

GBBC Open-Source Ideas Series: Switzerland

Part I: Digital Asset Laws in Switzerland



GBBC
Global Blockchain
Business Council

FRORIEP

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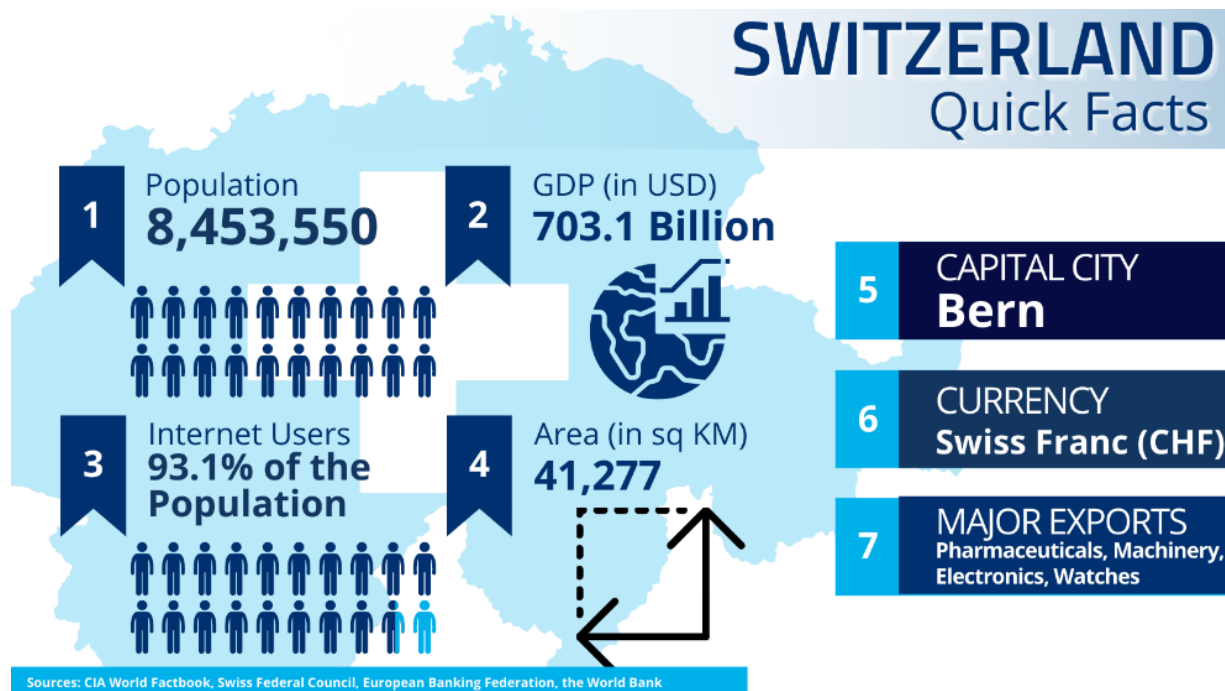
Zürich, Switzerland

Introduction

Since 1848 the Swiss Confederation has been a federal republic of largely autonomous cantons. Its administrative capital is Bern, while Lausanne serves as its judicial center. The Federal Council, Federal Court, and Swiss Parliament, made up of two legislative houses — the Council of States and the National Council — comprise the federal government.

Switzerland boasts one of the world's lowest unemployment rates (2.31 percent in 2019) and highest real gross domestic product (GDP) per capita (\$81,475, 12th highest in the world).ⁱ More than 75 percent of the labor force works in the service sector, which is, according to the World Factbook, "led by financial services... Its economic and political stability, transparent legal system, exceptional infrastructure, efficient capital markets, and low corporate tax rates also make Switzerland one of the world's most competitive economies."ⁱⁱ

Switzerland's unique financial sector can be traced back to the early 18th century, when the Great Council of Geneva banned banks from divulging details about their clients; this was codified in Swiss law in 1934 and reaffirmed by a popular vote in 1984.ⁱⁱⁱ This secrecy, combined with the country's neutrality and stability, have maintained its financial sector as one of the world's leaders for over 300 years.




Blockchain and Digital Assets

Today, however, Switzerland is being recognized not for its historical success, but rather its forward-thinking nature in the blockchain and virtual currencies space. In 2014, Switzerland became one of the first countries to release a detailed [report](#) on virtual currencies and their legal treatment; the report suggested that bitcoin "fulfills the three main functions of money (i.e. intermediary in exchanges, a unit of account and a store of value) to a certain degree, its high volatility prevents it from fulfilling them entirely."

