

Legal 500

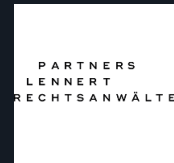
Country Comparative Guides 2023

Liechtenstein

Blockchain

Contributor

RECHTSANWÄLTE
LENNERT PARTNERS



Janina Pietrowska

MLaw Switzerland / Head of IT, Fintech, Blockchain Practice / Of Counsel |
janina@rlp.li

Alexander Yudovich, LL.M. (International Business Law)

Lawyer and Certified Tax Advisor, Head of Sports Law Practice / Of Counsel |
alexander@rlp.li

Dr Philipp Lennert

Attorney at Law (DE); Certified Attorney in Tax Law (DE); European Attorney at
Law in Liechtenstein; Public Notary in Liechtenstein | philipp@rlp.li

This country-specific Q&A provides an overview of blockchain laws and regulations applicable in Liechtenstein.

For a full list of jurisdictional Q&As visit legal500.com/guides

Liechtenstein: Blockchain

Liechtenstein is often considered a part of the European Crypto Valley together with multiple cantons of Switzerland. Regulatory activity in Liechtenstein is primarily focused on ensuring legal certainty for all players of the crypto market. Thus, while the regulator Financial Market Authority Liechtenstein (FMA) actively facilitates the development and adoption of blockchain and decentralized technologies, there are national licensing requirements in place for certain activities.

Liechtenstein turned out to be really attractive jurisdiction for medium- and large-scale blockchain infrastructure projects, which is quite understandable. Legal certainty is paramount for them and strict licensing rules are less of an issue for large companies, unlike small startups. Nevertheless, startups at seed stage could also find legal certainty and stability an important reason pro for choosing Liechtenstein.

Some serious advantages of Liechtenstein include:

- Liechtenstein is a part of the European Economic Area and it allows projects to reach the European market.
- Liechtenstein also protects its investors well that makes it more reliable than other countries.
- Liberal legislation and legal stability as in Switzerland but faster and more flexible thanks to the size of the country.
- Liechtenstein is an international financial centre with over 295 billion assets under management.

1. Please provide a high-level overview of the blockchain market in your jurisdiction. In what business or public sectors are you seeing blockchain or other distributed ledger technologies being adopted? What are the key applications of these technologies in your jurisdiction?

Overall, there are over 80 large blockchain companies registered in Liechtenstein. Some notable examples include:

- Vlinder Climate – a company that uses blockchain assets to finance carbon removals from mangrove and seaweed restoration.
- Slant.li – blockchain-based private data

computing provider.

- WeOwn AG – a company that provides blockchain standardized blockchain solution as a core reconciliation and ledgering layer for financial firms.
- LCX – a regulated cryptocurrency exchange and the largest Liechtenstein-based tokensale launchpad – the company performs the role of a token issuer for blockchain startups.
- Crowdli, that carries out tokenization of real estate.
- NEX/NASH exchange fulfilled the tokenization of participation in future income.

2. To what extent are tokens and virtual assets in

use in your jurisdiction? Please mention any notable success stories or failures of applications of these technologies.

One of the popular trends in 2021 was so called non-fungible tokens. Such tokens are supposed to be not interchangeable with other tokens as they feature unique elements depending on the tokenized good or intellectual right. Since each physical asset has its own properties (eg, a tokenized car features a unique identification number and milage, a tokenised diamond features an individual cuts and carat), they will also be featured in the token therefore making it inimitable. The same goes for intellectual property rights to, for example, songs. As each track features individual codes, the tokenised music will result in an NFT.

Liechtenstein Blockchain Act provides a unique and solid legal framework for issuance of fungible and non-fungible tokens, while few tokenization projects like Tiamonds by LCX AG are a great example for its usage.

NFTs are not specifically regulated by MiCA. However, if tokens are non-fungible only technically and represent a similar content, i.a. involving any kind of investment, those tokens can be treated as financial instruments under MiFID II.

3. To what extent has blockchain technology intersected with ESG (Environment, Social and Governance) outcomes or objectives in your jurisdiction?

Among variety of projects intersected with ESG objectives we are aware of those that use blockchain technologies for tokenization of carbon credits (for example, *Vlinder*). Also there is a project, *Pink Elements*, that uses blockchain to ensure supply of clean drinking water. SHEQONOMI is going to use blockchain to support females in developing counties for listening to educational content in a transparent way.

4. Please outline the principal legislation and the regulators most relevant to the use of blockchain technologies in your jurisdiction. In particular, is there any blockchain-specific legislation or are there any blockchain-specific regulatory frameworks in your jurisdiction, either now or envisaged in the short or mid-term?

