

Virtual currencies

Many virtual currencies – Bitcoin, for example – are based on blockchain technology. Anyone intending to operate a blockchain-based business must first find out whether it is subject to licensing requirements under financial market law.

Monetary units of virtual currencies like Bitcoin are managed in blockchain networks. These currencies only exist virtually on a computer network and have no physical form. They are traded on the internet without any form of centralised supervision and do not have to be processed via intermediaries (e.g. states or central/commercial banks). Virtual currency users can transfer units to each other or use them to pay for goods and services online.

Is there any risk in buying and using virtual currencies?

Switzerland has no regulations regarding the buying and selling of virtual currency units or their use as a means of paying for goods and services. In other words, no special approval is required for these activities. This applies to everyone who pays with a virtual currency or buys units of it as well as to all those who accept payments in a virtual currency or sell units of it. This does not mean, however, that there are no risks in using or investing in virtual currencies. As a rule, these currencies are subject to significant price fluctuation and there may be uncertainties regarding the currency issuer. At present, it remains unclear whether claims to virtual currencies can be asserted under civil law.

Trade in virtual currencies presents money laundering risks

Although Swiss financial market law contains no specific provisions governing virtual currencies, trading in these units may still require authorization from FINMA. Because of the technology on which they are based, virtual currencies tend to facilitate anonymity and cross-border asset transfers. The trade in these currencies therefore entails increased money laundering and terrorism financing risks. In particular, providing custody wallet services (i.e. custody and payment services for virtual currencies) and operating trading platforms on which virtual currencies can be bought and sold fall under the Anti-Money Laundering Act. Before offering such services, potential providers must join a self-regulatory organisation.

Virtual currencies**A banking licence may be required**

Some trading activities with virtual currencies require a banking licence and involve ongoing monitoring by FINMA. This is generally the case when an organisation accepts money on a commercial basis from clients and keeps it in its own accounts. The same applies to providers who lodge virtual currency holdings from customers in “wallets” and manage accounts for them. However, FINMA’s current position is that no banking licence is required if virtual currency holdings are transferred for secure safekeeping only and if these virtual currency units are stored separately on the blockchain for each customer and each deposit can be attributed to an individual customer at all times.

Other blockchain-based applications may also require authorization

Virtual currencies like Bitcoin are not the only application of blockchain technology, which also underpins the services provided by so-called “colored coins” and “smart contracts”. In these cases the provider must ascertain in advance whether authorization is required under other financial market laws (e.g. the Stock Exchange Act or the Financial Market Infrastructure Act). The latter may be the case, in particular, where crypto trading platforms are operated.

FINMA investigations

If FINMA receives specific information that an activity involving virtual currencies or other blockchain-based applications is being carried out without the authorization required under financial market law, FINMA will launch an investigation. If the suspicions turn out to be justified, FINMA will take all necessary action to restore compliance with the law, which may result in the liquidation of the company in question. Furthermore, any breach of licensing requirements under supervisory law is a criminal offence and FINMA will inform the relevant prosecution authorities accordingly. FINMA’s website contains information on whether a provider has been granted a FINMA licence or is an SRO member.

For more information about Bitcoin, please see the Federal Council’s report on the “[Legal basis for distributed ledger technology and blockchain in Switzerland](#)” dated 7 December 2018 and the FINMA Guidelines on Initial Coin Offerings. FINMA is closely following developments in these areas and supports the creation of an appropriate legal framework for virtual currencies (see also the media release issued by the Federal Council: “[Federal Council wants to further improve framework conditions for blockchain/ DLT](#)”).