient regulation should create legal certainty for those affected and underline Switzerland's good reputation as an attractive location for doing business.

The report suggested in a first step certain adjustments in civil law and insolvency law as well as in the financial market law. There is no requirement to revise the law in the area of anti-money laundering and terrorist financing risks as the current regulations sufficiently cover the activities in connection with crypto currencies and initial coin offerings (ICO).

Civil Law and Insolvency Law

The Federal Council is of the opinion that there is no need for the amendment of civil law with respect to crypto currencies such as Bitcoin. The transfer of and the payment with crypto currencies is not subject to specific legal requirements and is, therefore, not subject to legal barriers.

However, insofar as tokens based on blockchain technology reflect a legal position (contractual claim, membership, or ownership right), the Federal Council recognised in the report room for improvement of the current legal basis. The users expect that such tokens have similar functions as traditional securities. To achieve this the current law would have to be interpreted extensively and flexibly which would lead to uncertainty.

For example, one of the questions with respect to securities is whether the rules of possession can be applied to mere digital assets and whether it would no longer require a physical element. The prevailing doctrine is rejecting the view that under the current law a token can be qualified the same as a physical object. Alternatively, tokens might be qualified as uncertificated value rights. However, in this case the transfer of tokens would therefore require either a written agreement or the assumption of a contract. While the former is not practicable, the assumption of a contract generally disputed in the legal doctrine. The Federal Council, therefore, suggests to amend the law on securities to clarify such questions.

Legislative action is also required in insolvency law. If crypto assets are deposited with a company, it is unclear today who is entitled to such rights in the event of bankruptcy. In particular, the question arises as to whether such assets can be segregated in favour of third parties or whether they fall into the bankruptcy estate. The Federal Council will propose an amendment to the law to regulate a right to segregation as part of a planned consultation process.

Financial Market Law

The Federal Council did not find a need to amend the current financial market law with regard to blockchain or DLT based applications. As the Swiss financial market law is drafted and applied technology neutrally, there is no need for a revision of the law. However, in certain specific areas amendments to the current law are considered to be reasonable. This applies in particular to banking law, financial market infrastructure law and law on collective investment schemes.

Next Steps

In a next step, the Federal Council will instruct the responsible departments to draw up a consultation draft in the first quarter of 2019. Afterwards, the required changes in the law will be prepared and – once the legislative process has been completed – implemented.

The content of this newsletter does not constitute legal or tax advice and may not be used as such. If you need advice with regard to personal circumstances, please reach out to your contact person at Reichlin Hess AG or to the authors of this newsletter.

Our lawyers responsible for blockchain / crypto-projects would be happy to support with any further questions you may have regarding this topic.

Your contacts



Christian Maeder
MLaw, Attorney-at-Law
Certified Tax Expert

christian.maeder@reichlinhess.ch
www.reichlinhess.ch

T +41 41 729 10 70
M +41 79 332 51 75



Paul Thalmann
MLaw, Attorney-at-Law
Notary Public

paul.thalmann@reichlinhess.ch
www.reichlinhess.ch

T +41 41 729 10 70

The content of this newsletter does not constitute legal or tax advice and may not be used as such. If you need advice with regard to personal circumstances, please reach out to your contact person at Reichlin Hess AG or to the authors of this newsletter.