

# BITCOIN REVOLUTION

## A LEGAL PERSPECTIVE

BLOCKCHAIN SCHOOL  
CRS4 – PULA (CA) - ITALY  
JUNE 12, 2018

COINLEX.

**SIMBULA**  
STUDIO LEGALE

**BITCOIN**  
**CRYPTOCURRENCY**  
**BLOCKCHAIN**  
**INITIAL COIN OFFERING**  
**SMART CONTRACT**  
**BLA, BLA, BLA**



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**GREED**

**THE SAME OLD STORY....**





# **German Authorities Sold \$14 Million in Seized Cryptos Over Price Fears**

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**BITCOIN IS NOT THE BUBBLE**

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**IT IS THE PIN**

# HOW THE LAWS CONSIDER BITCOIN?

**US Internal Revenue Service: Property**

**US Securities and exchange Commission: may be a security**

**US Commodity Futures Trading Commissions = Commodities**

**Euoropean Court of Justice (sentence October 22, 2015, no. C-264/2014) = a way of payment**

**Italian Agenzia delle Entrate (RM 72/E Sptember 2, 2016) = treated as foreign currency**

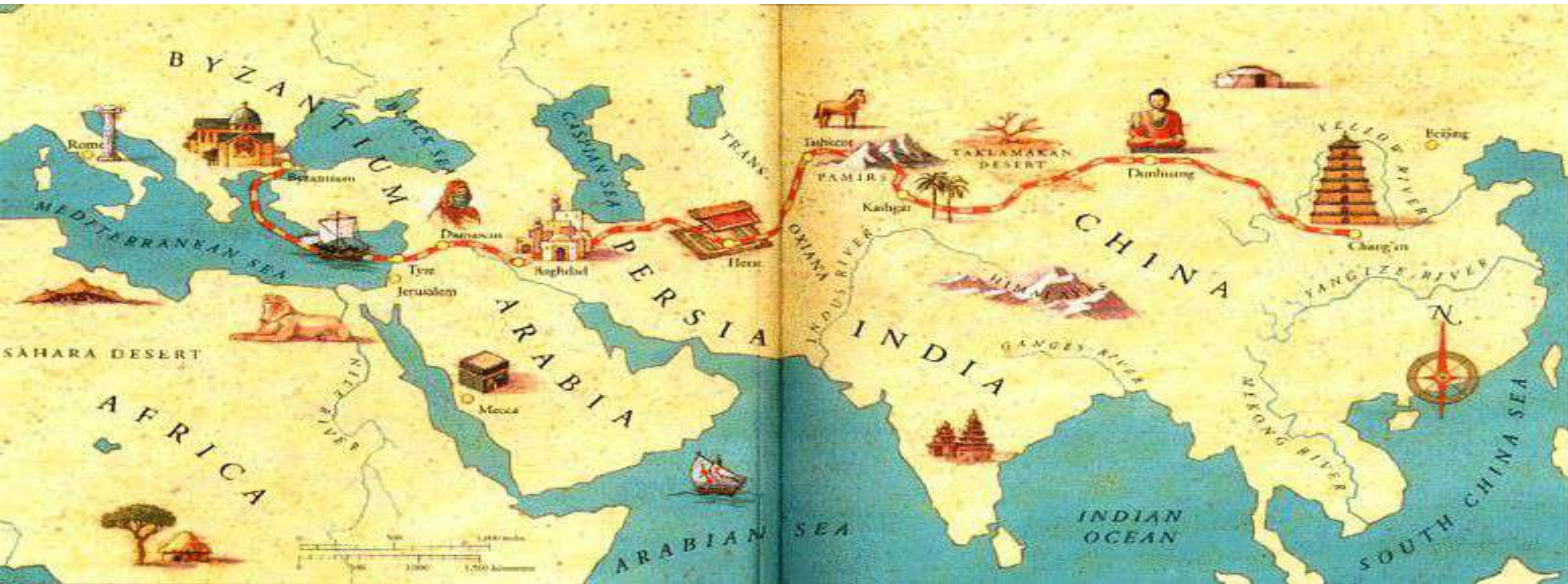
Laws, regulations, judicial precedents, are necessarily looking at the past and are not suitable for the disruptive Blockchain.

Policymakers should be aware that Bitcoin and Blockchain Technology have this great potential to promote an incredible number of businesses, including payments services and smart contracts, both under maximum security and privacy.


