

Blockchain II Law: Another step forward for the digitalization of EU capital markets

Executive Summary

- A new law amending the law of 6 April 2013 on dematerialised securities and the law of 5 April 1993 on the financial sector was approved by the Luxembourg Parliament on 21 January 2021. The new law entered into force on 22 January 2021.
- The new law enables the issue, holding and maintenance of dematerialised securities entirely on secured electronic registration systems, such as DLT or databases managed by settlement organisations or central account keepers.
- The new law further allows Luxembourg and EEA investment firms and credit institutions to operate as central account keepers for non-listed debt securities.

The Luxembourg legislator marks another milestone for the use of new technologies in the issuance and circulation of transferable securities. The law of 22 January 2021 (the “**Blockchain II Law**”) amends the law of 6 April 2013 on dematerialised securities, as amended (the “**Dematerialised Securities Law**”) and the law of 5 April 1993 on the financial sector, as amended (the “**Financial Sector Law**”).

The Blockchain II Law brings further innovation with respect to the regulation of dematerialised securities in the Grand Duchy of Luxembourg by allowing investment firms and credit institutions to hold and manage securities

issuance accounts via secured electronic registration systems such as distributed ledger technology (“DLT”) (e.g., blockchain) and databases.

I. Issuance of Dematerialised Securities: How Does it Work?

The Dematerialised Securities Law provides the possibility for Luxembourg companies¹ to issue (or convert existing securities to) debt or equity securities in dematerialised form.

When dematerialised securities are issued, the securities are registered into a securities issuance account (*compte d’émission*) held by a settlement organisation² or a central account keeper.³ The securities issuance account is a register in which dematerialised securities are recorded together with their main features.

The registration of the securities in the securities issuance account is the moment in which such securities are deemed to be legally issued. When the securities are subscribed by an investor, they are recorded in the securities account (*compte-titres*) of the investor.

Securities issuance accounts and securities accounts serve different purposes. The securities issuance account enables the account keeper to monitor the number of securities in circulation, in order to verify that the number of securities recorded in the securities issuance account is equal to the aggregate number of securities held by one or more investors in their securities accounts. Title to the

¹ The Dematerialised Securities Law allows foreign companies to issue debt securities in dematerialised form, but only if such debt securities are governed by Luxembourg law.

² *Settlement organisation* is defined as a securities settlement system within the meaning of the law on payment services,

designated as such by the *Banque centrale du Luxembourg* and notified to the European Commission by the Minister responsible for the financial sector and whose system operator is established within the Grand Duchy of Luxembourg.

³ See par. III. for the definition of *central account keeper*.



dematerialised securities is represented by a record in the securities account.

Following the registration in the securities issuance account, the securities may circulate by means of account-to-account transfers in accordance with the law of 1 August 2001 on the circulation of securities and other financial instruments (as amended, the “**General Securities Law**”).⁴

II. Filling the Gap Left by the Blockchain I Law

The General Securities Law, as amended by the law of 1 March 2019 (the “**Blockchain I Law**”),⁵ allows the use of secured electronic registration systems to hold and manage securities accounts.⁶

Before the enactment of the Blockchain II Law, however, there was uncertainty whether the issuance of dematerialised securities could be made also by means of secured electronic registration systems, such as DLT or databases.

The Blockchain II Law fills this gap by introducing the legal definition of securities issuance accounts and by expressly allowing the use of secured electronic registration systems to maintain such accounts.

Like for the Blockchain I Law, the Blockchain II Law uses a neutral and broad wording when referring to secured electronic registration systems, in order to include in the definition new technologies that may be developed in the future.

III. Who Can Hold Securities Issuance Accounts?

Securities issuance accounts can be held only with settlement organisations and central account keepers. Securities issuance accounts relating to securities

admitted to trading on a regulated market or a multilateral trading facility can be held only with a settlement organisation.

The Financial Sector Law defines *central account keeper* as a person whose activity is to keep securities issuance accounts for dematerialised securities.⁷ Before the approval of the Blockchain II Law, the Financial Sector Law provided that only settlement organisations (as defined in the Dematerialised Securities Law)⁸ and entities authorised by the Minister responsible for the *Commission de Surveillance du Secteur Financier* (CSSF) could carry on the activity of central account keepers.⁹ Such authorisation could be granted to credit institutions and investment firms incorporated under the laws of the Grand Duchy of Luxembourg or to branches established within the Grand Duchy of Luxembourg by credit institutions or investment firms authorised in another Member State (as defined in the Financial Sector Law).¹⁰

The Blockchain II Law broadens the array of entities that may exercise the activity of central account keeper in relation to unlisted dematerialised debt securities by including MiFID investment firms (*entreprises d'investissement*)¹¹ and credit institutions (*établissements de crédit*)¹² based in Luxembourg or in another Member State.

