

# “TOKENISED SECURITIES ARE NOW POSSIBLE UNDER SWISS LAW”

The issuing of tokenised securities is becoming a tangible reality. This game-changing new rule will benefit both startups and investors. Jacques Iffland, a lawyer at Lenz & Staehelin, explains.

Distributed ledger technology, or DLT, is branching out from cryptocurrencies and ICOs. DLT is well on its way to fundamentally reshaping the infrastructure of capital markets, making them more accessible to startups and SMEs. Jacques Iffland, a lawyer who specialises in capital markets at Lenz & Staehelin, which co-founded CMTA (see inset, opposite), enlightens us about these ground-breaking changes.

## How can distributed ledger technology facilitate company financing?

These days, only large companies can trade on stock markets. Startups and SMEs don't have access to them. Distributed ledger technology can simplify the infrastructure of capital markets and thus reduce the cost of issuing securities. In essence, DLT lets organisations work around certain logistical constraints, such as going through central securities depositories.

## Wasn't that supposed to be the case with ICOs?

With an ICO – as it's generally defined – different types of instru-

ments can be issued with each transaction. There are no standards. And that's a problem for institutional investors. They not only have to look at the issuer and its business model, but also the exact rights associated with the instrument. The effort required to wade through that analysis is often disproportionate.

It would be a whole new situation if, instead of being tailor-made for each transaction, the rights lined up with those granted with traditional instruments traded on capital markets, such as equity and debt instruments. Institutional investors know those inside out. Issuers can reach institutional investors by using distributed ledger technology to issue traditional instruments, which is not theoretically the case with an ICO.

## So, traditional instruments traded on capital markets, like shares and equities, can be issued in token form?

Yes, and the issue was debated for some time. Swiss legislation had clearly not planned to allow for tokenisation. But the legal landscape

has cleared up since then. Professor Hans Caspar von der Crone from the University of Zurich, one of the most renowned experts in Swiss corporate and commercial law, confirmed that Swiss companies can already tokenise shares under Swiss law. And that statement formed the basis used by the CMTA to design its blueprint for tokenisation. Mt Pelerin used this blueprint to be the first company to tokenise its shares in late 2018.

## OBJECTIVES OF THE CMTA

The Capital Markets and Technology Association [CMTA] aims to develop initiatives to facilitate the use of distributed ledger technology on capital markets, create standards, and, in doing so, make things more comfortable for investors. This non-profit was set up in 2018 by Swissquote in partnership with Lenz & Staehelin and Temenos AG, and with the support of the École Polytechnique Fédérale de Lausanne (EPFL).

## THE FUTURE OF FINTECH IN THE SPOTLIGHT AT EPFL

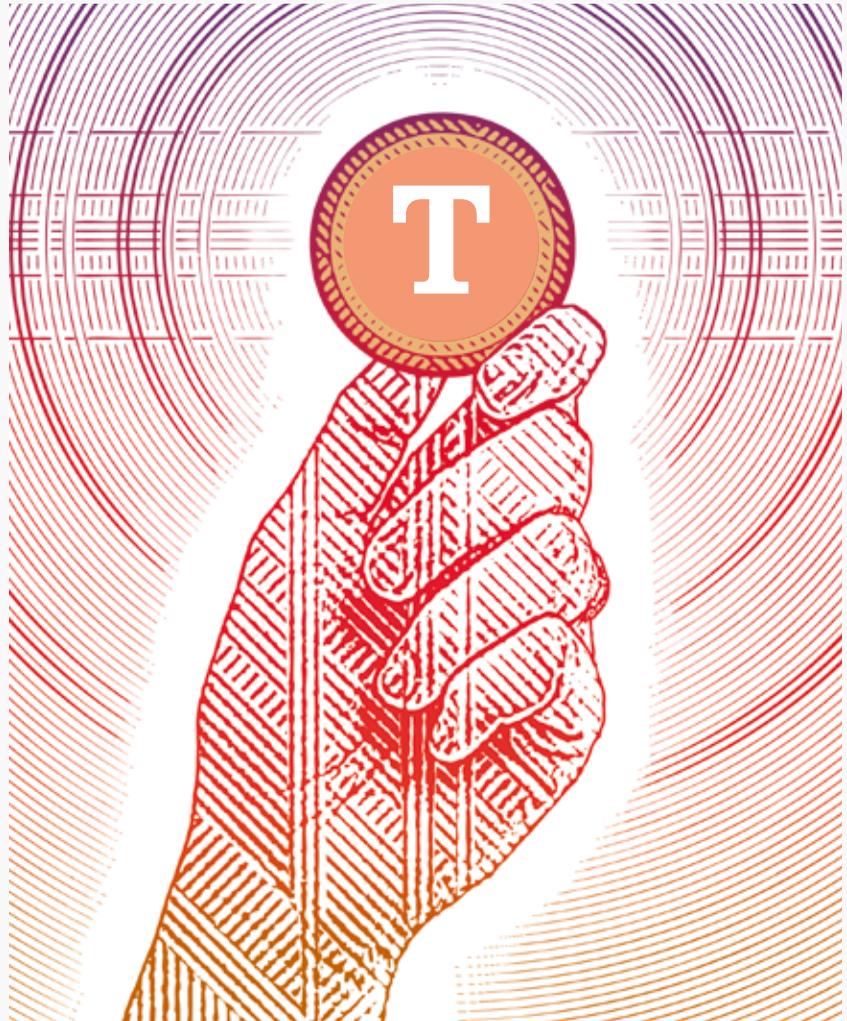
Founded in 2018, the CMTA will hold its first public conference on 6 June 2019 in partnership with the EPFL's Center for Digital Trust (C4DT). The event will take place at the SwissTech Convention Center in Lausanne, focusing on the outlook for DLT on capital markets.

Find out more at [cmta.ch](http://cmta.ch)

### Isn't it because they're more complex than a traditional ICO that tokenised debt and equity securities took so long to emerge?

The transactions are no more complex, at least not in Switzerland. The authorities generally call for further details on ICOs, to make sure that the tokens issued do not qualify as deposits, which would require authorisation. These issues are irrelevant to the issuance of tokenised securities because the legal framework is clear.

Of course, a public offering of securities may involve the publication of a prospectus, i.e. a document for which its authors are legally liable. The importance of the prospectus should not be under-estimated, but nor should it be overblown. There's nothing surprising about asking a company that is raising large sums of money to provide information about its business, financial position and intended use of the funds. The rampant lack of credibility on the ICO market is mainly because issuers did not release adequate information. A well-defined legal framework that clearly determines responsibilities is in fact a positive development for investors.



### Several private banks are members of the CMTA. Why are these institutions interested in tokenised securities?

Investing in innovation and unlisted companies is a big draw for private banks. In today's low-rate environment, the need to find higher-yielding investments is increasingly urgent. Hunting down the next unicorn is an attractive prospect for private banking clients. But investing in an unlisted company is currently so complex that it can be incompatible with some management strategies. Tokenisation can simplify all that by facilitating trading in equity and debt securities.

### No stock exchange currently lists tokenised securities. How

### will the liquidity of these instruments develop?

A stock exchange, in the legal sense of the term, is not required for a secondary market to develop for tokenised securities. Swiss law now lets banks create their own trading platforms and develop an equity or debt securities market. The securities traded on these platforms are not listed but simply admitted to trading. That's a key distinction. Listing means substantially higher requirements for issuers. So these platforms offer a useful alternative to stock exchanges, including for tokenised securities. ▽



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