Liechtenstein was one of the first countries in the world to adopt special legislation on blockchain, namely the

Token and Trustworthy Technology Service Provider Act (also TVTG or Liechtenstein Blockchain Act), which has been enforced from the beginning of 2020, creating one of the world's first safe and regulated environments for token-related services and establishing rules for tokenization of assets, due diligence requirements, KYC and AML procedures as well as licensing procedures for various blockchain-based assets and crypto companies.

In this context, it should be noted that Liechtenstein's TVTG legislation follows the approach of a "token container model" meaning a token can represent rights to all possible assets, i.e. tokens will be deemed to constitute whatever is "put into the container". Therefore, for instance, if financial instruments are tokenised ("put into the container") the token will also be classified as financial instrument under MiFID II. The principle of "substance over form" is applicable here.

It is important that a legal definition of "Trustworthy Technology Service Provider" (TT service provider) appeared, along with licensing requirements for TT service providers. It is a key definition in Liechtenstein's crypto regulations. It is an umbrella term that covers all entities that perform any operations with tokens.

TT service providers have to be registered and obtain so called registrations (comparable to national licenses) for all sorts of operations, from token issuance and crypto payment processing to physical validation of tokenized assets.

The following registrations could be obtained until revision of TVTG in 2023 in light of MiCA:

- Token generator (technical issuer of tokens)
- Token issuer (Over 5 Mln – no registration requirement from 01.02.2024)
- Private keys custodian
- Token custodian
- Physical validator (between token and tokenized assets)
- Protector (holding tokens in his own name for account of third parties)
- Exchange office operator (token exchange for fiat)
- Verifying authority (checking ability to conclude the deal and the preconditions to sell tokens)
- Price service provider
- Identity service provider (identifying the authorized person of token and making registry).

The following major changes are covered by the revision

of TVTG in 2023 in light of MiCA.

Token Issuer

Until now, there was a registration requirement under the TVTG for issuers of a public token issue of more than CHF 5 million in their own name. A corresponding registration requirement will be abolished from 01.02.2024, so that a limit on the amount of the own issue of tokens will no longer apply. However, basic information must still be published, which must be reported to the competent Financial Market Authority of Liechtenstein, FMA.

TT-Asset Managers

Until now, the role of crypto advisors and crypto portfolio management was not covered by the Blockchain Act. In the future such service providers can provide the following services:

manage portfolios with crypto assets on an individual client basis with discretionary powers within the scope of a client mandate,;

offer or make personalised or specific recommendations to third parties with regard to the purchase or sale of one or more crypto assets. The registration relates exclusively to services for crypto assets. and not financial instruments.

TT-Custodian

Until now, Liechtenstein national law has distinguished between the safekeeping of TT keys and TT tokens. In addition, a so-called TT-protector held third-party tokens in his own name on a TT system. All three activities were subject to registration.

In the future a single activity as a "TT custodian". is subject to onregistration for the protection of customers.

Tokenization-Service Provider

For the purpose of easier differentiation of both activities, the already regulated activity of the technical token generator will be changed to the effect that the creator will only be liable for the technical quality of the token, while the so-called tokenisation service provider will be liable for both the technical and legal quality of the token. However, both activities are – in contrast to purely technical service providers – directly related to the marketing of tokens. Purely preparatory activities are therefore not subject to registration.

5. What is the current attitude of the government and of regulators to the use of blockchain technology in your jurisdiction?

Liechtenstein can boast a highly flexible and favorable official attitude towards blockchain related matters. Apart from a clear legal framework, it is an advantage of Liechtenstein that a project can communicate with the regulator, FMA in advance and submit a so-called supervision request (Unterstellungsanfrage) to be able to obtain official feedback regarding which licences and requirements are applicable to the project.

Any project choosing Liechtenstein as a jurisdiction will work in close cooperation with the local regulator and other authorities to become a player on the market. An open, straightforward and clear attitude of local authorities has always been of great help for startups and mature businesses.

6. Are there any governmental or regulatory initiatives designed to facilitate or encourage the development and use of blockchain technology (for example, a regulatory sandbox or a central bank digital currency initiative)?

FMA has a special fintech-desk responsible for cryptocurrency and blockchain regulation, as well as for regulation of any future financial technologies. Additionally, a special government body responsible for facilitation of fintech and blockchain development was established – Stabsstelle für Finanzplatzinnovation und Digitalisierung (Office for financial center innovation and digitization). These are the main initiatives and main drivers that at due time promoted the adoption of the Liechtenstein Blockchain Act that is described below, while the FMA fintech-desk are exactly the people who carry out their duties to put the law into practice.