Such investment firms and credit institutions will not need a separate authorisation by the Minister responsible for the CSSF, but they will need to have control and security mechanisms and IT systems adapted for the keeping of central accounts allowing:

- The registration of all the securities which compose each issue admitted to their transactions in a securities issuance account;

⁴ Unless the *dematerialised Securities law* derogates from the General Securities Law.

⁵ On this topic, see the GSK Update “[Luxembourg passes law allowing the use of blockchain in the issuance and circulation of securities](#)”.

⁶ Art. 18a of the General Securities Law.

⁷ Art. 28-11(1) of the Financial Sector Law.

⁸ See nt. 2.

⁹ Art. 28-11(2) of the Financial Sector Law.

¹⁰ Art. 28-12(1) of the Financial Sector Law.

¹¹ As defined under art. 1, item 9 of the Financial Sector Law.

¹² As defined under art. 1, item 12 of the Financial Sector Law.



- The circulation of securities by transfer from one account to another;
- The verification that the total amount of each issue admitted to their transactions and registered in a securities issuance account is equal to the sum of the securities registered in the securities accounts of their account holders; and
- The exercise of the rights attached to the securities registered in the securities account.¹³

As explained in the parliamentary works, such requirements are aligned to the ones set out under Art. 28-12 of the Financial Sector Law for central account keepers authorised by the CSSF in order to ensure a level playing field.

In this respect the Blockchain II Law anticipates certain features of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in Crypto-assets (“MiCa”),¹⁴ building up on the advices issued by the EBA and by ESMA.¹⁵

IV. Conclusion

The enactment of the Blockchain II Law shows once again the particular attention that Luxembourg reserves to the field of financial technology. The Blockchain II Law will increase the legal certainty of security token offerings, which may now be entirely held and managed within secured electronic registration systems maintained by credit institutions and investment firms. A much-needed flexibility to increase the diversification of funding options within the European Economic Area.

¹³ Art. 28-12(2) of the Financial Sector Law.

¹⁴ The MiCa proposal was published by the European Commission on 24 September 2020 as part of the Digital finance agenda. Once adopted, MiCa will bring crypto-assets qualifying as e-money instruments or securities within the perimeter of the EU financial services regulation.

Andreas Heinzmann

Partner
GSK Stockmann SA
andreas.heinzmann@gsk-lux.com

Valerio Scollo

Partner
GSK Stockmann SA
valerio.scollo@gsk-lux.com

Andrea Carraretto

Associate
GSK Stockmann SA
andrea.carraretto@gsk-lux.com



¹⁵ On 9 January 2019, the EBA and ESMA published reports with advice to the European Commission on the applicability and suitability of the EU financial services regulatory framework on crypto-assets. These reports were based on the mandate given to them under the Commission’s FinTech action plan, published in March 2018.

Copyright

GSK Stockmann SA – all rights reserved. The reproduction, duplication, circulation and/or the adaption of the content and the illustrations of this document as well as any other use is only permitted with the prior written consent of GSK Stockmann SA.

Disclaimer

This client briefing exclusively contains general information which is not suitable to be used in the specific circumstances of a certain situation. It is not the purpose of the client briefing to serve as the basis of a commercial or other decision of whatever nature. The client briefing does not qualify as advice or a binding offer to provide advice or information and it is not suitable as a substitute for personal advice. Any decision taken on the basis of the content of this client briefing or parts thereof is at the exclusive risk of the user.

GSK Stockmann SA as well as the partners and employees mentioned in this client briefing do not give any guarantee nor do GSK Stockmann SA or any of its partners or employees assume any liability for whatever reason regarding the content of this client briefing. For that reason we recommend you request personal advice.

www.gsk-lux.com

GSK STOCKMANN

BERLIN

Mohrenstrasse 42
10117 Berlin
T +49 30 203907-0
F +49 30 203907-44
berlin@gsk.de

FRANKFURT/M.

Taunusanlage 21
60325 Frankfurt am Main
T +49 69 710003-0
F +49 69 710003-144
frankfurt@gsk.de

HAMBURG

Neuer Wall 69
20354 Hamburg
T +49 40 369703-0
F +49 40 369703-44
hamburg@gsk.de

HEIDELBERG

Mittermaierstrasse 31
69115 Heidelberg
T +49 6221 4566-0
F +49 6221 4566-44
heidelberg@gsk.de

MUNICH

Karl-Scharnagl-Ring 8
80539 Munich
T +49 89 288174-0
F +49 89 288174-44
muenchen@gsk.de

LUXEMBOURG

GSK Stockmann SA
44, Avenue John F. Kennedy
L-1855 Luxembourg
T +352 2718 02-00
F +352 2718 02-11
luxembourg@gsk-lux.com