Laws aimed to stop or limit dis-intermediation of Incumbents will not protect Incumbents at all, but will limit the ability of Incumbents to evolve in order to avoid dis-intermediation



# LEX MERCATORIA





A cinematic photograph showing two men in dark suits running away from a modern building with large glass windows. The man in the foreground is running towards the right, away from the camera, while the second man is further back, also running in the same direction. The building's glass reflects the surrounding environment, including a parking lot with cars. The overall mood is one of urgency and escape.

# The Real Reason Token Issuers Are Fleeing the US

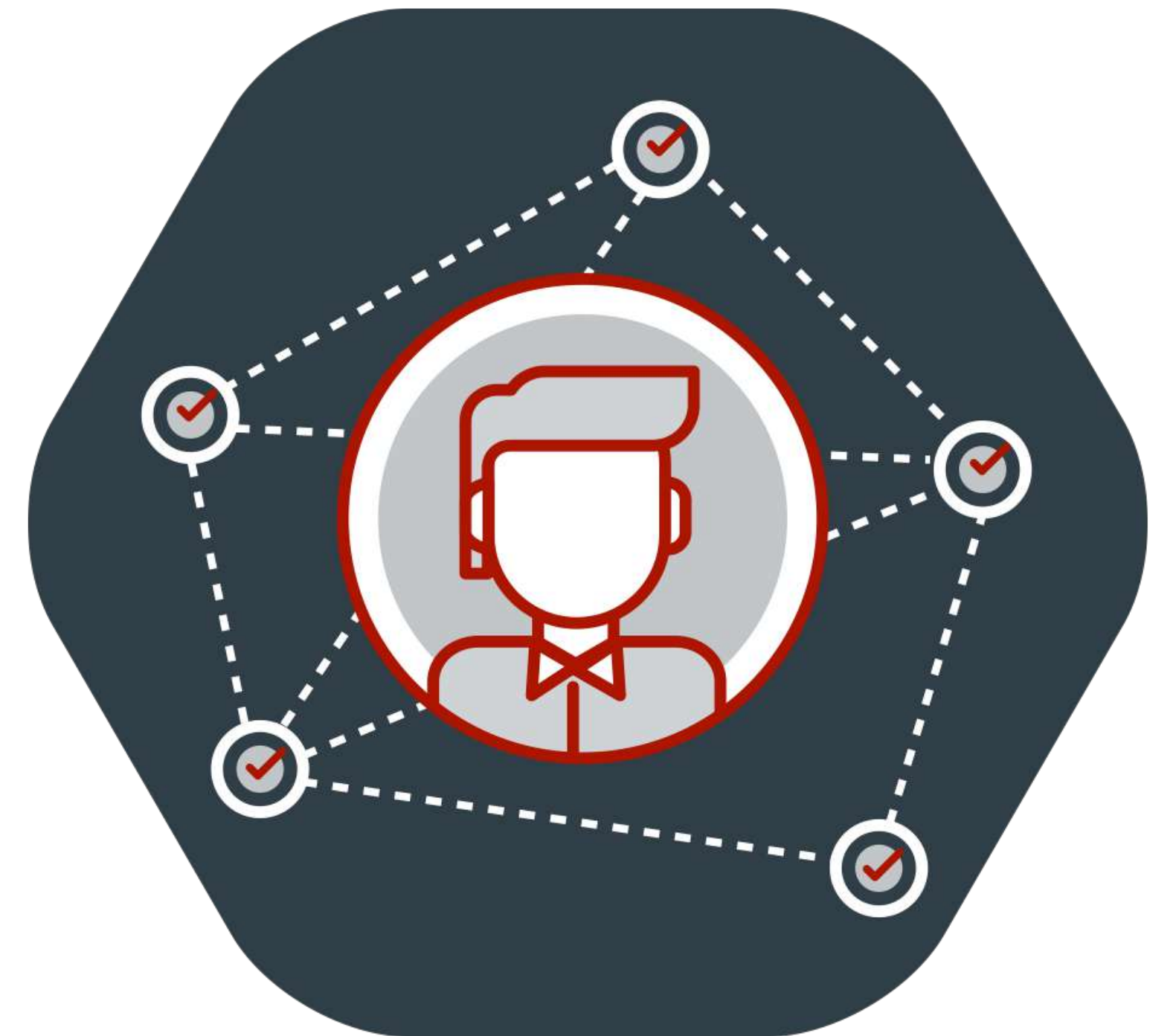
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# WHAT ARE CRYPTOCURRENCIES?

