Switzerland: supervision and policy

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Swiss Financial Market Supervisory Authority (FINMA)

The integrated supervisor of banks, insurers, securities firms, fund managers, portfolio managers (through the AOs), financial market infrastructures and, for AML purposes, directly supervised financial intermediaries. FINMA's fintech desk handles enquiries on the classification of tokens and business models under the ICO Guidelines and is the first point of contact for a digital-asset business.[1] Approach: a written enquiry through FINMA's online form with the minimum information listed in the ICO Guidelines' annex, followed if FINMA agrees by a meeting. FINMA charges by the hour for enquiries and licence applications. It does not give informal oral guidance that can be relied on, does not comment on hypothetical structures and expects the applicant's lawyer to have done the classification before asking. Enforcement is handled by a separate division whose first letter to a firm is usually a request for information under Art. 29 FINMASA, which should be answered with counsel.

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Swiss National Bank (SNB)

The central bank, responsible for monetary policy, financial stability and the oversight of systemically important payment systems. Its relevance to digital assets is through its wholesale CBDC pilots (Helvetia) with SIX Digital Exchange, its policy statements on stablecoins and its role in the oversight of SDX as a financial market infrastructure.[2] Approach: the SNB does not deal with individual firms except as infrastructure operators or pilot participants. Practitioners read its publications.

State Secretariat for International Finance (SIF)

The Federal Department of Finance's unit for financial market policy and legislation. SIF drafted the DLT Act and the Federal Council's reports on stablecoins and DeFi and leads Switzerland's position in the FATF, the FSB and the OECD on crypto matters.[3] Approach: through consultations on draft legislation, industry associations and, for significant market participants, direct dialogue. SIF does not interpret existing law for individual cases.

State Secretariat for Economic Affairs (SECO)

The authority for sanctions administration and export controls. SECO publishes the Swiss sanctions lists, administers the Ukraine Ordinance including its provisions on crypto services for Russian persons and grants licences and exemptions.[4] Approach: written enquiries to the sanctions unit on the interpretation of specific prohibitions, which SECO answers in writing within weeks. SECO expects the enquirer to identify the provision and the facts precisely and will not approve a transaction in general terms.

Federal Supervisory Authority for Foundations (ESA)

Part of the Federal Department of Home Affairs, supervising foundations with national or international scope, which includes almost all protocol foundations in Zug. ESA reviews the deed and regulations before incorporation on request, approves amendments of purpose and receives annual reports and accounts.[5]

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Approach: a preliminary review request with the draft deed, regulations and a description of the planned activity, including the token and its relationship to the foundation. ESA is practical about digital assets but firm on self-dealing and the non-distribution rule.

Notes

1. FINMASA Art. 4 ff.; FINMA's organisation and its fintech desk are described in Part C, Chapter VII and the enquiry process in Part E, Chapter XII. ↩
2. National Bank Act of 3 October 2003 (NBA; NBG, SR 951.11), Art. 5 and Art. 19 ff.; the Helvetia programme is described in Part E, Chapter XI. ↩
3. The Federal Council reports of 14 December 2018 (DLT), 2022 (DeFi) and the stablecoin work are described in Part C, Chapters V and VI. ↩
4. Embargo Act of 22 March 2002 (EmbA; EmbG, SR 946.231); Ordinance on Measures in Connection with the Situation in Ukraine (SR 946.231.176.72); see Part F, Chapter VII. ↩
5. Civil Code Art. 84; the ESA practice on protocol foundations is described in Part P, Chapter II. ↩

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