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ABOUT THIS PRESENTATION

REMARK

In today presentation about the swiss legal framework for fintech business we will limit ourselves to discussing payment tokens business models and other fintech business models.

We will not discuss asset-based tokens business models or ICO as legal issues are more complex and the time imparted for this intervention would not suffice to discuss all those issues

THE FINTECH REVOLUTION DEFINITELY STARTED WITH BITCOIN

While software companies were developing financial technologies application for decades what really started the fintech revolution was the apparition of bitcoin

World history is full of milestones.

Today in the fintech world we are not in 2018 after DEI but in year 9 AB (after bitcoin).

FROM 1 PENNY to 288 BILLION

Who remember that it was only

- **In 2008 that the domain name bitcoin.org was registered**
- **In 2009 that the first block of crypto currency block ZERO was mined only 9 years ago on the 3rd January 2009.**
- **That the first bitcoin value was worth less than a penny**

There was actually a text message embedded in Block Zero. *“The Times 03/Jan/2009 Chancellor on brink of second bailout for banks. It was a reference to an article about the*

UK Bank chancellor being forced to consider a second bailout for banks as the lending drought worsens as an aftermath of 2008 financial crisis

DID WE SEE IT COMING?

I don't know about you but to be honest I didn't take bitcoin seriously until maybe early 2013.

Before this the feeling was more. Bitcoin. Nice Try

In 2014 one of the first post I dedicated to bitcoin was actually called BITCOINS| INVESTMENT OPPORTUNITY OR RECEIPT FOR DISASTER?

Was I wrong in my critics?

To my credit two of my critics of the time are still accurate today

1. Unsafe A hot wallet is still not safe 3 exchange has been hacked this last month the last one 2 days ago in South Korea.
2. Bitcoin or crypto currencies are still as far as I'm concerned more a Bet, than an investment.

While a few have made huge profits many little players that came late to the party have simply been taken to the cleaner.

Those remarks were valid in 2014 and are still valid today.

Still there is no coming back crypto and blockchain are the finance and economy future

1907 CRYPTO CURRENCIES

Two days ago, they were **1,907** different crypto currencies in the world (you can check the list from a site called [Investing.com](https://www.investing.com))

Of course,

- Not all 1,907 cryptocurrencies are significant, or even legitimate
- The 20 top crypto currencies cumulate more than 85% of all the exchange volume.
- But what is most Incredible or frightening (I let you judge which terms is better) in all this is that two days ago the market cap of all crypto currencies was around 288 billion USD.

THE BLOCKCHAIN

But bitcoins and crypto currencies are just as we would call in french "the tree that hides the forest"

Behind the crypto currency tree there is the blockchain forest.

- The financial system being swept by the crypto currencies wave is just the beginning.

- The world economy is about to be flooded by the blockchain tsunami which will revolution more than finance and transform business models in various sectors **such** as the supply chain, plane travel, food distribution, energy, audit.

FINTECH LEGAL ISSUES

The beginning of bitcoins and crypto was a wild wide west period

We had a situation were

Government authorities where not sure at the time

- what bitcoin was and what laws to apply to them
- or which authorities within a country should or not regulated them

A story is symbolic of this period. The New York times in December 2013 tell the story of a Danish exchange called BIPS that was hacked and as a result 1 million USD worth of coins were stolen from client's wallet

what was interesting at the time was not the amount of the heist **but the statement issued by the company at the time**

"Danish police were examining the case but could not classify this as a theft due to the current non-regulation of bitcoin"

2013 AN IMPORTANT YEAR

It is current 2013 that some authorities started to react

For example, **Chinese authorities** warning the public of bitcoins dangers of risk of loss then later on prohibiting Chinese banks to deal in bitcoin,

French central bank issuing warning

It was also when **swiss parliament** members requested from the swiss federal counsel a report highlighting the advantages and disadvantages of bitcoin for the Swiss financial center

FINTECH LEGAL FRAMEWORK IN SWITZERLAND

The questions the swiss government had to answer was

1. First to look whether the apparition of virtual currencies or new fintech crypto model was supported by current legal system or if there was a legal vacuum to be filled
2. Even if there is no legal vacuum is there a need to issue specifics laws applicable to various business fintech models

3. Is it possible to render Switzerland more attractive to fintech investment by effecting targeted changes that facilitate fintech business model?