- **Chains of digital signatures**
- **More than 1200 cryptocurrencies**
- **Market value: USD 170 Billion**
- **USD 3 Billion traded per day (apple stock 4 billion dollars per day)**





# BITCOIN ORIGINS

## SATOSHI NAKAMOTO

Nobody knows who really he is and if he really exists.

We know only its goals through the white paper “*Bitcoin: a peer to peer electronic cash system*” published in October 2008 on the cryptographic mailing list at [mexdowd.com](http://mexdowd.com)





# THE GOALS

**Having digital transactions:**

- **Low-cost**
- **Irreversible**
- **Facilitated by cryptographic proof instead of trust**

**Why you need a third party such as a bank confirming a transaction if you have cryptography and blockchain that can do the work in a peer to peer environment?**





# SO:

Bitcoin is the digital money and is an application

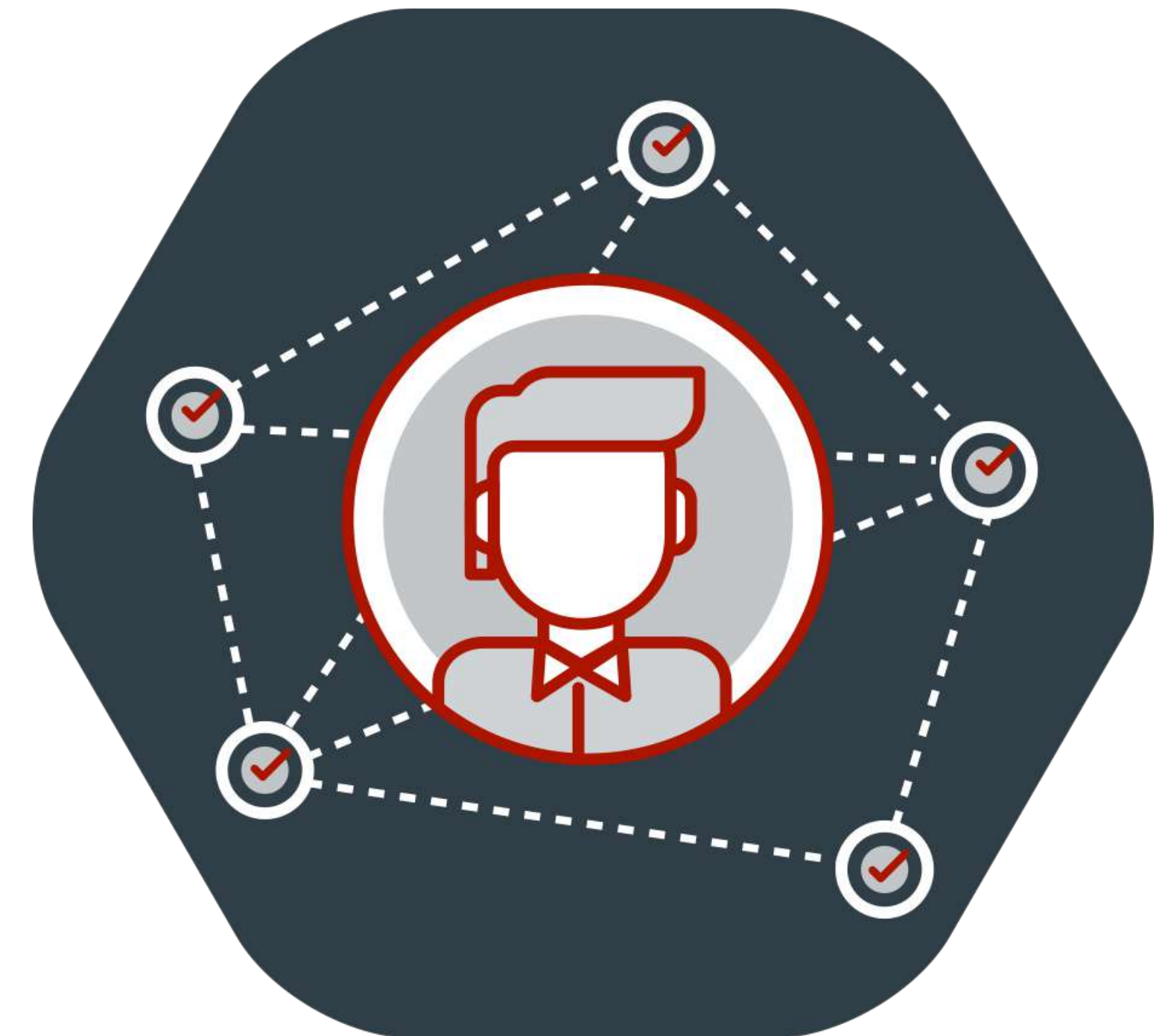
Blockchain is the mint and the operating system

Bitcoin is the first application of Blockchain.

