Where they differ

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The resemblance is real but it stops at the surface of the legal system. Beneath it, the two orders are built on different foundations, so that a practitioner who ignores the difference will make predictable mistakes.

Civil law and common law

Switzerland is a civil-law country. Its private law is codified in the Civil Code (CC; ZGB) and the Code of Obligations (CO; OR). The first question any Swiss lawyer asks about a token is which category of the codes it falls into. The answer, worked out between 2018 and 2021, is that a pure payment token is neither a thing (Sache) under Art. 641 ff. CC nor a claim and that it is transferred by a factual change in the power of disposal. The legislator therefore had to create a new category, the ledger-based security of Art. 973d ff. CO, to make tokens that embody rights work within the system.[1] Part D, Chapters I to III develop this.

Singapore is a common-law country whose private law grows case by case. Its courts did not need a statute to decide that crypto assets are property. They reasoned from the two traditional categories of personal property, things in possession and things in action, and asked whether a stablecoin balance fitted one of them. In *ByBit Fintech Ltd v Ho Kai Xin* [2023] SGHC 199 the High Court held that it is a thing in action which the common law recognises and will enforce.[2] Part J, Chapters I and II develop this.

The consequence for the practitioner is a difference of method. In Switzerland the answer to a new question is found by asking how the code would treat it, with the legislator intervening where the code cannot stretch. In Singapore the answer is found by asking how a judge would reason from the last decided case, with the legislator intervening where the courts are too slow or where a policy choice is needed that courts cannot make. Both methods produce workable law for digital assets. They produce it at different speeds and with different kinds of certainty. Swiss law is more certain before the first case and Singapore law is more certain after it.

Federal and unitary

Switzerland is a federation of twenty-six cantons. Private law, financial market law and criminal law are federal, but taxation is shared and the cantons compete on tax rates, on the availability of expenditure-based taxation and on administrative practice. The canton of Zug accepts Bitcoin and Ether in payment of cantonal taxes up to CHF 1.5 million per transaction, a limit it raised from CHF

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100,000 in May 2023.[3] The canton of Zürich does not accept them and abolished expenditure-based taxation in 2009. A founder who moves to Switzerland is therefore choosing a canton as much as a country, which is why a Swiss structure must be designed with cantonal practice in view. Part G and Part P, Chapter I make the point in detail.

Singapore is a unitary city-state. There is one tax authority, one regulator, one company registry and one set of courts. What Singapore loses in the absence of internal competition it gains in coherence. A ruling from IRAS applies everywhere and a licence from MAS covers the whole territory. There is no equivalent of the Zug–Zürich difference in wealth-tax valuation practice that keeps Swiss advisers busy. A practitioner moving from the Swiss system to the Singapore system must unlearn the habit of asking "in which canton", while a practitioner moving the other way must learn to ask it before anything else.

"Same risk, same rules" with different content

Both regulators describe their approach to digital assets with the same slogan. FINMA has used "same risks, same rules" since at least its 2019 stablecoin supplement.[4] MAS has used "same activity, same risk, same regulation" in its speeches and consultation papers since at least 2022.[5] The slogan means something different in each mouth, a difference which explains much of the divergence between the two regimes.

In Switzerland the slogan is a principle of statutory interpretation. It means that the existing financial market acts apply to tokens without amendment wherever a token performs the economic function that the act regulates. No special crypto licence will be created. The DLT Act of 2021 is consistent with this. It did not create a crypto regime but adjusted ten existing acts so that they could accommodate the technology. The only new licence it created, the DLT trading facility, exists because the existing exchange licences could not accommodate retail participants trading tokens directly.[6] The approach is technology-neutral in the strict sense. Its weakness is that it leaves gaps where an old definition fits a new product badly, as the staking guidance of 2023 showed.

In Singapore the slogan is a principle of policy. It means that MAS will regulate an activity in proportion to the risk it sees. Where the risk is new, as MAS judged the risk of retail cryptocurrency speculation to be in 2022, the rules will be new too. Singapore therefore has what Switzerland does not: a dedicated digital payment token licence under the Payment Services Act, a dedicated digital token service provider regime under the FSMA, dedicated consumer-access measures for retail customers and a dedicated stablecoin framework. The approach is activity-specific. Its strength is that it can respond to a new risk quickly. Its weakness is that a business can find itself regulated under three overlapping regimes and that a change of policy can remove the ground from under a business model within months.

Dimension	Switzerland	Singapore
Legal family	Civil law, codified	Common law, case-based
State structure	Federal, 26 cantons	Unitary city-state

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Dimension	Switzerland	Singapore
Financial regulator	FINMA (integrated, since 2009) with SROs for AML	MAS (central bank and integrated regulator)
Legislative method for crypto	Adjust existing acts (DLT Act 2021)	Dedicated regimes (PSA 2019, FSMA 2022, stablecoin framework)
Token classification source	FINMA ICO Guidelines 2018 and supplements	MAS Guide to Digital Token Offerings 2017/2020 and PSA definitions
Property status of tokens	By statute for ledger-based securities; doctrine for payment tokens	By case law since 2022/2023
Insolvency segregation	Art. 242a/242b DEBA	Trust law and MAS segregation rules
Retail access	Open, subject to FinSA conduct rules	Restricted by guideline since 2024/2025
Tax on private gains	Exempt from income tax; wealth tax applies	No capital gains tax; no wealth tax
Tax competition inside the country	Yes, cantonal	No

Notes

1. Code of Obligations (SR 220), Art. 973d para. 1: a ledger-based security is a right which, in accordance with an agreement of the parties, is registered in a securities ledger and can be exercised and transferred to others only via that ledger; para. 2 sets out the technical requirements of the ledger.
2. ByBit Fintech Ltd v Ho Kai Xin and others, General Division of the High Court, Philip Jeyaretnam J, 25 July 2023, paras 35 to 39, discussing Fry LJ's dictum that personal things are either in possession or in action and holding that the holder of USDT has an incorporeal right of property recognised as a thing in action.
3. Canton of Zug, media release of 19 May 2023 "Höchstbetrag für Steuerzahlungen mit Kryptowährungen neu 1,5 Millionen Franken", stating that about 150 crypto tax payments totalling almost CHF 2 million had been made since the introduction of the option, in partnership with Bitcoin Suisse.
4. FINMA, "FINMA publishes 'stable coin' guidelines", media release of 11 September 2019, describing a substance-over-form approach that treats stable coins like other blockchain tokens according to their economic function and applies "same risks, same rules" in each case.
5. Ravi Menon, Managing Director of MAS, "Yes to digital asset innovation, no to cryptocurrency speculation", opening address at the Green Shoots Seminar, Singapore, 29 August 2022, published by MAS and reproduced by the Bank for International Settlements.
6. Federal Department of Finance, media release of 18 June 2021: the Federal Council brought the DLT Act fully into force on 1 August 2021 together with a blanket ordinance adjusting ten ordinances; the amendments to the Code of Obligations enabling securities on a blockchain had entered into force on 1 February 2021.

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