7. Have there been any recent governmental or regulatory reviews or consultations concerning blockchain technology in your jurisdiction and, if so, what are the key takeaways from these?

The Liechtenstein Blockchain Act is to be adapted in the light of the European legal harmonisation through the MiCA Regulation, in order to adapt to the new regulations at an early stage and to continue to maintain Liechtenstein's competitive advantage. Please see Question 4, which describes all the main changes.

8. Has any official guidance concerning the use of blockchain technology been published in your jurisdiction?

As previously mentioned, the main Liechtenstein piece of legislation is Liechtenstein Blockchain Act that has been in force since the beginning of 2020 – please see Question 4 for more information.

9. What is the current approach in your jurisdiction to the treatment of cryptocurrencies for the purposes of financial regulation, anti-money laundering and taxation? In particular, are cryptocurrencies characterised as a currency?

The use of cryptocurrencies as a means of payment is largely unregulated apart from KYC/AML – the government tried to avoid the difficult issue of differentiating between cryptocurrencies and tokens.

10. Are there any prohibitions on the use or trading of cryptocurrencies in your jurisdiction?

All transactions, conducted by TT service providers, are subject to Due Diligence Act and Ordinance (Sorgfaltspflichtgesetz or SPG) which establishes KYC/AML procedures in accordance with the EU regulations. And given the all-encompassing nature of this concept, it is safe to say that all operations with cryptocurrencies in Liechtenstein are subject to KYC/AML regulations.

11. To what extent have initial coin offerings taken place in your jurisdiction and what has been the attitude of relevant authorities to ICOs?

The Principality of Liechtenstein as possible jurisdiction for initial coin offerings (ICO) and blockchain projects in general got on the radars together with Switzerland as it published ICO fact sheet in 2017. Nevertheless, it should be highlighted inter alia that after over 80% of unregulated initial coin offerings (ICOs) turned out to be scams, regulated utility token offerings (UTO) and security token offerings (STOs) became more popular as ways of fundraising. For example LCX AG provides standardized services for compliant utility token offerings.

12. If they are permissible in your jurisdiction,

what are the key requirements that an entity would need to comply with when launching an ICO?

Major requirements for token issuance could be in general named as follows.

I – Registration as Token Issuer

Token issuer registration is needed for the issuance for third parties. Registration for own issuance for over 5 Mln withing 12 months will be not required from 01.02.2024 anymore. .

- Persons who publicly offer tokens on behalf of third parties (this includes not only sales, but also other forms of public offering, such as an award for a fee or a gift (eg, air-drop)) – this is applicable to utility tokens only; to issue security tokens for third parties one would most likely need an investment firm licence.

Token issuer registration requirements include the following.

- Personnel, management and shareholders have to be reliable in terms of bankruptcy and criminal law, and an organisational structure with defined areas of responsibility, including procedures for dealing with conflicts of interest must exist.
- Minimum capital of CHF50,000, CHF100,000 and CHF250,000 must be at the company's disposal if tokens with a total value of, respectively, up to and including CHF5 million, of more than CHF5 million but less than CHF25 million and of more than CHF 25 million are issued within a period of 12 months.

II – Prospectus for Security Tokens or Basic Information and Notification for Utility Tokens

Article 30 of the TVTG contains an obligation to prepare, report and publish basic information, which should include information about the tokens to be issued and associated rights. The central difference from a securities prospectus is that basic information according to TVTG must be brought to the attention of the FMA in good time before the token issuance; the information must also be published somewhere (eg, on the issuer's website). However, no formal approval of the information by the FMA is required.

The TVTG furthermore states certain exceptions from the obligation to prepare and publish basic information (Art.

31 TVTG) i.a.:

- if all investors waive their right to receive the basic information,
- if the offering is addressed to fewer than 150 potential clients or
- if the total volume of the issuance amounts to less than CHF5 million.
- However, the token issuance still has to be notified to the FMA.

The licensing pressure leads to a peculiar phenomenon of token launchpads. These are platforms that have all the necessary licenses/registrations and issue tokens for other companies, since there is little economical sense in obtaining all the licenses for issuing utility token only.

A tokenisation platform is a platform that offers tokenisation services for real-world assets, bringing traditional investments to a digital sphere where they might be offered to a larger target audience. Services offered may extend from the tokenisation of various alternative investments, collectable cars, precious metals and stones and real estate, other physical goods or intellectual property to the tokenization of stocks/stock options. Such services developed and became more popular during 2021 as it seems that investors increasingly sought to bring their physical assets to the blockchain.

