

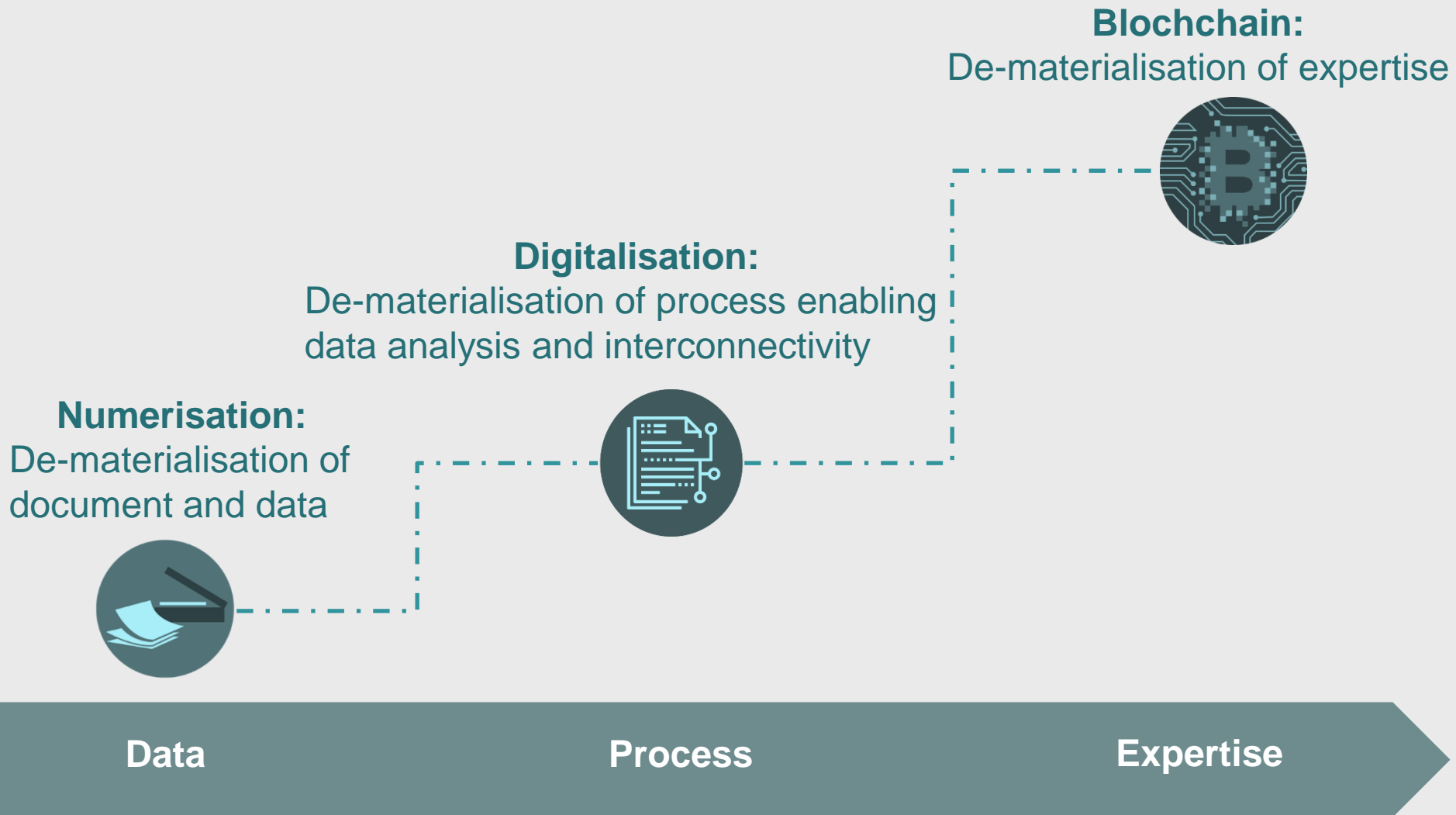
Fintech & Blockchain

What financial regulatory framework?