The report also noted that, at the time, there were about “65 declared traders (and rising) in Switzerland who accept bitcoin as a means of payment... These traders include florists, hairdressers, restaurants, hotels, bakeries, providers of leisure activities and also shoe shops.” The report then concluded that “virtual currencies are a marginal phenomenon and are not in a legal vacuum... there is no need for legislative measures to be taken at the moment.”^{iv}

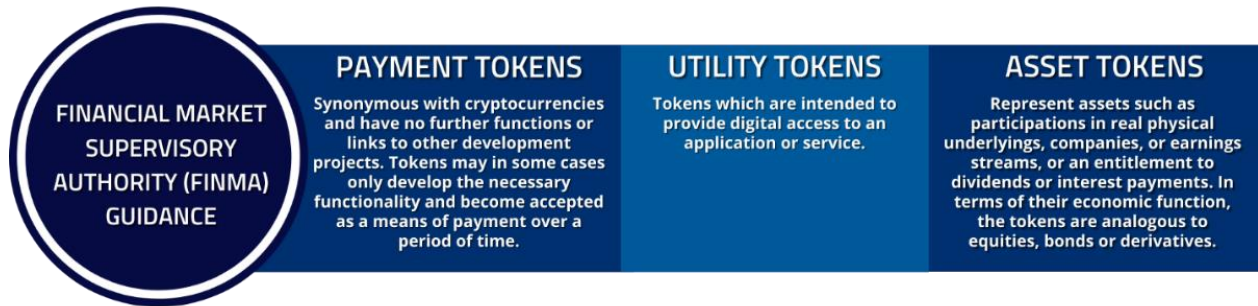
The report was issued at a time when governments around the world were warning people to stay away from virtual currencies. For example, the European Banking Authority (EBA) emphasized the risks surrounding virtual currency, including exchanges, digital wallets, money laundering, and tax implications. The EBA concluded that “if consumers buy virtual currencies... [they] should not use ‘real’ money that they cannot afford to lose.”^v In the United States, government bodies like the Securities and Exchange Commission and self-regulatory organizations like the Financial Industry Regulatory Authority (FINRA) were^{vi} issuing^{vii} strong warnings on the risks of bitcoin, with a particular focus on Ponzi schemes and investment scams.

 <h3>Federal Council</h3> <p>7 member executive council that serves as the head of Switzerland's government</p> <p>ACTIONS Federal Council directed the Federal Department of Finance (FDF) to “examine whether there was a need for regulatory action to reduce the barriers to market entry” for fintech firms</p>	 <h3>Federal Department of Finance</h3> <p>Primarily deals with the state budget and tax matters</p> <p>ACTIONS Recommended the creation of a fintech license, which was established in 2018 and entered into force in 2019</p>
 <h3>Swiss National Bank</h3> <p>Conducts the country's monetary policy</p> <p>ACTIONS Believes CBDCs are feasible from a technical and legal perspective, but are not ready to commit to issuing one</p>	 <h3>Financial Market Supervisory Authority</h3> <p>Switzerland's independent financial-markets regulator</p> <p>ACTIONS Provided guidance on the definition of ICOs, tokens, and cryptocurrencies to combat money laundering and increase securities regulation</p>

Switzerland’s next major action in the virtual currencies space came in 2016, when the Federal Council directed the Federal Department of Finance (FDF) to examine whether “there was a need for regulatory action to reduce the barriers to market entry” for fintech firms.

The FDF found that banking and anti-money laundering laws set “relatively high authorisation granting requirements, as such authorisation is generally aimed at banking activity (deposit-taking and lending business) with the corresponding risk exposure and need for regulation. Therefore, [a banking licence] is a considerable barrier to market entry for innovative fintech firms that want to carry out only certain elements of banking.”^{viii}

The FDF thus recommended the creation of a fintech license, which was established in 2018 and entered into force on January 1, 2019.^{ix} Additionally, in 2017, the Financial Market Supervisory Authority (FINMA) issued guidance on initial coin offerings (ICOs); this guidance was updated in 2018.