A block is a group of Bitcoin transaction

The chain contains every transaction which is recorded from the beginning of time and is available on public.

You participate to blockchain downloading the protocol which is an open source software and while confirming transactions you are rewarded with Bitcoin.



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# IS IT A CRYPTOASSET LEGAL?

IT DEPENDS HOW YOU USE IT, HOW YOU PROMOTE IT, HOW YOU SELL IT

## IS IT A CURRENCY?

NOT EXACTLY.

IT CAN BE CONSIDERED A WAY OF PAYMENT (see ECJ October 22, 2015, no. C-264/2014) or an asset or financial instrument or security

Basically is like when you try to give a legal definition of a website or an internet protocol.

The magic word is: it depends!  
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# Are Digital Currencies Actual Currencies?

Currencies serve three functions:

- medium of exchange;
- unit of account;
- store of value.

A **medium of exchange** is something people willingly accept for goods and services. People willingly accept the medium of exchange because they believe it can be used for other transactions. A unit of account is a measure people use to post prices. A **currency** provides a common measurement unit of pricing, enabling direct comparisons across different products or services. Finally, a **store of value** is something that individuals can use to transfer purchasing power over time. A currency will not be the only store of value in an economy.

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# IN BLOCKCHAIN WE TRUST

- Decentralized network = security (the more the nodes the more the security)
- Public ledger = transparency
- Irreversible transaction = certainty
- Finite, divisible resource = value



# AND WHAT ABOUT PRIVATE BLOCKCHAIN?

## PROBABLY BLOCKCHAIN DISTINCTIONS ARE FALLING OUT OF FASHION

### Internet/intranet analogy

We may see – although not guaranteed – some kind of convergence between private permissioned ledger networks. For private and permissioned version, we may use the intranet analogy, and the public networks we may use as the internet analogy, with suitable bridging protocols, which are in development.

On the product level, we can expect to see continued cross-pollination of ideas and technologies between public and private blockchains, since there is a great deal of technical overlap between these two types of system. But the scalability, confidentiality and governance requirements are completely different for public and private chains.



# AND DO YOU KNOW ANY USEFUL BLOCKCHAIN?

- **BLOCK.ONE?**
- **EIDOO.IO?**
- **VALID.GLOBAL?**
- **HOWEYCOINS.COM?....**





# ICO

## Initial Coin Offering



## US SECURITY ACT 1933

## US SECURITY EXCHANGE ACT 1934

A transaction will be considered a security if all of the following requirements are met:

1. There is an investment of money
2. There is an expectation of profits
3. The investment of money is in a common enterprise
4. Any profit comes from the efforts of a promoter or third party



# SWITZERLAND

FINMA, the Swiss financial market supervisory authority, published guidelines which provided well needed clarifications on the regulation applicable to the different kinds of tokens issued during ICOs.

In its analysis, FINMA distinguishes 3 kinds of tokens:

- 1) PAYMENT TOKENS (AKA CRYPTOCURRENCYES);**
- 2) UTILITY TOKENS;**
- 3) ASSET TOKENS.**

# SWITZERLAND

## PAYMENT TOKENS

**Are tokens used as a means of payment that do not give rise to claims on their issuer. According to the ICO Guidelines, FINMA “will not treat payment tokens as securities”.**

FINMA hasn't mentioned that cryptocurrencies could qualify as a payment system according to Article 81 of the Swiss Financial Market Infrastructure Act (FMIA), which indicates that FINMA will not request a licence as a payment systems for cryptocurrencies. However, the issuing of payment tokens constitutes the issuing of a means of payment subject to the Anti-Money Laundering Act (AMLA) as long as the tokens can be transferred technically on a blockchain infrastructure.

