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Comparative Guides

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Virtual Currencies

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Comparative Guide

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4. Results: Answers

Virtual Currencies OPEN ALL

1. Legal and enforcement framework ▼

1.1 In broad terms, which legislative and regulatory provisions govern virtual currencies in your jurisdiction? ▼

Switzerland
[Froriep](#)

Answer ... Virtual currencies are governed by:

- the Anti-Money Laundering Act;
- the Banking Act, if they involve a redemption claim to a fiat currency or a bank precious metal (commodity);
- the Collective Investment Schemes Act (collective investment schemes);
- the Banking Act (deposit) or the Financial Institutions Act (derivative), if they involve a redemption claim to a basket of fiat currencies, bank precious or non-bank precious metals or other virtual currencies; and
- the Financial Market Infrastructure Act, if they are issued through a payment system whose operator is responsible for the clearing and settlement of payment obligations.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

1.2 In broad terms, which legislative and regulatory provisions govern entities that provide services relating to virtual currencies? Must they be registered or licensed by a regulatory authority? ▼

Switzerland
[Froriep](#)

Answer ... Entities that provide services relating to virtual currencies are subject to the Anti-Money Laundering Act and, depending on the features of the virtual currencies and the type of activity, the Banking Act, the Collective Investment Schemes Act, the Financial Market Infrastructure Act, the Financial Institutions Act and the Financial Services Act (see question 1.1). Accordingly, they must:

- become a member of a self-regulatory organisation according to the Anti-Money Laundering Act; or
- apply for a licence under one of the other financial market laws mentioned above.

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Topic

Virtual Currencies





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Switzerland

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For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

1.3 Which bodies are responsible for enforcing the applicable laws and regulations? What powers do they have? ▼

Switzerland

[Froriep](#)

Answer ... In Switzerland, the Financial Market Supervisory Authority (FINMA) is responsible for the prudential supervision of the financial market and the enforcement of financial market laws. Enforcement activities are directed to licence holders and others acting without authorisation from FINMA where such authorisation is required under financial market law. FINMA has extensive powers, such as the power to:

- take precautionary measures (eg, block accounts, impose trading restrictions, limit the scope of business) or impose measures to ensure compliance with the law (eg, ordering measures);
- withdraw authorisation;
- liquidate unauthorised companies;
- issue industry and activity bans;
- order the disgorgement of profits generated illegally; and
- publish final rulings naming those involved.

Providing false information to FINMA and acting negligently or wilfully without authorisation, recognition, a licence, registration or affiliation with a self-regulatory organisation are subject to sanctions such as a custodial sentence, monetary penalties and fines imposed by the Federal Department of Finance or the Office of the Attorney General of Switzerland (and potentially a custodial sentence or custodial measures) under the Financial Market Supervision Act.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

1.4 What is the regulators' general approach to virtual currencies? ▼

Switzerland

[Froriep](#)

Answer ... FINMA applies the relevant financial market laws in a technology-neutral way and focuses on the economic function and purpose of virtual currencies ('substance over form'). FINMA follows the principle of 'same risks, same rules', while taking into account the features of each specific virtual currency project.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

1.5 Has there been any notable enforcement action relating to virtual currencies? ▼

Switzerland

[Froriep](#)

Answer ... In 2019, FINMA concluded more than 20 enforcement actions against projects relating to cryptographic tokens; however, not all related to virtual currencies. Most enforcement actions concerned:

- non-compliance with the Anti-Money Laundering Act;
- inadequate corporate governance and risk management;
- breach of the market conduct rules; and
- various business practices whereby client funds were solicited on the financial market without the requisite licence (FINMA Annual Report 2019).

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

2. Definitions ▼

2.1 How are 'virtual currencies' defined in your jurisdiction? Have there been any judicial decisions which have helped to define virtual currencies or their interplay with the existing body of laws (eg, contracts law, property law)? ▼

Switzerland

[Froriep](#)

Answer ... Generally, virtual currencies do not convey any rights against the issuer or any other party. They are assets *sui generis* whose value is intrinsic, determined by market supply and demand. Virtual currencies are intended to be used – whether now or in the future – as a means of payment for the acquisition of goods or services or as a means of money or value transfer. If virtual currencies are linked to an underlying currency or basket of currencies or commodities (stablecoins), and confer a claim against the issuer, they qualify as contractual claims against the issuer under the Swiss Code of Obligations (in most cases a purchase agreement) or a share in a collective investment scheme (see also question 1.1).