Today's discussion

1. What exactly?
2. General considerations
3. Regulatory framework **for Fintech**
 - a. In Switzerland
 - b. Quick International comparison
4. Regulatory framework for **cryptocurrencies & ICOs & TGEs**
 - a. General
 - b. In Switzerland
 - c. Quick International comparison
5. Conclusion: what to expect?

From numerisation to digitalisation to blockchain



What is exactly FinTech?

A specific industry which use technology's innovation as the core part of its activities to disrupt the traditional marketplace activities in delivering:

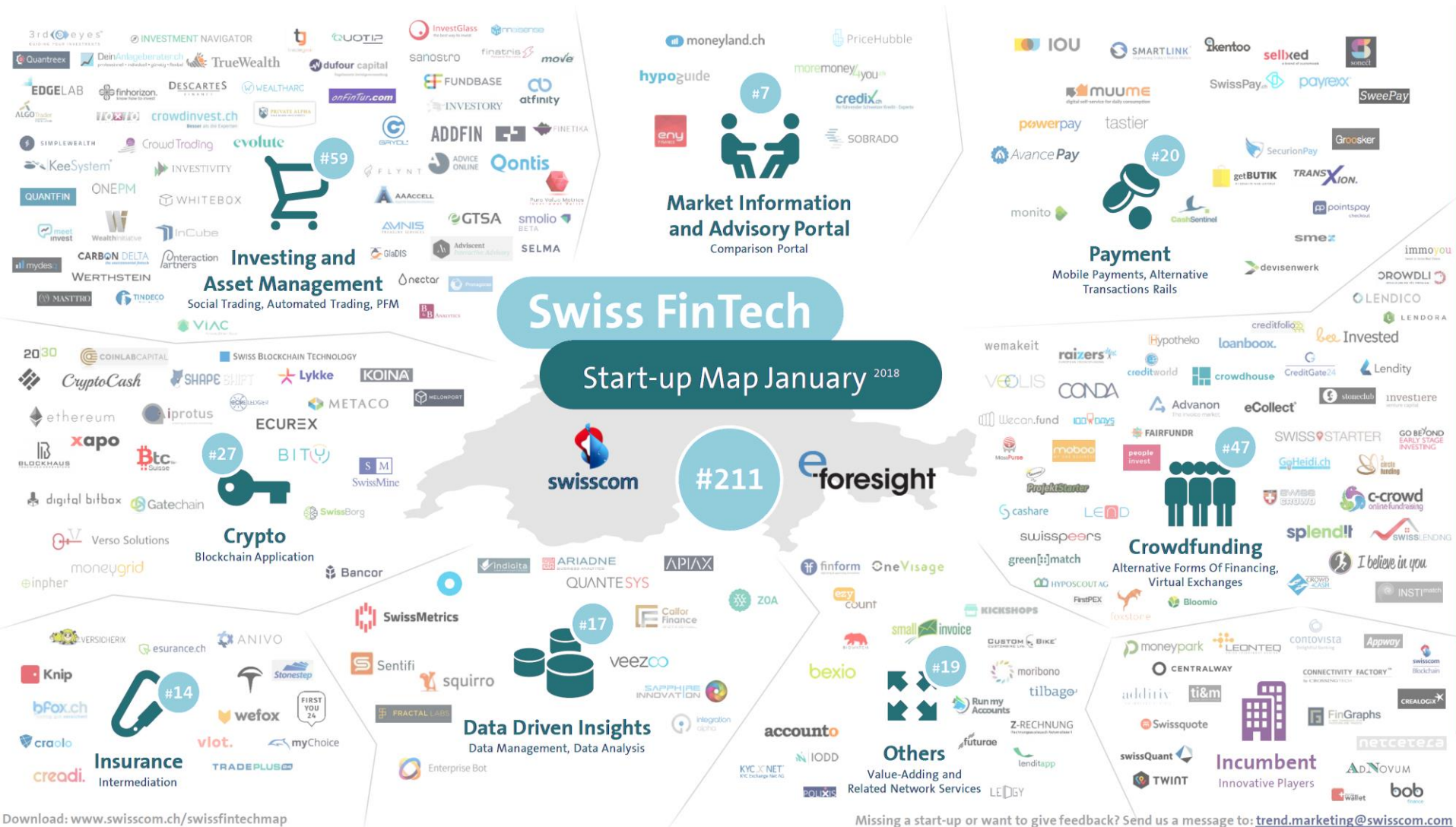
- Financial services : FinTech.
- Compliance and regulatory services : RegTech.
- And so on: Insurtech - AgriTech – HealTech - RetailTech ...

