



FAQ - Tokenisation

Version 1

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Update information

02/10/2026

First publication

This document does not constitute a complete guide on tokenisation under Luxembourg laws, but rather a mere listing of recurrent questions asked to the CSSF in this context; it has thus no vocation to treat this topic exhaustively. In particular, this guidance is without prejudice to any other legal and regulatory obligations applicable to the obliged entities, including those arising under AML regulations. It will be updated when necessary, and the CSSF reserves the right to adapt its approach to any matter covered by the FAQ at any time.

You should regularly check the CSSF website for relevant updates, new guidance, or change of positions.

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Introduction

The CSSF acknowledges the potential benefits offered by tokenisation (i.e. the digital representation of assets on distributed ledgers or the issuance of traditional asset classes in tokenised form to enable them to be issued, stored and transferred on a distributed ledger), notably in terms of efficiency and cost. In line with its technologically neutral approach, the CSSF evaluates the risks related to business models that rely on tokenisation by looking at how it is being used and not at the technology itself. In this spirit, these FAQs aim at providing guidance to entities that consider relying on tokenisation when performing their activities.

The CSSF invites such entities to contact it as early as possible to initiate a preliminary dialogue, to identify the relevant legislative frameworks and need for licenses, as well as to identify any potential obstacles at an early stage. This step may be based on a detailed presentation that enables the CSSF to ensure that it has a proper understanding of the proposed project before the entity initiates the formal administrative procedures. To initiate a preliminary dialogue, Luxembourg-supervised entities may directly contact their usual point of contact/*réviseur* at the CSSF, and other entities may contact the CSSF's Innovation Hub (innovation@cssf.lu).

When contacting the CSSF for the first time in relation to a specific project involving tokenisation, entities are invited to provide a description of the whole project and lifecycle of the assets involved from their issuance to their trading, settlement and distribution. This description should notably contain a legal qualification of the tokens to be issued, including the rights attached, a description of the activities of all stakeholders involved in the lifecycle of said tokens, as well as details of all contractual relationships, including outsourcing arrangements in relation to the business case at hand. These entities are also invited to complete a preliminary assessment of the potential license requirements that such a project may entail and, if possible, any other administrative procedures that may need to be completed (e.g. notification in case of outsourcing to a third-party service provider). This may impact the timing of the submission of the notification as control agent, given that there may be discrepancies among applicable legal delays.

This document will be updated progressively as specific issues encountered by the CSSF and reported by the sector arise.

Definitions, abbreviations and acronyms

Blockchain Law IV:	Law of 20 December 2024 amending: (i) the Law of 6 April 2013 on dematerialised securities, as amended, (ii) the Law of 5 April 1993 on the financial sector, as amended and (iii) the Law of 23 December 1998 establishing a financial sector supervisory commission, as amended
Dematerialised Securities Law:	Law of 6 April 2013 on dematerialised securities
DLT:	Distributed Ledger Technology
DORA:	Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector
EEA	European Economic Area
ICT:	Information and Communication Technology
IFM:	Investment fund manager. For the purpose of this FAQ, IFM means the designated external IFM or, where applicable, the internally managed UCI
PFS:	Professionals of the Financial Sector
UCI(s):	Undertaking(s) for Collective Investment
UCIA:	An entity, as defined in section 2.1. of Circular CSSF 22/811, performing the activity of UCI administration

Section I: Tokenisation of investment funds

Q1. Can a UCI issue native tokens, i.e. UCI units/shares that are natively issued solely on DLT in the form of tokens?

Published on 2 October 2026

Yes.

In accordance with the principle of technological neutrality, Luxembourg UCIs can issue native units/shares using DLT, provided that the proposed operating model is compliant with the regulatory framework which applies to the relevant UCI.

UCI units/shares issued using DLT (i.e. "tokenised units/shares") may be issued in registered or dematerialised form, within the meaning of the Law of 10 August 1915 on commercial companies. In other words, the use of DLT as the issuance and record-keeping infrastructure does not determine the legal form of underlying securities or vice-versa.

For UCIs issuing registered units/shares, the CSSF reminds market participants that any UCIA performing the registrar function may use DLT to maintain the unit/shareholder register.