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

[Froriep](#)2.2 How are 'initial coin offerings' and 'security token offerings' defined in your jurisdiction? **Switzerland**[Froriep](#)

Answer ... In guidelines issued on 16 February 2018, the Financial Market Supervisory Authority (FINMA) defined 'initial coin offerings' (including security token offerings) as a process through which investors transfer funds to the token offering organiser (issuer) against:

- cryptographic tokens representing a means of payment (payment token);
- debt or equity claims on the issuer (asset/security tokens); or
- digital access to an application (utility tokens).

Depending on the features of the cryptographic tokens, the issuance is subject to specific financial market laws. FINMA has not explicitly defined 'security token offerings', but they are covered by the definition of 'initial coin offerings' where asset/security tokens are sold.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

2.3 Are stablecoins treated as virtual currencies in your jurisdiction or do they fall under an existing category (eg, electronic money)? **Switzerland**[Froriep](#)

Answer ... Where stablecoins serve as a means of payment for goods or services or as a means of money or value transfer, they qualify as virtual currencies (and are subject to the Anti-Money Laundering Act), but also as:

- deposits under the Banking Act, if they entail a redemption claim to a fiat currency, a bank precious metal (commodity) or a basket of fiat currencies or bank precious metals or other virtual currencies, to the extent that the underlying assets are managed for the account and risk of the issuer;
- derivatives under the Financial Services Act, if they relate to the underlying assets listed above or non-bank precious metals and are structured as structured products; or
- collective investment schemes under the Collective Investment Schemes Act, if they entail a redemption claim to a basket of fiat currencies or bank precious or non-bank precious metals or other virtual currencies, to the extent that the underlying assets are managed for the account and risk of the virtual currency holders.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

3. Virtual currencies market 3.1 Which virtual currencies have become most embedded in your jurisdiction? Does this vary depending on the specific use? **Switzerland**[Froriep](#)

Answer ... Ether and Bitcoin are the most embedded virtual currencies in Switzerland. They qualify as a means of payment under the Anti-Money Laundering Act. Other virtual currencies – such as DAI, BAT, XRP and XTZ – are used only within the crypto-community.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

3.2 What different products and services are offered? **Switzerland**[Froriep](#)

Answer ... Various authorities and companies accept Bitcoin and Ether as a means of payment for the settlement of fees (eg, tax bills) and the purchase of goods and services (eg, hotel stays, legal services, cars, insurance, e-commerce).

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

3.3 How are virtual currency service providers generally structured? How are they generally financed? **Switzerland**[Froriep](#)

Answer ... Virtual currency service providers are generally structured either as limited liability companies or as stock corporations. They are financed by venture capital and private equity, and in a few cases by an initial token offering.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

3.4 Are virtual currency trading platforms subject to a specific regulatory regime in your jurisdiction? Must they be registered or licensed by a regulatory authority? Does this vary depending on whether the platform accepts legal currency or whether the platform is custodial? Are virtual currency trading platforms subject to any form of 'market abuse' regulation? ▼

Switzerland

[Froriep](#)

Answer ... Virtual currency trading platforms (regardless of whether they also trade in legal currencies) are subject to the Anti-Money Laundering Act and must become members of a self-regulatory organisation as financial intermediaries. If they also offer custodial non-segregated accounts and hold funds above CHF 1 million, trading platforms are also subject to the Banking Act and require either a banking licence light (which allows for the acceptance of funds up to CHF 100 million, without investing such funds and without paying interest) or a full banking licence. If a trading platform is fully decentralised and peer-to-peer, it may be outside of regulation (this has not yet been fully clarified by the regulator and legal doctrine).

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

4. Crossover with banking ▼

4.1 How are virtual currencies positioned within the broader banking landscape in your jurisdiction? ▼

Switzerland

[Froriep](#)

Answer ... In 2019, the Financial Market Supervisory Authority granted two banking licences to banks specifically focusing on virtual currencies and distributed ledger technology. Many Swiss banks have issued structured products linked to virtual currencies and offer custodial services for virtual currencies. Adoption in the banking industry is steady.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

4.2 What impact could mainstream adoption of virtual currencies have on the ability to control inflation in your jurisdiction? ▼

Switzerland

[Froriep](#)

Answer ... This is difficult to foresee and subject to monetary policy. The Swiss national bank is monitoring the developments of virtual currencies closely and will most likely take appropriate action in case virtual currencies become relevant to inflation and deflation.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

4.3 What other implications could the mainstream adoption of virtual currencies have for the banking system in your jurisdiction (eg, with respect to payment services)? ▼

Switzerland

[Froriep](#)

Answer ... This is not yet clear. Perhaps in the future, it will be possible to deposit virtual currencies with all banks as fiat currencies and use them for standard banking transactions.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

4.4 Regarding decentralised finance, do the banking regulations in your jurisdiction apply to loans of virtual currencies or interest-bearing deposits of virtual currencies? Does this vary depending on whether stablecoins are loaned or deposited? ▼