FINMA also made it clear that the exchange of a cryptocurrency for fiat money or another cryptocurrency falls under Article 2(3) AMLA. The same applies to the offering of services to transfer tokens if the service provider (custodial wallet provider) maintains the private key.

**KYC**

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# SWITZERLAND

## UTILITY TOKENS

Provide access to a platform that offers blockchain-based infrastructure. As long as such ‘platform tokens’ have no investment purpose and can actually be used to confer digital access rights to an application or service at the point of issue, FINMA will not treat them as securities.

In the current market environment, however, ICOs are regularly launched in order to raise funds for developing a platform – the platform is not accessible at the time of the token issuance. Consequently, according to the wording of the ICO Guidelines, in the majority of cases FINMA would qualify a ‘platform token’ at the time of the ICO as a security token rather than a utility token.

# SWITZERLAND

## UTILITY TOKENS

It's currently unclear whether FINMA requires full access to an already established platform for such qualification or regards a beta version of the platform as sufficient qualification as utility token. But if the token qualifies as security, a prospectus according to the Swiss Code of Obligations (CO) may have to be issued. However, such qualification does not automatically mean that a FINMA license is required.



# SWITZERLAND

## ASSET TOKENS

Represent assets such as a debts or equity claims on the issuer and are qualified as securities by FINMA.

This does not mean, however, that it is not possible to issue Swiss asset tokens. The issuing of tokens that are analogous to equities or bonds can result in prospectus requirements under the Swiss Code of Obligations to be applicable. Moreover, an issuer of asset tokens has to be compliant with Swiss securities regulation.

# SWITZERLAND

## HIBRYD TOKENS

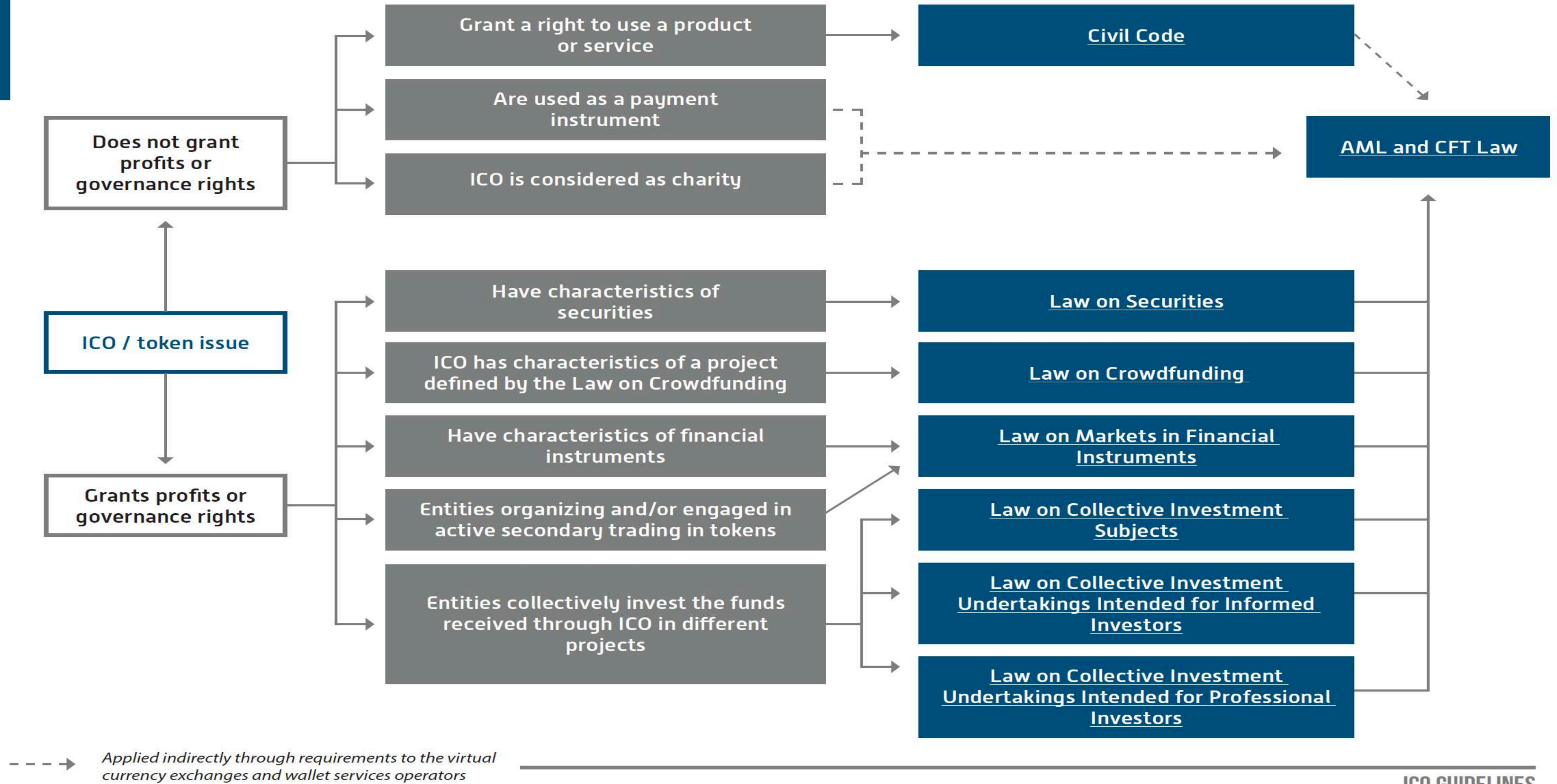
Are asset and utility tokens that can also be classified as payment tokens. Such tokens may be deemed to be both securities and means of payment and the respective requirements apply cumulatively.