In order to establish a platform to tokenise assets, such as securities or physical goods, a token issuer registration is required. Besides that, an investment firm licence for security tokens may become obligatory. The relevant requirements, however, are determined by the circumstances of the individual case.

Registered token issuers and/or generators in Liechtenstein include:

- LCX (token issuer and token generator)
- Bittrex Global (token issuer)
- Equanimity (token issuer and token generator)
- Crowdlitoken (token issuer)
- INVAO Trading (token issuer)
- Calidris Fintech (token issuer)
- VNX Commodities (token issuer inter alia)
- Bank Frick & Co (token issuer and token generator inter alia)
- Finetoken (token issuer).
- Leandro Lopes (token issuer);
- Mimo Capital (token issuer and token generator);
- XDCTEQ AG (token issuer);
- Golden Share Company (token issuer and

token generator);

- The Finest Token (token issuer and token generator);
- VP Bank AG (token issuer and token generator); and
- Blockchain office institution (token generator).

13. Is cryptocurrency trading common in your jurisdiction? And what is the attitude of mainstream financial institutions to cryptocurrency trading in your jurisdiction?

Cryptocurrencies are not treated as something exceptional in Liechtenstein. A considerable number of crypto exchanges are registered here under the Blockchain Act, providing among other the cryptocurrency trading opportunities:

- Bittrex Global (token issuer, token depository and exchange service provider);
- Bitclear (exchange service provider);
- Neon Exchange (exchange service provider);
- LCX (exchange service provider inter alia);
- Lirium (exchange service provider inter alia);
- Mimo Capital (exchange service provider);
- Safedroid FL (exchange service provider);
- VNX Commodities (exchange service provider inter alia);
- Smart Valor (token depository and exchange service provider);
- The Finest Token (token depository and exchange service provider);
- Salus Alpha Financial Services (token depository and exchange service provider);
- MP Services (exchange service provider);
- BTSE (exchange service provider); and
- Bitcoin Suisse (Liechtenstein) (token depository and exchange service provider).

14. Are there any relevant regulatory restrictions or initiatives concerning tokens and virtual assets other than cryptocurrencies (e.g. trading of tangible property represented by cryptographic tokens)?

Please refer to Question 4 where various tokenization services are listed that are subject to so-called registrations under Liechtenstein Blockchain Act. Those services refer mainly to utility tokens, NFTs and cryptocurrencies – tokens not being security tokens or E-Money. Security tokens issuance and specifically trading of security tokens being financial instruments in the

sense of MiFID II normally fall within the scope of MiFID II.

15. Are there any legal or regulatory issues concerning the transfer of title to or the granting of security over tokens and virtual assets?

The Blockchain Act is notable for the fact that it creates a unique civil law framework, to provide legal certainty for transfer of title to or the granting of security over tokens and virtual assets.

Key points for effective transfer of tokenised assets mentioned in the Blockchain Act are:

- the holder of the private keys has right of disposal (Verfügungsgewalt) over the token;
- they are presumed to be the authorised person with "proprietor's rights" (Verfügungsberechtigte) over the token; and
- the disposal over the token effects the disposal over the right represented by the token.

16. How are smart contracts characterised within your legal framework? Are there any enforceability issues specific to the operation of smart contracts which do not arise in the case of traditional legal contracts?

In general, smart contracts are not yet recognized within Liechtenstein legal framework. However, the connection between the person, the token and the asset over the token is regulated in the Liechtenstein Blockchain Act that provides more guarantees for enforceability of claims towards tokens and assets behind the tokens.

17. To what extent are smart contracts in use in your jurisdiction? Please mention any key initiatives concerning the use of smart contracts in your jurisdiction, including any examples relating to decentralised finance protocols.

While regulators in some jurisdictions unfortunately tend to ask for a banking license for any kind of staking by default, Liechtenstein tries to provide a solution for one of DeFi major use cases staking within Blockchain Act revision.

Token Loan Company

Against the background of considerable customer risks in

the activity of commercial staking (provision of assets for the validation of the system) or lending (transfer of tokens for a certain period of time against an agreed interest rate) of customer tokens, a further service requiring registration is introduced in the form of the "token loan company". On the one hand, the service of staking and lending is not to be prohibited, but allowed in principle and under certain conditions in the sense of a liberal economic order. On the other hand, customers should receive adequate protection as soon as possible.

