2021年《DLT法》

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瑞士并未制定一部加密法。2020年9月25日，它通过了《关于联邦法律适应分布式账本技术发展的联邦法》，市场称之为《DLT法》，该法修订了十部现行联邦法律。[1]这一做法沿袭了联邦委员会2018年12月的报告，该报告的结论是：瑞士法律已能很好地适应这项技术，只需作选择性调整。[2]对《瑞士债务法》和《中介证券法》的修订于2021年2月1日生效，其余部分于2021年8月1日生效，同时生效的还有一部调整十项联邦条例的总括性条例。[3]

其中四项变革最为关键。第一项是《瑞士债务法》第973d至973i条规定的基于账本的证券。如今，权利可以登记在满足四项功能性要求的证券账本中，此后只能通过该账本行使和转让，并具有可流通证券的效力。第一项要求是：债权人而非债务人对其权利拥有处分权。第二项要求是：账本的完整性须通过技术和组织措施加以保护，例如由多个独立参与者共同管理。第三项要求是：权利内容和账本运作方式须记录在账本中或与之关联的数据中。第四项要求是：债权人无需第三方介入即可查看信息，并核实与自身相关记录的完整性。[4]第二项变革是依据《瑞士债务执行与破产法》第242a条和第242b条，在托管人破产时对加密资产进行隔离。对于托管人随时为客户备妥、且已单独分配给客户或集体持有但可明确归属的资产，客户可以取回。第三项变革是《金融市场基础设施法》第73a条及以下各条规定的DLT交易

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设施。这是一种新牌照，适用于允许非受监管参与者（包括零售投资者）交易基于账本的证券的多边交易场所，并可在一个实体内整合交易、结算和托管。第四项变革是对《银行法》和《瑞士反洗钱法》的一系列调整。这些调整明确：未隔离的加密资产托管属于银行业务，而隔离资产的托管人属于金融中介机构。[5]

《DLT法》生效时，是主要金融中心中全球第一部针对数字资产的综合性法律。其立法选择经受住了时间的考验。它没有定义"区块链"或"代币"，而是规范账本的功能，因而自2021年以来无需修订便容纳了每一项技术发展。其局限同样明显。对于作为私法客体的纯支付型代币，它未作任何规定，这类代币仍受第D部分第I章所述的事实处分权学说调整。它没有涉及稳定币、DeFi或去中心化自治组织，联邦委员会此后已在单独的报告中逐一研究了这些问题。它也完全没有改变税法。第C部分第V章和第VI章追溯了立法进程及其后的政策。

注释

1. Federal Act of 25 September 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology (AS 2021 33 and AS 2021 400)；联邦委员会2019年11月27日咨文（BBl 2020 233）；联邦委员会2018年12月14日报告。↩
2. 联邦委员会，2018年12月14日新闻稿 "Federal Council wants to further improve framework conditions for blockchain/DLT"。该新闻稿报道，联邦委员会于2018年12月7日通过了关于瑞士分布式账本技术和区块链法律框架的报告，其结论是瑞士法律框架很适合应对新技术，但需要作选择性调整。↩
3. 联邦财政部，2021年6月18日新闻稿 "Federal Council brings DLT Act fully into force and issues ordinance"。↩
4. Code of Obligations (SR 220)，第973d条第1至3款，由《DLT法》增设，自2021年2月1日起生效。↩

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5. Financial Market Infrastructure Act (SR 958.1)，第73a至73f条；Banking Act (SR 952.0)，第1b条及第16条第1bis项；Anti-Money Laundering Act (SR 955.0)，第2条第3款；均经《DLT法》修订，自2021年8月1日起生效。↩

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