

Q&A - Reform brings Luxembourg Securities Law to the blockchain age

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What is the new securities law about?

Since Bitcoin's blockchain technology entered the mainstream, the crypto-currency market has boomed at an incredible rate. Blockchain – the underlying distributed ledger technology behind Bitcoin – has the power to disrupt many industries, and in particular to revolutionize the security of ownership. Luxembourg has opted to embrace and adapt to these technological developments.

What does the draft law aim to do?

In a nutshell, it seeks to afford legitimacy and legal sanction to the use of blockchain technology in the holding, distribution and transfer of securities. Securities may be held, registered, and transferred using secure electronic recording mechanisms such as distributed ledger technology i.e. by way of blockchain. Thus a custodian may use blockchain in the management of a securities account, to record entries and transfers. Does this have a corresponding impact on the treatment of the securities themselves? Not exactly. The ledger will use the token concept – and the token will be treated as a security, in this avatar a digital asset in the ledger. The token (like the security) remains fungible and in theory has the same attributes as does a dematerialised or paper security.

How has this been received?

Naysayers will have much to agonise over in the draft law (7363) amending the law on the circulation of securities published by the *Chambre des Députés* on 27 September 2018. On the other side of the fence, believers will be ecstatic that legislative action is being taken by the Luxembourg authorities to modernise securities law in line with developments in technology, given the usual time lag between (the pace of) technological advancements and corresponding (snail-like) revisions to the law.

What is the potential impact?

Only a handful of countries so far have taken the step of legitimising blockchain through legislation, and thereby encouraging the use of blockchain in commercial and financial transactions accessible to the ordinary market player. Is Luxembourg shedding its reputation as a cautious if pragmatic actor on the world stage, and seeking instead to brand itself as quick to market in spotting an opportunity whose time, some may well argue, has come? Sophisticated, tech-savvy financial market players will no doubt seek to take full advantage of the opportunities when and if offered by this development in the arena of securities circulation.

What are the next steps?

As the blockchain space matures, clarity and a precise legal framework become increasingly important. The ongoing dialogue between regulators and market participants, as well as the evolving knowhow on regulatory obligations, will certainly help separate the wheat from the chaff in this emerging market. This will be necessary in order to distinguish between serious players and scams, and to build trust in the space for the future.

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