THE FIRST QUESTION WAS ANSWERED BY 2014 REPORT OF THE SWISS FEDERAL COUNCIL ON VIRTUAL CURRENCY

Conclusion of the swiss federal council where that

- From an economic point of view, bitcoin is currently a niche phenomenon.
- Virtual currencies exist only in the form of a numerical code and therefore have no material counterpart but because of their negotiability, **they are to be classified as asset values.**
- **While bitcoin fulfills, to a certain extent, the three main functions of money** (that is, intermediate in trade, unit of account and store of value), its high volatility prevents it from actually fulfilling this role plainly.
- Although it can be used as a means of payment for real goods and services, **it is not accepted anywhere as a legal tender.**

4 years down the road bitcoins and other virtual currencies with a market cap value at 288 billion USD virtual currencies are beyond being a niche market phenomenon but as to the rest the conclusions of the federal counsel are still accurate

LEGAL TREATMENT OF VIRTUAL CURRENCIES

The issue was to know whether there was a legal vacuum in the sector of

- private law,
- criminal law
- and financial law

Private Law

Under Swiss law, the use of a virtual currency as a means of payment for the acquisition of goods or services or the purchase or sale of official currencies presupposes as for other deal an agreement, in accordance with art. 1 of the Code of Obligations (CO)

Therefore, no legal vacuum in this regard

Criminal Law

There was as well no need to modify the criminal code

Since a virtual currency is defined as an asset value, penal dispositions related to offenses against property, such as breach of trust, fraud, the unlawful use of assets or theft are applicable to virtual currency

Money Laundering:

AML law, money laundering could be applicable
Besides Art. 305bis of the Penal Code could also apply to fact in relation to virtual currency trading

Financial Market laws

As a means of payment, bitcoin also concerns financial markets.

The question being whether in the light of the law governing those markets and whether or not the trading activities in relation to bitcoin are subject to any restrictions

About crypto businesses that can be exercised under the form of a supervised SRO or a directly supervised Finma company

About the use and acceptance of bitcoins as a means of payment when acquiring goods or services;

The use of bitcoins as a means of payment for the acquisition of goods or services is not subject to the Banking Act.

The bitcoins received in such transaction falls within the scope of the derogation "*funds received for goods or services*" and do not qualify as deposit under the Banking Act

Purchase and sale of virtual currencies or crypto exchange businesses models

If the bitcoins are changed for official currencies **on a per-denomination basis** *then there is no accumulation of funds or bitcoins by one or the other parties.*

There is no deposit within the meaning of the Banking Act

Purchase and sale of virtual currencies on a platform

Operation of trading platforms

First case platform is used transfer money or bitcoins from a platform's users to other users **but the platform is not involved in the payment process**

Platform will be subjected to AML and will requires the company to operate under SRO or Finma directly supervised status.

Second Case Where it becomes more complicated is if **the operator of the platform is also involved in the payment process**, meaning if the funds transit by the platform operator account

If the business model met the following cumulative conditions:

1. the amounts in official currency or bitcoins received from the users is fully and immediately forwarded to the counterparty of the purchase transaction;
2. there must be no residual balance belonging to the customers concerned from the operator of the platform;
3. the funds or bitcoins transmitted must not produce interest;
4. finally, the execution of the transactions must not be entrusted to an interposed third party.

If all those conditions are met then the trading platforms will be subjected to AML and the company can also operate the business under SRO or Finma directly supervised status

It they are not then

the funds received by the platform would be deemed deposit under the banking Act and a banking license would be required.

Alternatively, the platform could avoid to have to apply for a bank license if it could obtain from a Swiss Bank the provision by a swiss bank of a guarantee for default risk covering all assets in official currency or bitcoins.

Good luck with that one

Other crypto currency business models that can be operated in Switzerland under the form of a SRO or Finma directly supervised

Bitcoin ATM business Model

Bitcoin Suisse, must have been one of the first company running a bitcoin related business model in Switzerland by establishing a network of bitcoin ATM.

Legal Rationale: This business model does not require a bank license and is operated under the form of a Finma or SRO supervised company because funds are just passing through and it does not require that a client balance for later use be created).

Crypto Wallet Business Model

XAPO a well know US Crypto Wallet company was the first such company to receive Finma approval to operate a Crypto Wallet business in Switzerland under the form of a FINMA/SRO supervised "Other financial intermediary".

It however took 2 years of communication and meeting with Finma before XAPO received FINMA greenlight to operate as a FINMA/SRO supervised company.

Key Preliminary Question: The key question that Finma had to resolve was as follows whether a wallet hold funds or not?