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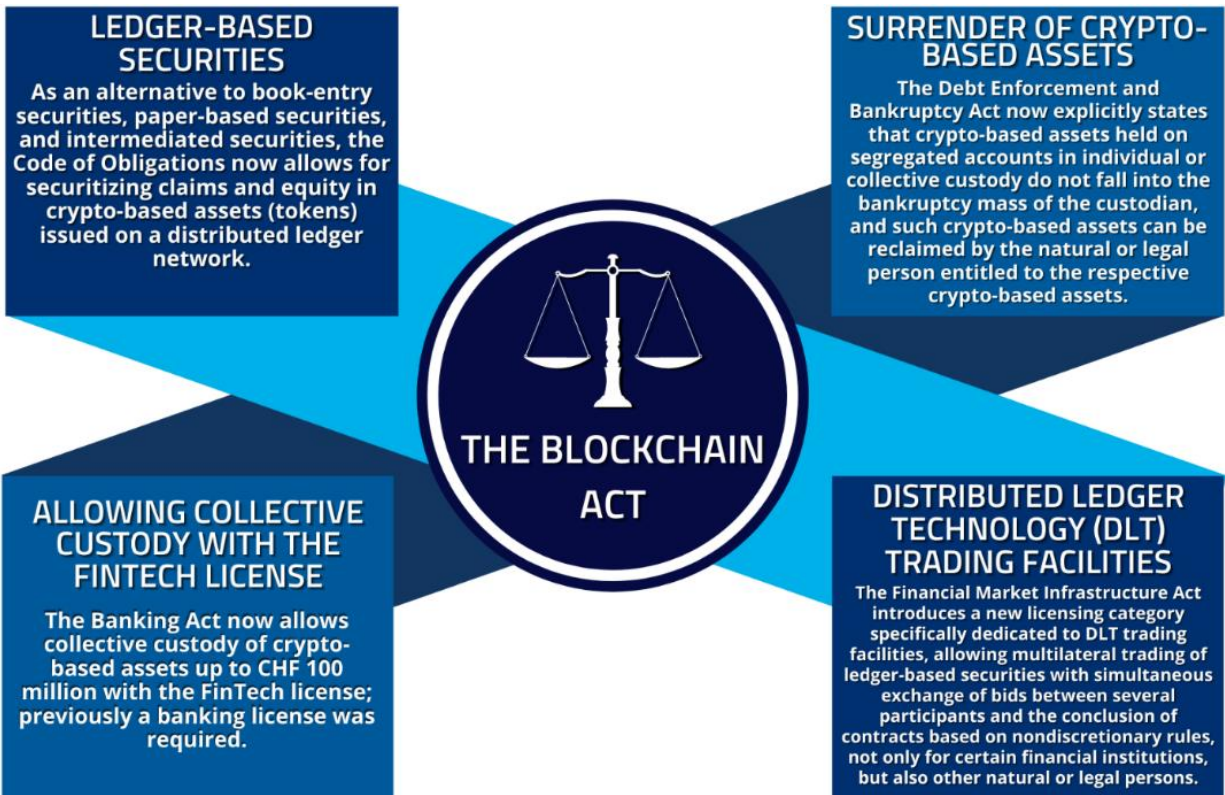
The actions by the Federal Council and FDF provided businesses and individuals in Switzerland with regulatory and legal clarity at a time when many jurisdictions were scrambling to respond to blockchain technology and virtual currencies. For example, in April 2018, less than a month after the creation of the Swiss fintech license, the Reserve Bank of India (RBI) banned^{xi} regulated entities from dealing with virtual currency businesses; this ban was later struck down^{xii} in March 2020, leaving the industry in a regulatory grey area.

Since then, the government has proposed an outright crypto ban^{xiii}, walked the proposal back^{xiv}, and the RBI has had to inform^{xv} banks that they cannot use its struck-down April 2018 circular to deny services to virtual currency businesses. The lack of a consistent and unified blockchain and virtual currency strategy is perhaps not surprising given India’s population is over 150 times larger than Switzerland’s. Small jurisdictions like Switzerland, Singapore, Gibraltar, Bermuda, and Estonia have had a clear advantage in establishing coherent regulatory frameworks and policies for emerging technologies given their comparative agility in shaping regulation.