# SWITZERLAND

## HIBRYD TOKENS

Special caution is called for when no platform exists at the time of the issuance of the token. Whether FINMA regards a beta version of such a platform to be sufficient to avoid qualification as a security, is yet unclear. You can also not avoid the qualification of a security by promising to issue a token at a later time. FINMA made it clear that claims to acquire tokens in the future out of a pre-financing and pre-sale phases of an ICO will be treated as securities if the tokens are standardized and suitable for mass trading.





# PRE-ICO SALE IS LIVE

15% BONUS ENDS IN

14 : 22 : 25 : 12

Day(s)

Hours(s)

Minute(s)

Second(s)

TOKEN SALE!

Learn More



## MEET THE TEAM



**Josh Hinze**

Co-founder and Head  
Architect



**Ashley Turnbull**

Co-founder and Head Travel  
Strategist



**Wayne Roswell**

Head of Legal



**Sabrina Holmes**

Head of PR/Marketing



**Aberto Silva**

Co-founder and Head  
Engineer



**Emma Kim**

Head of Partner Develop



**LET'S START WITH HARD STUFF**

**TOKEN SALES TERMS IN AN ICO**



- PLATFORM, PURPOSE AND USE OF THE TOKENS
- CANCELLATION OR REFUSAL OF PURCHASE REQUEST
- TOKEN SALE PROCEDURES AND SPECIFICATIONS
- ACKNOWLEDGMENT AND ASSUMPTION OF RISKS
- INTELLECTUAL PROPERTY RIGHTS
- SECURITY PERSONAL INFORMATION
- TAXES
- WARRANTIES
- COVENANTS
- INDEMNIFICATION
- LIMITATION OF LIABILITY
- DISRUPTION EVENT
- APPLICABLE LAWS AND DISPUTE RESOLUTION
- PRIVATE AND PUBLIC SALE OF TOKENS
- Risk of Losing Access to Tokens Due to Loss of Private Key(s)
- Risks Associated with the Ethereum Protocol
- Risk of Mining Attacks
- Risk of Hacking and Security Weaknesses
- Risks Associated with Markets for Tokens
- Risk of Uninsured Losses
- Risks Associated with Uncertain Regulations and Enforcement Actions
- Risks Arising from Taxation
- Risks Associated with the Development and Maintenance of the Platform
- Risks Arising from Lack of Governance Rights
- ETC., ETC., ETC.....