Why is this important?

Because **Finma has determined that crypto currencies must be treated the same as other currencies if a Crypto Wallet hold crypto currency “create a balance for later use by the client” then a bank license would be needed.**

Why Did Finma allows crypto wallet companies to operate as Finma/Sro supervised?

Because the safe-guarding of private keys wasn't to be compared with conventional banking operations such as account keeping

Indeed, a crypto wallet does not actually store a value in crypto currency only the key to access this value

The information like your balance and other details like creation time, balance transaction history etc... is stored on a blockchain block

ABOUT TARGET CHANGES TO MAKE FINTECH BUSINESS MODELS MORE ATTRACTIVE

Switzerland has decided to adopt a “forward looking” generic regime with no attempt to categorize Fintech Business model”.

New fintech business models appears every day and try to regulate each of those business models would impede Switzerland objective to become the new fintech hub

2017 have seen the Swiss government implementing changes to the banking ordinance which resulted in

THE CREATION OF SWISS SANDBOX

Why the need of a Sandbox.

Because every day innovators are creating new financial fintech business models that need to be tested

One of the legal issue that so far hindered the development of Fintech businesses in Switzerland was that:

To test and develop financial fintech business models often requires the fintech start up to receive and hold client's deposits.

Now has a principle Swiss Bank Act provided that only licensed bank can receive and hold deposits from the public. And the legal threshold to be qualified as a professional was very low at 20 deposits or even less in certain circumstances

Therefore, the parliament modified Section 6 of the Swiss Ordinance on Banks and Saving Banks (“B0”) and added a New Articles 6 paragraph 2.

Pursuant to article 6 paragraph 2 of the BO:

“Anyone who, over a long period of time, accepts more than 20 deposits from the public or makes call (offering) to the public to obtain them does not act in a professional capacity within the meaning of the Banking Act if they:

a) accepts deposits from the public for a total amount of no more than 1 million francs; AND

b) do not invest or remunerate such deposits, AND

c) informs the depositors, in writing or by any other means allowing to establish the proof of it by a text, before these make the deposit:

1.that it is not supervised by FINMA, and

2.the deposit is not covered by the deposit guarantee.”

SETTLEMENT EXCEPTION EASING CROWDFUNDING ACTIVITIES

Another targeted change was, the modification exception provided for in the Banking Ordinance for the acceptance of funds for settlement purposes

The enhanced settlement account exemption which extends the maximum holding period to 60 days for funds on settlement accounts, without qualifying as client deposits; (FROM 7 days)

The new Banking Ordinance certainly improves the legal environment for crowdfunding activities in Switzerland.

However, these new regulations mitigate only the money taking and transferring problems caused by the banking regulations they do not address other structural issues related to crowdfunding.

I personally believe that crowdfunding would be a fintech sector that would deserve to be regulated by a specific law.

STORED VALUE BUSINESS MODEL

Currently this business model in Switzerland can be exercised under the form of a SRO or directly Finma supervised company

There is however limitation to the business model as follows

AN E Money balance does not qualify as a deposit from the public if, cumulatively:

(a) the use of the stored e-money balance is strictly limited to future purchases of goods and services. (excludes transaction from person to person

(b) the e-money balance stored with a payment service provider never exceeds CHF 3,000 per customer. and

(c) the e-money balance does not bear any interest nor are there any other monetary incentives in relation to the e-money balance

If those 3 conditions are met, then the funds received are not deemed deposit from the public and a Swiss Financial as and an SRO or Finma directly supervised financial intermediary company could run Person to Business payment services model.

Also, the balance should not remain on the account more than 60 days.

LIGHT BANK LICENSE OR FINTECH INNOVATOR LICENSE

A new authorisation category is to be created in the Bank Act for companies that accept public funds of up to a maximum of CHF 100 million.

Some called it light bank license I prefer fintech innovator license. Basically, swiss answer to EU EMI license

There will be soon a new license in Switzerland for P2P or P2B business. Hopefully before the end of the year

Conditions will be as follows:

- 300,000 CHF capital
Then capital must increase in relation to the float at a rate of 5%
- Maximum amount of float allowed 100,000,000 CHF
- P2P and P2B business models allowed

ALTERNATIVE JURISDICTION FOR VARIOUS FINTECH BUSINESS MODELS

REMARK:

In this section we provide example of easy jurisdictions in relation to this matter

including Hong Kong, Singapore, UK, Cyprus **We can of course provide services in more jurisdictions that this**, including but not limited Malta, Bulgaria, Estonia, Switzerland, Luxembourg, Lichtenstein. Offshore we can provide services in Bahamas, BVI, Caimans, Commonwealth of Dominica, Seychelles and Saint Lucia. Those is a selected list we can provide services in more jurisdiction.

