Phase two: perimeter building, 2018–2021

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The ICO boom produced the first failures and the first rules. In Switzerland the emblematic case was Envion. The Zug company had raised about CHF 100 million from more than 30,000 investors through a token sale in early 2018, and FINMA opened enforcement proceedings in July 2018 on suspicion that the sale amounted to the unauthorised acceptance of public deposits.[1] FINMA found in March 2019 that Envion had indeed accepted deposits without a licence. The company went into bankruptcy, after which the founders and the Berlin management spent years in litigation with each other and with investors. Envion taught Swiss practice three lessons that remain current. A token with a repayment feature is a deposit however it is labelled. FINMA will act against a Zug company even when the operations are abroad. A protocol whose founders fall out has no protection in the token documentation. Part H, Chapter I uses the case as its first illustration.

The Federal Council's report of December 2018 and the DLT Act that followed were the constructive response. The report concluded that Swiss law was fundamentally fit for the technology and proposed targeted amendments, which Parliament adopted on 25 September 2020 and which entered into force in two steps in 2021.[2] In parallel FINMA built the perimeter by guidance. The fintech licence entered into force on 1 January 2019. Guidance 02/2019 of 26 August 2019 applied the travel rule to Swiss financial intermediaries from the first franc. On the same day FINMA licensed Sygnum and SEBA as the first crypto banks.[3] The stablecoin supplement of September 2019 was written with the Geneva-based Libra Association in mind and told the world that a global stablecoin issued from Switzerland would need a payment-system licence and more.[4] Libra never launched, but the analysis survives in FINMA's 2024 guidance.

Singapore built its perimeter by statute. The Payment Services Act was passed in January 2019 and commenced on 28 January 2020, bringing exchanges and other DPT service providers under an AML-focused licensing regime with a six-month transitional period. The amendments of January 2021 widened the DPT service to custody and transfer, although MAS did not bring them into force until April 2024. On the private-law side, the Court of Appeal decided *Quoine Pte Ltd v B2C2 Ltd* [2020] SGCA(I) 02 in February 2020, the first appellate decision anywhere on algorithmic trading of crypto assets. It held that the unilateral-mistake doctrine looks to the programmer's knowledge and left open whether Bitcoin can be held on trust.[5] IRAS published its e-Tax Guide on digital tokens in April 2020 and exempted DPT supplies from GST from 1 January 2020. By the end of 2021 Singapore had several hundred PSA applications pending, had placed Binance on its Investor Alert List and had seen Binance withdraw its Singapore application, the first sign that the licensing bar was higher than the industry had assumed.[6]

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Notes

1. FINMA, media release of 26 July 2018 "FINMA launches enforcement proceedings against envion AG", stating that the company had accepted approximately CHF 100 million from more than 30,000 investors and issued EVN tokens in a bond-like form.
2. Federal Council, media release of 14 December 2018; Federal Department of Finance, media release of 18 June 2021 on the full entry into force of the DLT Act on 1 August 2021.
3. FINMA Guidance 02/2019 "Payments on the blockchain" of 26 August 2019; FINMA, media release of 26 August 2019 on the licensing of two blockchain service providers as banks and securities dealers.
4. FINMA, "FINMA publishes 'stable coin' guidelines", media release of 11 September 2019, giving an indicative classification of the Libra project as requiring a payment system licence under the Financial Market Infrastructure Act with additional requirements for capital, liquidity and reserve management.
5. Quoine Pte Ltd v B2C2 Ltd, Court of Appeal, Civil Appeal No 81 of 2019, judgment of 24 February 2020, Sundaresh Menon CJ for the majority.
6. MAS, Investor Alert List entry for Binance.com, 2 September 2021; Binance Asia Services Pte Ltd withdrew its PSA licence application in December 2021.

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