

5th Luxembourg FinTech Conference

Blockchain and securities - the Luxembourg perspective

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No comprehensive framework for DLT/blockchain

=> Do we need one? YES ☐
NO ☐
(tick the box)



➤ 15/128 FinTechs = blockchain (Minister Pierre Gramegna)

Bitstamp

 **bitFlyer**

Law of 1 March 2019 amending Law of 1 August 2001 on the circulation of securities, as amended:

- Blockchain law passed on 14 February 2019
- 58 votes in favour and 2 against

JOURNAL OFFICIEL

DU GRAND-DUCHÉ DE LUXEMBOURG



MÉMORIAL A

N° 111 du 5 mars 2019

Loi du 1^{er} mars 2019 portant modification de la loi modifiée du 1^{er} août 2001 concernant la circulation de titres.

Nous Henri, Grand-Duc de Luxembourg, Duc de Nassau,

Notre Conseil d'État entendu ;

De l'assentiment de la Chambre des Députés ;

Vu la décision de la Chambre des Députés du 14 février 2019 et celle du Conseil d'État du 15 février 2019 portant qu'il n'y a pas lieu à second vote ;

➤ The passing into law of bill 7363 was welcomed by large parts of the blockchain community

Luxembourg Passes Bill to Give Blockchain Securities Legal Status

CoinDesk, 15 Feb. 2019



Daniel Palmer

Feb 15, 2019 at 12:00 UTC

Updated Feb 15, 2019 at 12:04 UTC

The European nation of Luxembourg has just passed a bill providing a legal framework for securities issued over blockchains.

According to a [notice](#) published Thursday, the country's Chamber of Deputies, the county's parliament, passed the bill on Feb. 14 with 58 members supporting the legislation and only two voting against.

Titled Bill 7363, the legislation is intended to provide financial market participants with legal certainty for issuing securities using blockchain technology.

"The bill should provide greater certainty for investors and make the transfer of securities more efficient by reducing the number of intermediaries," the chamber said.

Luxembourg, an EU member nation, passed a bill making it possible to legally issue "dematerialized securities" in April 2013 via an amendment of a securities law passed in 2001.

Taking into account technological developments in recent years, the chamber said the new bill further amends the 2001 law to also include the registration and distribution of securities using secure electronic registration, "such as distributed ledger technology and in particular blockchain technology."

Single Article:

A new Article 18a shall be inserted after Article 18 of the Law of 1 August 2001 on the circulation of securities, as amended, and shall read as follows:

“ Article 18a. (1) The account keeper may maintain securities accounts and credit securities on securities accounts within or through secured electronic registration mechanisms, including distributed electronic ledgers or databases. Successive transfers registered within such a secured electronic registration mechanism shall be considered as book transfers between securities accounts. Maintaining securities accounts within such a secured electronic registration mechanism or crediting securities on securities accounts through such a secured electronic registration mechanism does not affect the relevant securities’ fungibility.

(2) The application of this law, the situation of the securities that are still held with the relevant account keeper, the validity or effectiveness of the collateral set up in accordance with the Law of 5 August 2005 on financial collateral arrangements, as amended, shall not be affected by the maintaining of securities accounts within such a secured electronic registration mechanism or by the credit of securities on securities accounts through such a secured electronic registration mechanism.”

Account keeper = regulated profession

- continues to be the key actor



Fund industry

Securities held/maintained on the blockchain



Securities transferred through the blockchain



It is the turn of the industry now!

- The law is simple
- It builds on the existing system and regulations

Definition – scope:

secured electronic registration mechanisms, including distributed electronic ledgers or databases

➤ neutral

Securities on the blockchain

- does not affect « fungibility »* of the securities

= important for the fund industry



* 1 security equals another: I am buying share 0001 but can be reimbursed share 0002 (simplified description).

Collateral arrangements

≠ affected

Law of 5 August 2005 on financial collateral arrangements

- transposing Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements;
- amending the Commercial Code;
- amending the Law of 1 August 2001 on the circulation of securities and other fungible instruments;
- amending the Law of 5 April 1993 on the financial sector;
- amending the Grand-ducal Regulation of 18 December 1981 on fungible deposits of precious metals and amending Article 1 of the Grand-ducal Regulation of 17 February 1971 on the circulation of securities;
- repealing the Law of 21 December 1994 concerning repurchase agreements;
- repealing the Law of 1 August 2001 on the transfer of ownership for security purposes

(Mémorial A 2005, No 128)

2 features

- legal security and certainty
- tech neutrality



Circulation on the blockchain \neq issuing on the blockchain

➤ law of 6 April 2013 on dematerialised securities



amend?

Possible amendment

➤ issuing on the blockchain =



Other possible developments

Registered shares

Art. 430-3.

A register of the registered shares shall be maintained at the registered office and every shareholder may examine it; the register shall specify:

- 1° the precise designation of each shareholder and the number of shares or fractional shares held by him;
- 2° the payments made on the shares;
- 3° (*Law of 6 April 2013*) «transfers and the dates thereof or the conversion of shares into shares in bearer or dematerialised form, if the articles allow therefor.»

Law of 10 August 1915 on commercial companies

Other possible developments

Registered shares

Art. 430-4.

Ownership of registered shares shall be established by an entry in the register prescribed in the foregoing Article.

(*Law of 6 April 2013*) «The company must satisfy the request of a person inscribed in the register to issue a certificate relating to the shares registered under that person's name.»

Transfers shall be carried out by means of a declaration of transfer entered in the said register, dated and signed by the transferor and the transferee or by their duly authorised representatives, and in accordance with the rules on the assignment of claims laid down in Article 1690 of the Civil Code. The company may accept and enter in the register a transfer on the basis of correspondence or other documents recording the agreement between the transferor and the transferee.

Subject to any contrary provisions of the articles, transmission, in the case of death, shall be validly established vis-à-vis the company, provided that no objection is filed, on production of a death certificate, the certificate of registration and an affidavit (*acte de notoriété*) attested by a *juge de paix* or a notary.

Law of 10 August 1915 on commercial companies

➤ amend?



Other possible developments

Bearer shares (need to be registered today)*

- Token = security?
- Token = title?

- Droit des biens



* Law of 28 July 2014 - Loi du 28 juillet 2014 relative à l'immobilisation des actions et parts au porteur et à la tenue du registre des actions nominatives et du registre des actions au porteur.

Need for some centrality

➤ who is liable?

- Transfer agent?
- Company issuing the securities?



Disintermediation means re-intermediation

New actors?

- Fund industry => regulated
- Existing actors reinvent themselves?



Towards a semi-decentralized world?

By analogy with a recent BIS-Paper:

« towards a world of semi-decentralized exchange »?
(about cryptocurrencies)

BIS Working Papers, n°765, Beyond the doomsday economics of « proof-of-work » in cryptocurrencies, by Raphael Auer, Monetary and Economic Department, January 2019, Bank for International Settlements

Towards a semi-decentralized world?

- « complement and improve »
(analogy with the same paper)
- not necessarily replace and abolish

Towards a semi-decentralized world?

... but who knows?