FinTech goes beyond the traditional “facilitator” stage of technologies.

Mainstreams for Fintech

- Payments services
- Money transfer / remittance
- Lending Tech
- Wealth Management /
Personal Finance /Investment
- Institutional / Capital market
tech / Insurtech
- Crowdfunding (C-donating,
lending, C-investing)
- Crypto-currencies based
services
- Blockchain services
- AI / Chatbots

Mean streams for Fintech



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General considerations to approach regulation

- **2 types of “Fintech” innovations:**
 - Centralised FinTech with
 - human involvement
 - business administrations and monitoring
 - eg. “traditional” crowdfunding: centralised investment pooling.
 - P2P and decentralised technologies with the aim to
 - reduce human involvement at its minimum → automatization, AI and smart contracts
 - Reduce centralisation of administration at its minimum → distributed teams, means with no specific national nexus.

General considerations of regulations

- **Tie-points for a regulation may be found in “real life” connections:**
 - Citizenship / location of investors, consumers, etc.
 - Fiat currencies into which CC. is converted
 - Location of service providers, etc...
- **2 different regulatory approaches coexist – if any:**
 - Either an *ad hoc* Fintech regulation, or
 - Existing regulation applied *mutatis mutandis* for Fintech cases
- **Often a *post- development* regulation approach**
 - Regulation after several years of using
 - Regulation is **daily** evolving framework
 - A “clé en main” solution cannot be expected

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Fintech

Swiss regulatory framework

Evolution and turnaround in 2016

- Fall 2013 Parliamentary postulates
- 2013 FINMA Annual report
- 2014 FINMA FAQ sheet Bitcoins
- 2014 Federal Council report on virtual currencies & FINMA Annual report
- 2014 FINMA Enforcement report: pre. investigations into BTC trading
- 2015 FINMA's Protection of investors position: *"special role in the black economy"*

- 2016 Regulation's adjustments (AML, Video-Online identification)
- 2016 Fintech Desk, multiple public interventions, parl. motions
- 2017 Fintech Sandbox & Banking Ordonnance amendments
"Light License" in comparison with banking license requirements
Principle of technology neutral regulation

- 2017 Balance between enforcement decisions & public speeches for openness
Regulation by cases, but no general regulation

Swiss regulatory framework applicable?

- **Crowdfunding:**
 - Often fall under Banking Act / AMLA
 - Art. 5 par. 3 BA: applicable to exchange platform but restrictive
 - CISA
- **Payment systems**
 - Often fall under Banking Act
 - CHF 3000'.- often too low
- **Blockchain**
 - Centralised legislation with domestic tie-points
 - Crypto currencies: AMLA often applicable
 - BA & CISA applicable depending on the model

Fintech

Swiss regulatory framework

- General Framework favourable – so far
- Bank Ordinance amended :
 - 5 main categories
 - Sandbox
 - Art. 5-6 OB amended
 - No deposits considered – no interest paid / no settlement within 60 days
 - No license for more than 20 deposits - if
 - Less than CHF 1 million max
 - No interest/investment
 - Depositors' information about no FINMA supervision & no depositor protection scheme
 - If 1 million threshold exceed?
- Circular 2008/3 Public deposits with non-banks amended to reflect
- To come: authorisation for financial innovation


