Switzerland: registration, courts and self-regulation

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Commercial registers of the cantons of Zug and Zürich

The registration authorities for companies, foundations (except family and ecclesiastical foundations) and associations carrying on a commercial business. Both accept crypto contributions in kind with an auditor's confirmation and both process filings within one to two weeks.[1] Approach: filings through a notary or directly by the company with the required public deeds and declarations. The Zug register has published guidance on crypto contributions.

Courts

The cantonal courts of Zug (Kantonsgericht, Obergericht) and Zürich (Bezirksgericht, Handelsgericht for commercial disputes, Obergericht) are the first-instance and appeal courts for civil claims involving digital assets, with the Federal Supreme Court in Lausanne as the final instance. The Federal Criminal Court in Bellinzona hears federal criminal cases and appeals in mutual assistance matters.[2]

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Approach: through counsel admitted in Switzerland. The Zürich Commercial Court is the preferred forum for high-value commercial disputes because of its expertise and the speed of its proceedings.

Self-regulatory organisations

VQF in Zug, PolyReg in Zürich, SO-FIT and ARIF in Geneva and OAD-FCT in Lugano are the SROs recognised by FINMA that admit digital-asset financial intermediaries. Each publishes its regulations, fee schedule and admission procedure and supervises its members through annual AML audits.[3] Approach: a pre-application conversation with the SRO's admissions staff, who will say frankly whether the business model fits, followed by the formal application. The SROs are the most accessible of all Swiss regulatory bodies and the best source of practical guidance for a start-up.

Supervisory organisations

AOOS, OSIF, OSFIN, FINcontrol Suisse and SO-FIT (in its AO capacity) are the supervisory organisations authorised under FINMASA to supervise portfolio managers and trustees on FINMA's behalf. Approach: affiliation is applied for in parallel with the FINMA licence application. The AO's preliminary review of the file is a useful dress rehearsal for FINMA's.

Ombudsman bodies

Financial service providers under FinSA must affiliate to a recognised ombudsman body. Several exist, including the Swiss Banking Ombudsman for banks and the Financial Services Ombudsman (FINSOM) and the Ombudsman for Financial Service Providers (OFD) for other institutions.[4]

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Industry bodies

The Crypto Valley Association (Zug), the Swiss Blockchain Federation (Berne), the Swiss Bankers Association and OpenVASP (the travel rule protocol association) are the bodies through which the industry speaks to regulators. The Capital Markets and Technology Association (CMTA, Geneva) publishes standards for tokenised securities and custody. Through these bodies practitioners obtain the market view. Approach: membership and working groups. CMTA's standards are cited by FINMA and banks and are worth reading before drafting any tokenisation documentation.

Notes

1. Commercial Register Ordinance of 17 October 2007 (CRO; HRegV, SR 221.411); see Part P, Chapter II. ↩
2. Civil Procedure Code Art. 6 (commercial courts); Federal Supreme Court Act of 17 June 2005 (SR 173.110); see Part H, Chapter VIII. ↩
3. AMLA Art. 24 ff.; the SROs are described in Part C, Chapter VII and Part F, Chapter I. ↩
4. FinSA Art. 74 ff.; see Part E, Chapter IV. ↩

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