Tokenised commodities and art

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A gold token is a claim against the issuer for delivery of gold, or a representation of a share in gold the issuer holds. PAX Gold and Tether Gold, the two largest, give the holder a right to redeem for physical gold in minimum quantities and otherwise hold the gold in London vaults under the issuer's title.[1] The holder's position is contractual, which FINMA's 2019 stablecoin supplement recognised when it classified commodity-linked tokens as deposits or as asset tokens depending on whether the holder has a property right in specific bars.[2] A Swiss issuer that holds allocated gold for the holder under a bailment and issues a token representing it is a custodian of a thing and the holder owns the gold under Art. 641 CC. A Swiss issuer that holds unallocated gold and promises delivery is a debtor and the holder is a creditor.

Tokenised art follows the same analysis with an added copyright layer. An NFT linked to a physical painting represents whatever right the issuer has granted, which is usually nothing beyond the token itself unless a sale agreement or trust transfers title to the painting. Fractionalised ownership of a painting through tokens is a collective investment in both hubs if a manager controls the painting on behalf of the holders. Part E, Chapter X and Part K, Chapter IX treat the fractionalisation question. The practical advice is identical to that for real estate: identify the vehicle that owns the physical object and analyse the token as an interest in that vehicle.

Notes

1. Paxos Trust Company, PAX Gold Terms and Conditions (redemption in whole-bar increments of approximately 430 troy ounces, or smaller quantities through partners); TG Commodities Ltd, Tether Gold Terms of Service. Both documents are revised periodically and the current version should be checked.
2. FINMA Supplement to the ICO Guidelines, 11 September 2019, section 2.2 (tokens linked to commodities; property right v contractual claim). Part E, Chapter VII.

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