International regulatory Framework


- **Openness of regulators with**
 - With Fintech Accelerators or Incubators, Sandboxes, White papers on r innovation, Fintech Forum, Consultation papers on Fintech, MoUs, etc.
- **A supporting and hearing approach before regulating if necessary**
- **Remaining international regulatory issues:**
 - Issues on integration and resilience from global participants
 - Issues on investors' and consumers' protection (hacking, sufficient information, irreversibility of transfers)
 - Relations with current reporting regulations: EMIR? Dodd Frank? REMIT?
 - Pseudo-anonymity towards regulators?

International regulatory Framework

Figure IV.1. The Sandbox Approach in Selected Jurisdictions

General Information		Type of Applicant		Benefits for Businesses			Safeguards			
Country	Regulator	Authorized/ Licensed/ Incumbents	Unauthorized/ Unlicensed/ Startups	Regulations relaxed or waived	Licensing requirements relaxed or waived	Clarifications on regulatory expectations	Limits on customers, value and/or duration	Additional reporting obligations/closer monitoring	Additional consumer protections/risk mitigation	Specified regulations that cannot be waived
Australia	ASIC	✗	✓	✗	✓	✗	✓	✓	✓	✓
Canada	CSA	✓	✓	✓	✗	✓	✗	✗	✓	✗
Hong Kong SAR	HKMA	✓	✗	✓	✗	✗	✓	✓	✓	✗
Malaysia	BNM	✓	✓	✓	✗	✗	✓	✓	✓	✗
Singapore	MAS	✓	✓	✓	✗	✗	✓	✓	✓	✓
Switzerland	FDF	✓	✓	✗	✓	✗	✓	✗	✓	✓
United Arab Emirates	ADGM	✓	✓	✓	✗	✗	✓	✓	✓	✗
United Kingdom	FCA	✓	✓	✓	✓	✓	✓	✓	✓	✓

 Explicitly mentioned in the regulatory authority's disclosure, staff analysis.

 Either not required or not mentioned in the regulatory authority's disclosure.

Source: IMF Staff

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Technologies with scattered regulations



Cryptocurrencies : general considerations

- Used as mean of payment for buying goods and services
- **Blockchain's characteristics:**
 - Peer to peer (P2P) network
 - Decentralised → no intermediaries for exchange / clearing houses
 - Not attached to a specific country or (governmental) institution
 - +
 - Transactions are irreversible and *quasi* in real time
 - Highly personal
 - Pseudo-anonymous
- **Crypto currency**
 - ≠ “fiat” money / “real” money” / “conventional currencies”
 - ≠ e-money → transcription of fiat money via electronic tools
 - Most common: BTC, ETH, LTC

Cryptocurrencies

Swiss regulatory framework

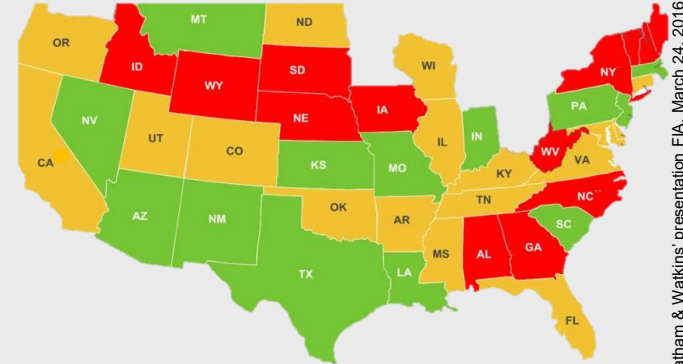
- No Swiss specific regulation & legal provisions for Blockchain in general
- Federal Constitution: art. 99 (1) & arts. 1-2 CPIA
 - Swiss Francs: single recognised currency with legal consequences
e.g. legal tender, for debts recognition, bankruptcy
 - Electronic / scriptural money : **not** a currency (FF 1998 3485, 3507)
 - So even more true for C.C... Other payment instruments exists with no legal tender: eg. WIR currency
- Art. 81 FMIA: payment system ?
 - **Entity** that *clears & settle* payment obligation based on uniform rules and procedure **≠** French version : “On entend par système de paiement toute **organisation** fondée sur des règles et procédures communes qui sert à compenser et régler des obligations de paiement».
- Art. 61 FMIA: central securities?
 - A **central** securities depository is the operator of a central custodian or a securities settlement system. A central custodian is an **entity** for the central custody of securities and other financial instruments based on uniform rules and procedures.