According to the introduction of the Blockchain Act, token lending companies are companies that receive tokens under the condition that they can dispose of them at their own discretion or on the instructions of customers, but must transfer the tokens of the same type, quantity and quality back after a certain period of time. Also included in this definition are such service providers who receive the tokens from the clients for the aforementioned purposes and with power of disposal, but who use them only in trust for clients or on behalf of clients. Not included in the definition of a token loan company are pure intermediaries or advisors who facilitate a person's decision on staking but do not dispose of the tokens themselves.

Finally, token loan companies are placed under a special supervisory regime and must meet corresponding minimum capital requirements. The supervisory regime should ensure that the company does not use client tokens without the knowledge and explicit consent of the clients and that it regularly carries out risk assessments of its own activities. Furthermore, the minimum capital requirements (10% of the equivalent value of the tokens transferred by customers, does not have to be held in legal currency) are intended to establish a minimum level of customer protection against default and insolvency of the company.

18. Have there been any governmental or regulatory enforcement actions concerning blockchain in your jurisdiction?

It is worth noting that legal clarity and transparency is added by the fact the government treats crypto banks and crypto companies identically to traditional banks and financial firms when it comes to regulation enforcement. As a general rule, enforcement procedures are initiated only when there is an infraction. FMA issues a warning to the company in question, and provides time for said company to remedy the issue. Only after that more drastic actions are undertaken, up to revoking the license.

In cases where crypto banks and companies were involved in fraud, criminal investigations were initiated, similar to investigations into fraudulent traditional finance firms.

19. Has there been any judicial consideration of blockchain concepts or smart contracting in your jurisdiction?

As far as Liechtenstein as a jurisdiction has been attracting blockchain projects since 2016-2017, and some banks provide services to blockchain projects, there have been a number of court resolutions or proceedings related to blockchain projects. However, it should be mentioned that case law is not that much important when it comes to Liechtenstein in this regard, given there is a legal framework for blockchain projects, namely the Blockchain Act.

20. Are there any other generally-applicable laws or regulations that may present issues for the use of blockchain technology (such as privacy and data protection law or insolvency law)?

Among other notable examples of blockchain-friendly legal issues it could be noted that after intense discussions, the Liechtenstein government has proposed including uncertified security or book-entry security with all the functions of a traditional security of public faith, by incorporating new articles into the Final Part of the Persons and Companies Law (PGR).

It should also be noted that, as mentioned in Question 10, all operations with cryptocurrencies and tokenized assets in Liechtenstein are subject to Due Diligence Act and Ordinance.

21. Are there any other key issues concerning blockchain technology in your jurisdiction that legal practitioners should be aware of?

European Directives into national legislation, which is the case with EEA Securities Prospectus Implementation Act (EWR-WPPDG).

MiCA entered into force 30 June 2023. With the entry into force not all rules of MiCA will apply immediately. The only rules that will immediately enter into application relate to the provision of additional regulatory guidance, such as rules on the development of regulatory technical standards, the issuance of guidelines and the adoption of delegated acts by EU regulators and supervisors. On 30 June 2024 the rules relating to stablecoin issuers will apply. These rules are divided into rules for asset-referenced tokens (ARTs) and rules for e-money tokens (EMTs), which are set out Titles III and IV MiCA.

On 30 December 2024 all other rules will apply. These rules include, inter alia, rules for issuers of crypto-assets other than ARTs/EMTs, crypto-asset service providers (CASPs), and the prevention of market abuse.

Pursuant to art. 143 MiCA, the regulation sets out several transitional measures relating to various topics.

In brief, these rules relate to the following:

- Offers of crypto-assets before 30 December 2024;
- Admissions to trading before 30 December 2024;
- CASPs that provided their services in accordance with applicable law before 30 December 2024;
- Issuers that issued ARTs in accordance with applicable law before 30 June 2024; and
- The option for Member States to apply a simplified procedure for applications for an authorisation as a CASP that is submitted between 30 December 2024 and 1 July 2026 by entities that were authorised under national law to provide crypto-asset services on the date of entry into application.

Contributors

Janina Pietrowska

**MLaw Switzerland / Head of IT, Fintech, Blockchain
Practice / Of Counsel**

janina@rlp.li



Alexander Yudovich, LL.M. (International Business Law)

**Lawyer and Certified Tax Advisor, Head of Sports Law
Practice / Of Counsel**

alexander@rlp.li



Dr Philipp Lennert

**Attorney at Law (DE); Certified Attorney in Tax Law (DE);
European Attorney at Law in Liechtenstein; Public
Notary in Liechtenstein**

philipp@rlp.li