For UCIs issuing dematerialised units/shares using DLT, an eligible entity (e.g. the IFM, a registrar agent or a credit institution authorised as UCIA) will need to act as UCIA for the registrar function (please refer to Q2 below). In addition, market participants must also comply with all requirements applicable to such legal form under the Dematerialised Securities Law.

For UCIs issuing both “tokenised” units/shares (i.e. UCI units/shares issued using DLT, which may be in registered or dematerialised form) and “traditional” units/shares (i.e. non-tokenised units/shares), various entities may be appointed to act as UCIA for the registrar function (please refer to Q3 below).

The CSSF also reminds market participants that a UCIA planning substantial changes to its operating model as part of its use of DLT is required to apply with the CSSF for authorisation of any substantial changes to the initial application, in accordance with point (5) of Circular CSSF 22/811.

Q2. Where a UCI issues dematerialised units/shares, does the appointment of a control agent within the meaning of the Dematerialised Securities Law impact the need to appoint a UCIA in charge of the registrar function?

Published on 2 October 2026

No.

The form under which units/shares of a UCI are issued (i.e. registered or dematerialised) does not impact the need to appoint a UCIA in charge of the registrar function within the meaning of Circular CSSF 22/811.

The tasks covered by the UCIA in its registrar function, which are listed in points (19) and (20) of Circular CSSF 22/811, go beyond what is required from a control agent under points (a) to (c) of Article 1(10a) of the Dematerialised Securities Law. In consequence, an eligible entity (e.g. the IFM, a registrar agent or a credit institution authorised as UCIA) will need to perform all the residual tasks foreseen under points (19) and (20) of Circular CSSF 22/811.

In this context, please note that nothing shall prevent a single entity holding all appropriate licenses/authorisations to perform both functions (for instance, a credit institution (i) authorised as UCIA within the meaning of Circular CSSF 22/811 and (ii) having notified its intention to operate as control agent within the meaning of Article 21a of the Dematerialised Securities Law).

Q3. May multiple entities act as UCIA in charge of the registrar function for the same UCI, where such a UCI issues both traditional and tokenised units/shares?

Published on 2 October 2026

Yes.

Multiple entities may act as UCIA in charge of the registrar function for the same UCI, where such a UCI issues both “tokenised” units/shares (i.e. UCI units/shares issued using DLT, which may be in

registered or dematerialised form) and “traditional” units/shares (i.e. not tokenised units/shares), provided that the following conditions are met:

- (i) the division of tasks between the different UCIAAs in charge of the registrar function must not result in a fragmentation which renders the exercise of the coordination and general supervisory function difficult, if not impossible, or which unnecessarily increases costs by unjustified duplication or complexity of the operating model;
- (ii) the IFM must ensure that the operating model, as well as the potential risks and implications thereof, is adequately disclosed to investors of the UCI. In this context, in accordance with point (41) of Circular CSSF 22/811, the names of all entities acting as UCIAA for the UCI, along with their respective functions, must be clearly disclosed in the offering documents;
- (iii) an entity (the IFM and/or one of the UCIAAs) must maintain a consolidated view of the units/shares issued by the UCI to ensure that all other relevant UCI administration functions/tasks can be performed (e.g. calculation of the NAV per share, calculation of distributions/capital calls, etc);
- (iv) the IFM and/or the UCI must ensure that any additional risks arising from this division of responsibilities among the relevant UCIAAs for the registrar function are properly managed;
- (v) full compliance with all relevant provisions of the applicable law must be ensured, including, where applicable, the obligation to maintain a register of all registered shares at the UCI’s registered office. This register must contain all required information as specified in the Law of 10 August 1915 on commercial companies.

Section II: Control agent specificities

Q4. What are the legal requirements and procedures to become a control agent?

Published on 2 October 2026

- **Considerations applicable to all applicants**

In accordance with Article 21a(2) of the Dematerialised Securities Law, and after officially presenting the operating model to the CSSF as mentioned in the Introduction hereabove, entities wishing to perform control agent activities in Luxembourg must notify the CSSF at least two months prior to the control agent’s activity taking place and shall include the information necessary to allow the CSSF to verify compliance with the legal requirements set out in Article 21a(1) of this law. In case the information is not sufficient, the CSSF can, of course, require further documentation in order to ensure compliance with the relevant articles.

