

# Guidelines

for applications concerning licensing as a **DLT trading facility** according to Article 73a ff. of the Financial Market Infrastructure Act

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## Purpose

This document is intended to act as a guide for the convenience of applicants and to facilitate the presentation of applications submitted by them. It does not give rise to any legal claim. These guidelines highlight the information and documents an applicant must usually submit when making an application. The guidelines do not exclude the possibility that the applicant may submit additional information or that the Swiss Financial Market Supervisory Authority FINMA may request further details and documents. Particularly in connection with the use of distributed electronic registers it is likely that further information will be required in the application. The application must be in one of Switzerland's official languages. If an application is submitted by a legal representative, this person's original authorisation must be submitted.

Pursuant to Article 73a of the Financial Market Infrastructure Act (FinMIA; SR 958.1), the trading facility for distributed ledger technology securities (DLT trading facility) is permitted to commercially operate a facility for multilateral trading of DLT securities whose purpose is the simultaneous exchange of bids between several participants and the conclusion of contracts based on non-discretionary rules and which either admits participants pursuant to Article 73c para. 1 let. e FinMIA, holds DLT securities in central custody based on uniform rules and procedures, or clears and settles transactions in DLT securities based on uniform rules and procedures. At least one of these three conditions must be satisfied to trigger the licensing requirement as a DLT trading facility. FINMA licenses DLT trading facilities and supervises them after a licence has been granted.

Any change to the basis on which the licence was granted must be reported to FINMA. In the event of material changes, approval must be obtained from FINMA before continuing with operations (Art. 7a FinMIA). A DLT trading facility may not begin operations until a licence has been granted by FINMA. It is an offence to engage in activities which require a licence without being in possession of said licence (Art. 44 Financial Market Supervision Act [FINMASA]; SR 956.1).

## I. Licence application

### I.1 General information

- Intentions and reasons for obtaining a licence as a DLT trading facility
- Description of the proposed activity and organisation, including the proposed business activity, geographical scope and target clientele
- Certified extract from the commercial register
- Information about the business premises, infrastructure and personnel
- Information about the applicant's group companies, participations and/or other presences (branch or representative offices)
- If relevant: Description of the group structure
- Evidence of compliance with the minimum capital requirements
- Anticipated minimum capital trends in line with the business plan, including information about sources of financing

### I.2 Participations in the applicant

- Share capital (structure, allocation, nominal value, subscription etc.)
- List of all participants with a direct or indirect holding of 10% or more (to the level of beneficial owner with voting rights and capital interest)
- Graphic showing all directly or indirectly qualified participants to the level of beneficial owner (including information regarding the size of the participation), broken down by shares of voting rights and capital
- Information on any agreements and other ways in which the applicant may be controlled or materially influenced (e.g. shareholders' agreements)

### I.3 Information required for individuals who are directly or indirectly qualified participants

- Personal details and information about qualified participations in companies operating in the financial sector (original form, signed and dated)
- Copy of a current identification document (copy of a passport or official ID document signed and dated by the holder)
- Declaration regarding pending and concluded legal proceedings (original form, signed and dated)
- A CV signed by the person in question (including training and further education; list and description of past and current positions and directorships, with dates)

- References
- Swiss criminal records extract (original, no more than six months old)
- In the case of foreign nationals who have lived in Switzerland for less than five years, a criminal records extract from the previous country of residence or home country (original, no more than six months old)
- Debt enforcement register extract (original, no more than six months old)
- Declaration as to whether they hold the participation in question for their own account or on a fiduciary basis for a third party, and whether they have granted options or similar rights with respect to this participation (original form, signed and dated)

#### I.4 Information required for legal entities which are directly or indirectly qualified participants

- Personal details and information about qualified participations in companies operating in the financial sector (original form, signed and dated)
- Articles of association
- Extract from the commercial register or an attestation to this effect
- Description of business activities, the financial situation and, if applicable, the group structure
- Declaration regarding pending and concluded legal proceedings (original form, signed and dated)
- Declaration as to whether they hold the participation in question for their own account or on a fiduciary basis for a third party, and whether they have granted options or similar rights with respect to this participation (original form, signed and dated)

#### I.5 Information about persons entrusted with the administration and management of the business

- Composition of the governing body entrusted with the administration of the business, including details of the chairman, vice-chairman and members of any committees
- Information about the composition, organisation and powers of the executive board
  - Personal information (surname, first name, date of birth, nationality, place of birth, place of residence and function)
  - Copy of a current identification document (copy of a passport or official ID document signed and dated by the holder)
  - In the case of foreign nationals, copy of the residence permit (signed and dated)

- A CV signed by the person in question (including training and further education; list and description of past and current positions and directorships, with dates)
- Copies of job references, diplomas and other references
- Swiss criminal records extract (original, no more than six months old)
- In the case of foreign nationals who have lived in Switzerland for less than five years, a criminal records extract from the previous country of residence or home country (original, no more than six months old)
- Debt enforcement register extract (original, no more than six months old)
- Contract with the applicant (signed and dated copy)
- Declaration regarding pending and concluded legal proceedings (original form, signed and dated)
- Declaration regarding participations in supervised institutions (original form, signed and dated)
- Declaration regarding other directorships (original form, signed and dated)