Switzerland

[Froriep](#)

Answer ... The financial market laws are technology neutral and also apply to loans of virtual currencies if the relevant activity is subject to the Banking Act. In the case of stablecoins, this will also depend on the exact features of the relevant stablecoins. If the funds in the decentralised finance structure are deposited with autonomous smart contracts running on a fully decentralised distributed ledger network and no one has control over such smart contracts, the banking regulations will likely not apply.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

5. Technology ▼

5.1 Is blockchain technology in itself regulated in your jurisdiction and what specific legal issues are associated with its use? ▼

Switzerland[Froriep](#)

Answer ... Blockchain technology itself is not specifically regulated in Switzerland. Whether the use of blockchain is subject to financial market regulation or other legal issues depends on the intended use and activity.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

5.2 What other implications could the mainstream adoption of virtual currencies have from a technological perspective? ▼

Switzerland[Froriep](#)

Answer ... This is difficult to answer. Currently, virtual currencies are still a niche in the financial market. Mainstream adoption would require expansion of the underlying technical infrastructure.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

6. Data security and cybersecurity ▼

6.1 What is the applicable data protection regime in your jurisdiction and what specific implications does this have for virtual currencies? ▼

Switzerland[Froriep](#)

Answer ... Personal data is governed by the Data Protection Act. Currently, it is not yet clear whether certain elements of virtual currencies qualify as personal data. The qualification will also depend on the software protocol underlying the respective virtual currency.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

6.2 What is the applicable cybersecurity regime in your jurisdiction and what specific implications does this have for virtual currencies? ▼

Switzerland[Froriep](#)

Answer ... Switzerland has no specific cybersecurity regime.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

7. Financial crime ▼

7.1 What provisions govern money laundering and other forms of financial crime in your jurisdiction and what specific implications do these have for virtual currencies? ▼

Switzerland[Froriep](#)

Answer ... Money laundering is governed by the Anti-Money Laundering Act and the Swiss Criminal Code. Other financial crimes are governed by the Banking Act, the Financial Services Act, the Financial Institutions Act, the Collective Investment Schemes Act, the Financial Market Infrastructure Act and the Financial Market Supervision Act.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

8. Consumer protection ▼

8.1 What consumer protection provisions apply to virtual currencies in your jurisdiction? ▼

Switzerland[Froriep](#)

Answer ... Virtual currencies are subject to the same consumer protection provisions as other fiat currencies. Accordingly, in case of an activity that is subject to the Consumer Credit Act, the Banking Act or the Collective Investment Schemes Act, or any other financial market law, the respective provisions protecting consumers must be observed.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

8.2 What other implications could the mainstream adoption of virtual currencies have from a consumer perspective? ▼

Switzerland

[Froriep](#)

Answer ... It could force existing financial market participants to include virtual currencies within their business models.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

9. Competition

9.1 Do virtual currencies present any specific challenges or concerns from a competition perspective?

Switzerland[Froriep](#)

Answer ... We currently do not envisage any specific challenges or concerns from a competition perspective.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

10. Taxation

10.1 How are transactions in virtual currencies treated from a tax perspective in your jurisdiction?

Switzerland[Froriep](#)

Answer ... Because of the technology-neutral approach in Switzerland, transactions in virtual currencies are treated the same as transactions in fiat currencies.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

11. Trends and predictions

11.1 How would you describe the current landscape and prevailing trends in your jurisdiction as regards virtual currencies? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

Switzerland[Froriep](#)

Answer ... Switzerland is in the process of further improving its regulatory and legal framework. The Federal Council has proposed amendments to various laws and regulations to take into account the potential afforded by distributed ledger technology. Parliament has already adopted the proposed amendments, which are expected to enter into force in the second quarter of 2021.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)

12. Tips and traps

12.1 What are your top tips for virtual currency providers seeking to enter your jurisdiction and what potential sticking points would you highlight?

Switzerland[Froriep](#)

Answer ... Before entering the Swiss market, it is recommended to analyse the intended business activity or project structure from a legal, tax and regulatory perspective. This will not only help to identify potential pitfalls, but also help to bring out the best of the technology. Switzerland recognises the potential afforded by virtual currencies and applies regulations on a technology-neutral basis. The Financial Market Supervisory Authority (FINMA) accepts enquiries for an initial assessment of whether an intended business activity or project structure will require a licence and will thus be subject to supervision. Likewise, the tax authorities will issue a tax ruling on the intended business activity or project structure. The possibility to obtain a letter from FINMA (in case of a positive reply, a non-action letter) and a tax ruling from the tax authorities is a unique benefit in Switzerland and provides players with greater certainty before commencing operations.

For more information about this answer please contact: [Catrina Luchsinger Gähwiler](#) from [Froriep](#)