ONLINE BANKING

Online banks are to banking what low cost airlines are to air travel

So if you want to set up an online bank Switzerland with high costs may not be the best destination

LITHUANIA AS THE BANKING JURISDICTION?

Lithuania has introduced a new bank license called the Specialized Bank License since 1st January 2017

It presents the following benefits

1. **Low capital requirement** –requires only 1,000,000 Euros of capital
2. Low corporate income tax: at 15%
3. **Moderate office rental costs.** The cost of the offices in Vilnius the capital was in 2014 from 238 Euros to M2 per year against for example 718 Euros per M2 in Geneva.
4. **Low Employees Wages:**
5. **A market as large as possible:** With the passporting that allows a bank licensed in Lithuania would have access to a 750,000,000 inhabitants market.
6. **Short application process:** The bank license can be obtained in 6 months from the time all the documents have been filed and all the process and documents are in English language

WHAT CAN IT DO

EUROPEAN BANK LICENSE LITHUANIA	SPECIALIZED BANK LICENSE	FULL BANK LICENSE
SCOPE OF SERVICES THAT CAN BE PROVIDED BY THE BANK		
1. Lending	YES	YES
2. Payment services;	YES	YES
3. Receipt of deposits;	YES	YES
4. Currency exchange;	YES	YES
5. Issuing of e-money;	YES	YES
6. Issuing guarantees;	YES	YES
7. Fund administration;	YES	YES
8. Financial leasing;	YES	YES
9. Financial intermediation;	YES	YES
10. Creditworthiness assessment services; -	YES	YES
11. Safe-deposit box rental;	YES	YES
12. Investment services, clearing, services related to securities emissions. or manage investment, pension funds or be active by providing other services related to security emissions	NO	YES

We are already processing two applications

CRYPTO BANK

We would recommend to go offshore in commonwealth of Dominica

We can guarantee a turn key license in 3 months and another 3 months to activated the bank including swift, software, corresponding account, office fitting and so on

Capital requirement 1,000,000 USD

ICO FRIENDLY JURISDICTION

Looking for a friendly ICO jurisdiction as an alternative to switzerland

At this time the best offers we have would be in Slovenia.

Indeed, **ICO are not regulated and so far, the Central Bank of Slovenia stance is to warn investors that** *“As such, ICOs are not regulated nor controlled in Slovenia and the FSB said participants should limit their investments “in the amount that would not leave them too exposed.”*

Slovenia ICO benefits and drawbacks

Advantages:

- European Jurisdiction
- Crypto token is defined as movable property which is taxed at 0%
- Time to set up ICO is 1 to 2 months only
- Capital Requirement 7,500 Euros only (to be paid to local authorities – not included in our fees)
- Local banks are favourable to crypto, we are working with the biggest local banks and no issues with large amounts transaction
- 1 director and shareholder only

Drawback:

- **Corporate Income tax 19% but can manage to reduce tax burden by increasing deductible expenses so it is manageable**

In other words, there is only one drawback and it is manageable

CRYPTO FUNDS

Looking to set up a crypto funds without having to go through the whole process of setting up a regulated fund a solution exists in the Caymans Island under the name of Closed Ended Funds.

What is a Closed End Fund?

Cayman Mutual Funds Law does not define closed end funds but Cayman Islands Monetary Authority define it as a fund that

- **Has no regular redemption date**, and
- **Redemptions is only possible in limited circumstances** (in fine no voluntary redemption or repurchase right) or

- **Has extensive lock-up periods**

Other Characteristics of Closed End Funds

- **The number of investors is not limited**
- **Need to have a registered office in Cayman Islands**
- **Is suitable for illiquid assets**

Can a Closed End Funds be used as a Crypto Funds?

Yes, Cayman closed ended fund is suitable for Crypto assets which are actually considered as illiquid assets

How long does it take?

Closed End Funds would take around 3 to 4 weeks to set up. **Bank Accounts Options** We can provide bank accounts in CAYMAN OR EUROPE

This conclude our presentation

Do not hesitate to contact me if you need more information on this matter

Yours Sincerely



Rene Philippe Dubout