The ledger as register and the ledger as record: a decision sequence

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Checklist

For any tokenised real-world asset, record the following before advising on it: - The asset and the register that establishes title to it under the law of its location. - Whether the token is the register (Swiss ledger-based security) or a record (everything else). - If a record, the registered owner and every legal relationship between that owner and the token holder. - The governing law of the token, of the underlying asset and of each relationship between them. - What the token holder receives if the registered owner, the issuer and the platform each become insolvent. - Whether any freeze, clawback or forced-transfer function exists in the token contract and who controls it. - The reconciliation process between the ledger and the other register, its frequency and who audits it. - The regulatory classification of the token under Chapter III and of the service providers under Parts E and K.

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The reconciliation item deserves emphasis. A digital twin is only as reliable as the process that keeps the twin aligned with the original. Every tokenised fund, bond and property product the author has reviewed has a point at which an operator reads the ledger and updates the register, or reads the register and updates the ledger. That operator can fail, be hacked or go insolvent. The documents should say what happens then, and the token holder should know which record a court will believe.

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