It should be noted that in case elements of the activity are fully or partially outsourced or supported by ICT third-party arrangements, additional notifications may need to be submitted to the CSSF with a potential impact on the overall timeline of the notification of the control agent activities. Indeed, these notifications need to be submitted at least three months before the start of the outsourcing, reduced to one month if outsourcing is made to a Luxembourg support PFS (please refer to Circular CSSF 22/806 on outsourcing arrangements or to Circular CSSF 25/882 on requirements on the use

of ICT third-party services for Financial Entities subject to the Digital Operational Resilience Act (DORA)).

Pursuant to Article 21a(2), third subparagraph of the Dematerialised Securities Law, the CSSF may prohibit the notifying entity from carrying out control agent activities where this notification does not include the information necessary to enable the CSSF to verify that the legal requirements referred to in Article 21a(1) of this law have been complied with, or if the legal requirements referred to in Article 21a(2) of this law are not complied with. In the event that the CSSF does not prohibit the notifying entity from carrying out the activity within the regulatory period prescribed in Article 21a(2) of the Dematerialised Securities Law, the notifying entity may start carrying out its control agent activity.

The period referred to in Article 21a(2) of the Dematerialised Securities Law shall begin to run only upon confirmation by the CSSF to the applicant that the notification is complete, meaning that the notification includes all information required for the proper assessment thereof in a complete and clear manner.

- **Additional considerations applicable to entities established in other Member States**

In accordance with Article 2(10) of the Law of 23 December 1998 establishing a financial sector supervisory commission, the CSSF shall ensure that control agents referred to in the Dematerialised Securities Law, that are established or operate as control agents in Luxembourg comply with Article 21a of this law and its implementing measures.

Any entity located in the EEA intending to notify the CSSF in respect of the control agent activity must first inform the competent authority of its home Member State. The entity must inform the CSSF of any objection or comment of such competent authority. In addition, the entity must ensure that the CSSF is in a position to verify, before the exercise of any control agent activity, that the competent authority will assist the CSSF in obtaining all relevant information necessary to ascertain compliance with the requirements of Article 21a of the Dematerialised Securities Law, – both at the moment of the notification and during the lifecycle of the activity. This may take the form of bilateral cooperation arrangements between the competent authority and the CSSF.

All the above aspects are necessary conditions to consider a notification as complete. Further, if the conditions are not met or no longer met, the CSSF may, pursuant to Article 21a(2), third subparagraph of the Dematerialised Securities Law, prohibit the entity from carrying out or from continuing to carry out (as the case may be) control agent activities.

Q5. Are DORA requirements applicable to a control agent?

Published on 2 October 2026

Given that the entities referred to in Article 1(10a) of the Dematerialised Securities Law fall within the scope of DORA under points (a), (e) and (g) of its Article 2(1), the CSSF takes the view that, in light of FAQs [DORA 136-3193](#) and [DORA 137-3195](#) published in the Joint ESA Q&A register, these entities as a whole are subject to DORA requirements including in respect of the control agent activity.

Such entities shall demonstrate, for the purposes of complying with the conditions set in Article 21a(1) of the Dematerialised Securities Law, that they have information processing systems and control and security arrangements for such information processing systems suitable for the

performance of their duties in relation to the control agent activity, including by applying their DORA compliance framework to their control agent activities.

Q6. Can a control agent have recourse to a third-party service provider to obtain technical support in the context of the tokenisation of UCIs? Are there any legal requirements to respect?

Published on 2 October 2026

Yes.

A control agent can have recourse to a third-party service provider to obtain technical support in the context of the tokenisation of UCIs (e.g. smart contract development and/or administration).

The CSSF considers it highly likely that the control agent activity qualifies as a critical or important function (CIF) within the meaning of Article 3(22) of DORA. In this context, in case the applicants consider the use of ICT third-party arrangements to support the control agent activity, notably for the tokenisation of UCIs, they must refer to Circular CSSF 25/882 and notify the CSSF thereof using the notification form ("Notification of an ICT third-party arrangement supporting a critical or important function as required under DORA") located on the CSSF website and within the applicable time limits.

Should the applicant conclude differently in its self-assessment, it is requested to inform the CSSF and provide robust rationale upfront any official notification, when presenting the operating model to the CSSF, as mentioned in the Introduction hereabove.