Cryptocurrencies

International regulatory framework

One country, several positions on the definition:

- SEC → Asset / Property, not a currency
- CFTC → BTC is a commodity
- NYDFS → BitLicence for VCs rules
- FinCEN → Exchange Platforms declared a “*Money Transmitter*”
- US District judge → Florida: BTC is a property, not a currency
→ NY: BTCs are funds/money (18 U.S.C. § 1960(b)(2))



Latham & Watkins' presentation FIA, March 24, 2016

Others?

- Australia: property
- Japan: mean of payment (scope of the Payment Services Act)
- Hong Kong : commodities (HKMA) vs. securities (SFC)
- Caution with varied interpretations → France, Germany, Canada

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ICOs – TGEs ?

General consideration

- Public event selling digital tokens for the purpose of obtaining public capital to fund software development, business operations, business development, or other initiatives operated exclusively on the Blockchain
- ICOs → Initial *Coin* Offering
- TGEs → Token *Generating* Event
- Crypto Currency → only a mean of payment
≠
- Token → cryptographically secured digital representation of a set of rights.
- Often for startups, but also for well-established business
- ICOs /TGE Business models are as various as «traditional» business model

Tell me what offers your token...

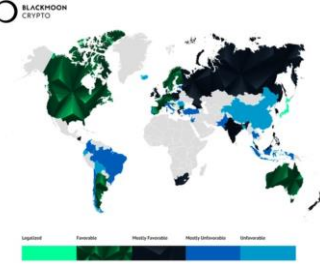
- Depending on the rights inherent to the token → Regulation:

E.g.:

- the right to access and use a network or software application?
 - the right to redeem the token for a unit of currency or a good?
 - the right to receive a share of future earnings and/or percentage of ownership?
 - the right to vote on decisions made by the organization?
 - the right to contribute to an organization and earn a revenue in exchange?
-
- Native token?
 - Utility token? Protocol token?
 - Means of payment / commodity / Collective investment / Securities ?
 - Work token?

So and Switzerland?

- Same position as under the Crypto-currencies: existing regulatory legislation
- Balance between Enforcement decisions and investigation & supportive position for innovative business
- Communication on FINMA Enforcement decision on E-Coin (Sept. 19, 2017)
→ Signal to develop compliant ICOs.
- FINMA Press Release to further investigate ICOs (Sept. 29, 2017) & FINMA Guidance 04/2017:
 - Reminder of regulation on principles based and technology neutrality
 - Reminder of the Fintech Desk
 - Reminder of existing regulations



3. ICOs

International regulatory framework

As for the CryptoC., different approaches:

- Those in **favour**: Canada, Estonia, Japan, Gibraltar/ Australia (ad hoc regulation)
- Those **banning** it: China (but..), South Korea
- Those **developing** regulation: Isle of Man
- Those “**studying** at the moment...”, Israel (announced for 31.12), Russia (?)
- **And the E.U?** Multiple analyses and positions by the EU Commission. In addition, 5AMLD in developing AML-CFT framework for CryptoC.

6. What to expect for lawyers?



Source: <https://www.rts.ch/info/sciences-tech/9005572-quand-les-ordinateurs-se-melent-de-justice.html>

Thank you for your attention!



Questions?
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