# TOKEN SALES TERMS

Version 1.0 - Last Updated: 12/04/2018]

Please read these Token Sale Terms and Conditions carefully. The Tokens are not offered by XXX Ltd, a limited liability company with legal seat in XXXXX, \_\_\_\_\_, VAT no. \_\_\_\_\_ to minors, U.S. Citizens or U.S. Persons (as the meaning in 26 U.S. section 7701(a)(30)), or to citizens or persons from Bosnia and Herzegovina, Democratic People's Republic of Korea (DPRK), Ethiopia, Iran, Iraq, Sri Lanka, Syria, Trinidad and Tobago, Tunisia, Vanuatu, Yemen, or to any other citizens or persons from a jurisdiction, in which it is impermissible or restricted to offer, distribute, purchase, sell or retain cryptographic tokens. By purchasing Tokens you warrant that you are neither a minor, a U.S. Citizen or U.S. Person or a citizen or person from Bosnia and Herzegovina, Democratic People's Republic of Korea (DPRK), Ethiopia, Iran, Iraq, Sri Lanka, Syria, Trinidad and Tobago, Tunisia, Vanuatu, Yemen or a citizen or person from a jurisdiction, in which it is impermissible or restricted to offer, distribute, purchase, sell or retain cryptographic tokens. You acknowledge that any purchase of Tokens by minors, U.S. Citizens or U.S. Persons, or citizens or persons from Bosnia and Herzegovina, Democratic People's Republic of Korea (DPRK), Ethiopia, Iran, Iraq, Sri Lanka, Syria, Trinidad and Tobago, Tunisia, Vanuatu, Yemen, or citizens or persons from a jurisdiction, in which it is impermissible or restricted to offer, distribute, purchase, sell or retain cryptographic tokens, under these Terms will be rendered null and void. If you are not sure if you are a minor, a U.S. Citizen or U.S. Person, or a citizen or a person from Bosnia and Herzegovina, Democratic People's Republic of Korea (DPRK), Ethiopia, Iran, Iraq, Sri Lanka, Syria, Trinidad and Tobago, Tunisia, Vanuatu, Yemen, or a citizen or person from a jurisdiction, in which it is impermissible or restricted to offer, distribute, purchase, sell or retain cryptographic tokens, do not participate in this Token sale. The distribution of these Terms in certain jurisdictions may be restricted by law. These Terms shall not be sent and or addressed wholly or in part, directly or indirectly, to any minors, U.S. Citizens or U.S. Persons, or persons in Bosnia and Herzegovina, Democratic People's Republic of Korea (DPRK), Ethiopia, Iran, Iraq, Sri Lanka, Syria, Trinidad and Tobago, Tunisia, Vanuatu, Yemen, or persons in any other jurisdiction in which it is impermissible or restricted to offer, distribute, purchase, sell or retain cryptographic tokens. These Terms or any other materials provided by XXX Ltd do not constitute a prospectus of any sort, is not a solicitation for investment and does not pertain in any way to an offering of securities in any jurisdiction. Neither this document nor any other materials have been (or will be) registered as a prospectus with any governmental authorities. Note that Section 28 contains a binding arbitration clause, which, if applicable to you, affect your legal rights. If you do not agree or understand these Token Sale Terms and Conditions, do not purchase Tokens.

## **Warranties**

By purchasing Tokens, you warrant that:

You have a good understanding of the English language, have read and understand these Terms;

You have sufficient understanding of the functionality, usage, storage, transmission mechanisms and other material characteristics of cryptographic tokens, token storage mechanisms (such as token wallets), blockchain technology and blockchain-based software systems to understand these Terms and to appreciate the risks and implications of purchasing the Tokens as further described in Annex A;







# A SMART CONTRACT IS REALLY A CONTRACT?

Smart Contract is a protocol.

However through the protocol you may set an arbitration method which automatically implement actions agreed by two or more parties for a specific activity. Exactly like in contract law, once a condition is fulfilled, another action may be implemented (ex. Payment upon verification of flight delay) .

Usually the judicial system adjudicates contractual disputes and enforces terms, but it is also common to have another arbitration method, especially for international transactions. With smart contracts, a program enforces the contract built into the code.

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**BUT IT'S STILL A LONG WAY TO THE FREEDOM PAL**



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# STAY TUNED.....

COINLEX.

CHI SIAMO ▾

CONSULENZA

LEGAL

BLOG & NEWS ▾

USEFUL LINKS

CONTATTI



## COINLEX. Bitcoin, criptovalute e soluzioni blockchains

COINLEX. è un network di professionisti,  
che per primi hanno analizzato e preso posizione  
sulle tematiche giuridiche dei bitcoin.

MORE INFO

Cash(BCH) \$1126.41 ↑1.34% EOS(EOS) \$14.1365 ↑0.58% Litecoin(LTC) \$119.833 ↓-1.22% Stellar(XLM) \$0.292203 ↓-1.72% Cardano(ADA) \$0.206569 ↓-2.42% IOX

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