Lending

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Token lending takes two forms that regulation treats differently. In the first, the customer lends tokens to the provider, which uses them as it sees fit and promises a return. In the second, the provider lends tokens or money to the customer against collateral.

Customer-to-provider lending is the Hodlnaut and Vauld model. Under the Payment Services Act, a provider that borrows tokens from customers is not providing a payment service in respect of the borrowing, because it is not safeguarding the tokens for the customer. It is the owner of the tokens and the customer is an unsecured creditor. This is why those platforms were able to argue that their yield products were outside the licensing regime, and why their customers ranked as unsecured creditors in the insolvencies. Under the SFA, the provider's promise to repay tokens with interest is a debenture if it is an acknowledgement of indebtedness. An offer of such a promise to the public requires a prospectus or an exemption.[1] The exclusion from the debenture definition for promissory notes and for debts incurred in the ordinary course of business does not help a platform whose business is borrowing from the public. Since 2024, a licensed DPT provider may not borrow from retail customers at all, because the arrangement necessarily involves the provider taking the customer's tokens for its own use.

The Banking Act 1970 is the third relevant statute. Accepting deposits from the public is the business of banking, where a deposit is defined as a loan of money. Tokens are not money for the purposes of the Banking Act, so a platform that borrows tokens is not deposit-taking in Singapore.[2] This is a sharp contrast with Switzerland. FINMA treats the acceptance of crypto assets with an obligation to return them as deposit-taking under Art. 1 BankA and Art. 5 BankO unless the assets are held in individual custody. A Swiss Hodlnaut would therefore have needed a banking or fintech licence from the start (see Part E, Chapter VIII). Singapore filled the gap by the retail prohibition and by the SFA debenture analysis, leaving the Banking Act untouched.

Provider-to-customer lending, in which the provider lends tokens or money to a customer to finance a position, is a credit facility. For retail customers it is prohibited under the consumer access measures described in Chapter III.[3] For accredited and institutional customers it is permitted, subject to the Moneylenders Act 2008 where money is lent and to the conduct requirements of the DPT licence. A margin facility in tokens is also a leveraged DPT transaction, which again is prohibited for retail customers.

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Notes

1. SFA, s. 2(1), definition of "debenture", and Part 13 on offers of securities; MAS Guide to Digital Token Offerings (2020), case study on a token that evidences a debt.
2. Banking Act 1970, s. 4B, definition of "deposit" as a loan of money, and s. 4 on the prohibition on banking business without a licence.
3. MAS, Guidelines PS-G03 on Consumer Protection Measures by Digital Payment Token Service Providers, provisions on credit facilities and leveraged DPT transactions with retail customers; Moneylenders Act 2008, s. 5, on the licensing of moneylending.

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