The Blockchain Act

Most recently, Switzerland passed a law known as the Blockchain Act, according to which specific provisions in the Code of Obligations, the Debt Enforcement and Bankruptcy Act, the Private International Law Act, the Financial Services Act, the National Bank Act, the Banking Act, the Financial Institutions Act, the Anti-Money Laundering Act, the Federal Intermediated Securities Act, and the Financial Market Infrastructure Act will be amended or extended.

The main features of the law include the following (see next page):



The amendments and additions in the other laws are mainly for consistency, to ensure that the newly introduced ledger-based securities and concepts are in harmony with existing provisions and concepts. The concept of ledger-based securities entered into force on February 1, 2021. The other amendments and additions are likely to enter into force on August 1, 2021, provided that the ordinances are adopted in time (the public consultation period has already closed).

Already the introduction of ledger-based securities has had a strong impact on the Swiss economy, particularly on the finance industry. The adoption of DLT technology and the use of crypto-based assets increased significantly, and increasing numbers of financial institutions offer custody, securitization, and distributions solutions for crypto-based assets, as well as access to liquidity. For example, SEBA Bank, a fully digital and crypto-focused bank, issued its Series B Participation Certificates as tokenized equity securities on the blockchain.^{xvi} Similarly, Sygnum, another digital and crypto-focused bank, offers asset tokenization on its Desygnate platform.^{xvii}

For Switzerland, 2021 and 2022 will be years of digital infrastructure building, peer-to-peer interactions, as well as digital-intermediated and non-intermediated financial services, such as DeFi.

Conclusion

Switzerland's framework for blockchain and digital assets has established the country as a global leader. It has paved the way for Zug to become "Crypto Valley" and for many young companies to set up within the legal framework, and most importantly, to grow within the parameters of clear regulation and oversight.

Additionally, many blockchain and digital non-profit organizations are following in the footsteps of major non-governmental organizations — such as the International Committee of the Red Cross and International Telecommunication Union — and have established headquarters in Geneva. The Global Blockchain Business Council is one such nonprofit association; it launched publicly in Davos in January 2017 and was incorporated in the Canton of Geneva.

The founders and founding Board of the GBBC chose Switzerland due to the country's early leadership and clarity around digital assets, cryptocurrencies, and blockchain technology. Regulatory and legal clarity attracts not only for-profit companies, but also critical ecosystem players, including investors, professional services, non-profits, and others.¹

In Part II of this series, the GBBC will partner to explore financial market innovations in Switzerland.

References

ⁱ <https://www.cia.gov/the-world-factbook/countries/switzerland/#economy>

ⁱⁱ Id

ⁱⁱⁱ <https://www.cNBC.com/2008/08/20/swiss-bank-accounts-separating-fact-from-fiction.html>

^{iv} <https://www.news.admin.ch/NSBSubscriber/message/attachments/35355.pdf>

^v <https://www.eba.europa.eu/eba-warns-consumers-on-virtual-currencies>

^{vi} <https://www.finra.org/investors/alerts/bitcoin-more-bit-risky>

^{vii} <https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-alerts/investor-7>

^{viii} <https://www.news.admin.ch/newsd/message/attachments/45938.pdf>

^{ix} <https://www.finma.ch/en/authorisation/fintech/fintech-bewilligung/>

^x <https://www.finma.ch/en/news/2018/02/20180216-mm-ico-wegleitung/>

^{xi} https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11243

^{xii} https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11243

^{xiii} <https://www.hindustantimes.com/india-news/govt-to-introduce-bill-for-banning-cryptocurrencies-here-s-what-you-need-to-know-101612007129123.html>

^{xiv} <https://economictimes.indiatimes.com/tech/technology/govt-may-set-up-new-panel-to-study-crypto-regulations/articleshow/82746324.cms>

^{xv} https://economictimes.indiatimes.com/tech/technology/rbi-says-banks-cant-use-its-2018-circular-to-ban-crypto-transactions/articleshow/83117728.cms?mc_cid=46d52c43eb&mc_eid=6d3707fb82

^{xvi} <https://www.seba.swiss/media-and-investors/seba-bank-issuing-series-b-equity-security-tokens>

¹ As an aside, but critical to removing business frictions, the Swiss government should look to update laws surrounding incorporation, registry, and governance. To this day, much of the corporate and governance documentation requires the concept of a “wet signature,” a physical copy of a signature in black or blue ink. Such laws should be updated to allow e-signatures as well as the digitization of most governance and public records.