## I.6 Business activity and internal organisation

- Detailed description of business activities and processes
- List of main and ancillary services provided by the DLT trading facility including the corresponding qualifications
- Articles of association, organisational regulations and policies tailored to the business activity of a DLT trading facility
- Business plan including budget (balance sheet, income statement) for the next three financial years starting from the anticipated commencement of operations with optimistic, realistic and pessimistic scenarios
- If available, annual reports, auditors' reports for the last three years
- Information about cessation of business and restructuring costs
- Organisational chart showing executive personnel and the FTEs per organisational unit
- Arrangements concerning the remuneration policy
- Organisation and regulations/policies relating to the risk organisation, compliance and the internal control system (including policies relating to internal audit, operational risk management and credit risks)
- Policies relating to the combating of money laundering and terrorist financing, sanctions regime, reporting and transaction monitoring

- Overview of the IT and application landscape and internal system connections (including interfaces to third-party systems, policies relating to IT systems and IT security as well as relating to data storage and data security)
- Business impact analysis
- Strategy and procedures to ensure business continuity
- Impact analysis and procedures in the event of a participant's default
- Policy (including procedure/measures) relating to record-keeping obligations
- List and description of potential conflicts of interest and related measures (including policies relating to the code of conduct for employees)
- Inventory of outsourcing arrangements made (including assessment and explanation as to whether they qualify as essential outsourcing arrangements)
- Risk analysis for outsourcing arrangements
- Outsourcing contracts
- Policy relating to outsourcing arrangements and monitoring of service providers

## I.7 Trade and self-regulatory organisation

- Detailed description of the trading facility and the planned trading activities, execution of transactions and all other relevant information (strategic orientation, technical implementation etc.)

### I.7.1 **Comprehensive documentation of the organisation and processes**

- Regulations on the organisation of trading
- Regulations on the clearing and settlement of transactions
- Policies with corresponding implementing provisions for regulations (including on pre- and post-trade transparency)
- Regulations on the admission, exclusion and duties of participants including participant categories and the respective requirements and policies with implementing provisions (e.g. relating to the technical connection)
- Regulations relating to the admission of DLT securities and any further assets (including a detailed description of the applicable duties)
- Evidence that the distributed electronic register operated by the DLT trading facility itself or by one or more specified operators meets the statutory requirements

- Evidence that the distributed electronic register that is not operated by the DLT trading facility itself, nor by any specified operator, have undergone technical inspection (including corresponding test report)
- Regulations on the implementation of reporting duties for securities transactions concerning all participant categories as well as policies with processes for recording and processing information about securities transactions
- Definition of the information to be exchanged, data formats and interfaces for exchange with other DLT trading facilities and Swiss trading venues (where necessary)
- Policies relating to the suspension of trading
- Policy relating to the duty to provide information (including sample texts for providing information to non-financial market participants)

#### **I.7.2 Self-regulatory organisation**

- Description of the self-regulatory organisation and explanation of how the requirements of independence are met
- Regulations for the individual bodies entrusted with regulation and monitoring tasks
- Regulations concerning exclusions
- Regulations concerning the trading supervisory body (including description of independence and human and material resources)
- Policy/regulations with detailed description of the collaboration with other trading supervisory bodies
- Description of the fulfilment of obligations concerning surveillance of the market, particularly with regard to price formation and the avoidance of manipulation as well as notification of the supervisory authority in the event of legal violations or other failings
- Regulations concerning the sanction commission
- Regulations concerning the rules of procedure
- Regulations concerning the use of penalties
- Regulations for the appeal body (concerning organisation, tasks, competencies and procedure)
- Schedule of fees

#### **I.8 Custody, clearing and settlement**

- Regulations and policies relating to custody, clearing or settlement activities
- Policy relating to integration of distributed electronic registers

- Information for addressing the specific risks associated with distributed electronic registers
- Policy relating to segregation
- Policy relating to the granting of credit and securities in the settlement process
- Policy relating to payment processing and the involvement of third parties
- Process documentation relating to custody, clearing and settlement
- Interface documentation between trading, custody, clearing and settlement
- Evidence of the required capital and liquidity

## I.9 Audit firm

### I.9.1 Regulatory audit firm

- Regulatory audit firm's notice of acceptance
- Completed questionnaire regarding services of approved audit firms

### I.9.2 Audit firm involved in the licensing procedure (licensing audit firm)

- Notice of acceptance as an audit firm in the licensing procedure
- Completed questionnaire regarding services of approved audit firms
- Detailed statement from the audit firm in accordance with the separate guidelines on confirmations of the audit firms in the licensing procedure

## II. Changes

All changes to matters affecting licensing require prior authorisation or approval by FINMA.

The following in particular require approval (the list is not exhaustive):

- Changes relating to key documents (particularly the articles of association and organisational regulations)
- Changes relating to holders of qualified participations
- Changes in the persons entrusted with the administration and management of the business
- Changes relating to the organisation

- Changes relating to internal corporate governance regulations
- Changes relating to the main services and ancillary services
- Changes relating to the acquisition or closure of subsidiaries, branches or representations abroad
- Changes relating to the outsourcing of essential services

The licence application must contain a detailed justification. All relevant information must be documented, and changed documents must also be submitted with changes tracked. Depending on the nature of the changes, it may be advisable to discuss them with FINMA in advance.