The DLT Act of 2021

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Switzerland did not pass a crypto act. It passed, on 25 September 2020, a Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, which the market calls the DLT Act and which amended ten existing federal statutes.[1] The approach followed the Federal Council's report of December 2018, which concluded that Swiss law was already well suited to the technology and needed only selective adjustment.[2] The amendments to the Code of Obligations and the Intermediated Securities Act entered into force on 1 February 2021 and the rest on 1 August 2021, together with a blanket ordinance adjusting ten federal ordinances.[3]

Four changes carry most of the weight. The first is the ledger-based security of Art. 973d to 973i CO. A right can now be registered in a securities ledger that meets four functional requirements and can then be exercised and transferred only through that ledger, with the effects of a negotiable security. The first requirement is that the creditors but not the obligor have power of disposal over their rights. The second is that the ledger's integrity is protected by technical and organisational measures such as joint management by several independent participants. The third is that the content of the rights and the functioning of the ledger are recorded in it or in linked data. The fourth is that creditors can view the information and verify the integrity

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of entries concerning themselves without the intervention of a third party.[4] The second change is the segregation of crypto-based assets in the bankruptcy of a custodian under Art. 242a and 242b DEBA. The customer may reclaim assets that the custodian holds ready for the customer at all times and that are either individually allocated to the customer or held collectively and clearly attributable. The third change is the DLT trading facility of Art. 73a ff. FinMIA, a new licence for a multilateral trading venue that admits non-regulated participants, including retail investors, to trade ledger-based securities and that may combine trading, settlement and custody in one entity. The fourth change is a set of adjustments to the Banking Act and the Anti-Money Laundering Act. They clarified that custody of crypto assets is a banking activity when the assets are not segregated and that the custodian of segregated assets is a financial intermediary.[5]

The DLT Act was, on its entry into force, the world's first integrated statute for digital assets in a major financial centre. Its drafting choices have aged well. By declining to define "blockchain" or "token" and by regulating the functions of a ledger instead, it has accommodated every technical development since 2021 without amendment. Its limits are equally clear. It did nothing for pure payment tokens as objects of private law, which remain governed by the doctrine of factual power of disposal described in Part D, Chapter I. It did not address stablecoins, DeFi or DAOs, each of which the Federal Council has since examined in separate reports. It did not change the tax law at all. Part C, Chapters V and VI, trace the legislative path and the policy that followed.

Notes

1. Federal Act of 25 September 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology (AS 2021 33 and AS 2021 400), Federal Council dispatch of 27 November 2019 (BBl 2020 233); Federal Council report of 14 December 2018. ↩
2. Federal Council, media release of 14 December 2018 "Federal Council wants to further improve framework conditions for blockchain/DLT", reporting the adoption on 7 December 2018 of the report on the legal framework for

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distributed ledger technology and blockchain in Switzerland and its conclusion that the Swiss legal framework is well suited to dealing with new technologies while selective adjustments are needed. ↩

3. Federal Department of Finance, media release of 18 June 2021 "Federal Council brings DLT Act fully into force and issues ordinance". ↩
4. Code of Obligations (SR 220), Art. 973d paras 1 to 3, as inserted by the DLT Act with effect from 1 February 2021. ↩
5. Financial Market Infrastructure Act (SR 958.1), Art. 73a to 73f; Banking Act (SR 952.0), Art. 1b and Art. 16 no. 1bis; Anti-Money Laundering Act (SR 955.0), Art. 2 para. 3; all as amended by the DLT Act with effect from 1 August 2021. ↩

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