

Ownership token

How to generate liquidity from illiquid assets

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What are tokens?

definition

- EBA (2014): “a digital representation of value that is neither issued by a central bank or public authority nor necessarily attached to a fiat currency, but is used by natural or legal persons as a means of exchange and can be transferred, stored or traded electronically”
<https://www.eba.europa.eu/documents/10180/657547/EBA-Op-2014-08+Opinion+on+Virtual+Currencies.pdf>
- 5° EU AML Directive (2018): “virtual currencies” means a representation of digital value that is not issued or guaranteed by a central bank or a public body, is not necessarily linked to a legally established currency, does not have the legal status of currency or currency, but is accepted by physical and legal people as a medium of exchange and can be transferred, stored and exchanged electronically”
- FINMA ICO Guidance (2018): *Payment tokens* [means of payment for goods or services] vs *Utility tokens* [give their holders access to blockchainpowered services or platforms] vs *asset tokens* [represent debt or equity claim on the issuer]

Can blockchain exist without token?

Blockchain without token is like:

- Street without cars,
- Cars without gas,
- A paper ledger without a pen.



A token on the blockchain...

... is representing an accounting value

... can act as a private mean of payment, a right, an asset, or any other material concept

... can allow peer to peer transactions, without intermediation

... is programmable (smart contracts) and can execute autonomous transactions.

... can be used as currency for Internet of Things

tokentaxonomy

As early as February 2018, FINMA recognized that tokens may represent assets such as participations in real physical underlyings, companies, or earnings streams, or an entitlement to dividends or interest payments. In terms of their economic function, these tokens may be considered analogous to shares, bonds or derivatives (securities).

FINMA has recognized 3 types of tokens:

- Utility token,
- Payment token,
- Asset token,

But new type of tokens are seeing the light,

- NFT (Non-Fungible Tokens)
- Governance token



Token taxonomy (Switzerland)

Payment Token

- are synonymous with cryptocurrencies.
- are intended to be used, now or in the future, as a means of payment for acquiring goods or services or as a means of money or value transfer.
- give rise to no claims on their issuer .

Token can change their qualification over time (eg utility token can become a payment token).

Tokens that fall within more than one category are qualified as hybrid token and need to comply with the requirements for all the involved categories .

Utility Token

- are intended to provide access digitally to an application or service by means of a blockchain-based infrastructure.

Asset Token

- Asset tokens represent assets such as a debt or equity claim on the issuer .
- Tokens which enable physical assets to be traded on the blockchain also fall into this category.

Token taxonomy (switzerland)

Payment token	Utility token	Asset token	
Bitcoin, Ethereum, Tether	<ul style="list-style-type: none"> • Binance • Link • Ethereum (before it became a payment token) 	<ul style="list-style-type: none"> • Tether • Gold backed token (gold is physically available) 	Non Security
	<ul style="list-style-type: none"> • Ethereum (before ETH blockchain was build) • XRP (? Waiting for SEC decision) 	<ul style="list-style-type: none"> • DLT securities (art. 2 FinMIA) • Bond backed token • Gold backed token (gold is not available) 	Security



Civil law and digital assets: Token transfer



Transfer of goods

- The legal system regarding the transfer of movable property requires a valid deed that creates the legal obligation (cause) and the transfer of possession of the object (traditio); the latter, however, can also occur through surrogates:
 - stipulate a special legal relationship so that the seller remains in possession of the res but the transfer of ownership still occurs (art. 924 paragraph 1 var. 2 CC);
 - deliver the res to an external third party who will safeguard it due to a special legal relationship (art. 924 para. 1 var. 1) or
 - create a co-ownership relationship between whoever buys a share of the res and whoever sells it, who will therefore become co-owner and possessor.
- By applying these same surrogates it is therefore not necessary to conclude the transfer of direct possession (brevi manu traditio, art. 924 para. 1 var. 1 CC) thus being able to transmit the property even without the delivery of the res in accordance with the law.

Goods Transfer Rules

- Transfer of ownership or institute (e.g. ownership instruction)
- Legal basis

Things



- Assignment in written (!) form
- "Digital" transmission on the uncertificate security register (blockchain)

Claims



- No legal requirements

Intangible assets




- **Claims** (from loan, order, deposit, service contract, purchase, exchange)
- **Company law** (type-specific: simple society, general partnership, public limited company, limited liability company, etc.)
- **Property?** As a rule not, exception: custody

Civil law and digital assets: Ownership token

Ownership

Real rights give the owner a direct and immediate interest in the asset itself (the "res"), the power to use and dispose of it freely and against any person ("erga omnes").

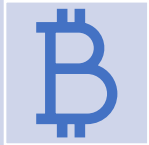


Real rights are mainly divided into two categories:

on the one hand we have the right of property which is established in the art. 641 ff. of the Civil Code (CC) while

on the other hand we find the limited real rights referred to in the articles. 730 ss CC (rights of use and exploitation).

Trasfer of an ownership token (asset token)



transfer the right of ownership through the exchange of the relevant token, without the necessary physical delivery of the res (art 924 CC).



Several people who have fractional ownership of a good without apparent signs of division, are co-owners (art. 646 CC)



“the transfer of the token can be seen as the expression of an informally concluded contract of transfer of possession.” (Federal Council report of 7 December 2018)

FINMA Asset token practice

3 conditions to be fulfilled for the token not to be considered as a transferable security:

the token only exists as a co-ownership right over the existing tokenized object and not as a right over an object yet to be purchased

the transfer of the token implies the transfer of co-ownership

the deposit of the object is not to be considered as a deposit pursuant to the art. 481 CO

The right to decide the sale of the good

One token, one owner, one decision

Multiple co-ownership tokens include the right of the co-owner of the token to decide on the sale of the tokenized asset

- if this right is considered a real right, an integral and inalienable part of the right of ownership, then the token would not be considered a transferable security.
- if contractual rights are proposed, the token represents the means to exercise this right, with the consequent qualification of a transferable security.



Ownership token as a fund?

Is there a third party?

Is there a management activity?

FINMA practice

CONCLUSION





Thank you for your attention

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