AMCHAM MORNING BRIEFING
BLOCKCHAIN TECHNOLOGY

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Blockchain Law and Supply Chain Management

Brief Regulatory Overview and Outlook

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Blockchain Law Overview

What? Blockchain technology vs. applications

Who? Where? Decentralized, borderless, smart contracts

How? Why? Outcome-based regulation and legal certainty
Blockchain Law

Areas of law . . .

- Corporate & Securities
- Tax & Customs
- IP & IT
- Contract & Property
- Banking & Finance
- Privacy & Data Protection

. . . more?
Blockchain Regulators

- Central government and ministries
- Financial conduct and monetary authorities
  - Securities and exchange authorities
  - Central banks
  - Insurance authorities
- Tax and customs authorities
- Personal data commissioners
Blockchain Law and Supply Chain Management

1. Applicable law and jurisdiction
   • Governing law and forum selection

2. Smart contracts – enforceability
   • Written, signed, notarized? Incorporation by reference? Modification?

3. Privacy, data protection, cybersecurity
   - GDPR – who is the data controller/processor?
   - Server localization

4. Transportation, logistics, distribution
   - Highly regulated for foreign investors

5. Payment
   - Cryptocurrencies – illegal payment method
Cryptocurrency

Regulatory Status
- Regulated virtual currency
- Unregulated virtual commodity
- Illegal payment method

Other considerations
- Property or not?
- Tax
- Offshore investment
- Capital controls
- Anti-money laundering

Image source: http://bitlegal.io
ICO: Blockchain to Raise Funds

- **Banned or “unauthorized”**

- **Permitted and regulated**
  - a. Regulators issued guidances
  - b. Compliance with AML, banking, securities, and other laws may be required depending on each ICO’s and token’s characteristics
  - c. No action letters

- **No guidance and generally not prohibited**
### ICO: Token Categories (FINMA)

<table>
<thead>
<tr>
<th>Category</th>
<th>Characteristics</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment token</td>
<td>To be used, now or in the future, as a <strong>means of payment</strong> for acquiring goods or services or as a <strong>means of money</strong> or value transfer. Cryptocurrencies give rise to no claims on their issuer.</td>
<td>= Cryptocurrencies</td>
</tr>
<tr>
<td>Utility token</td>
<td>Provides <strong>access</strong> digitally to an application or service by means of a blockchain-based infrastructure.</td>
<td>U.S. law: Howey Test and “Substance over form”</td>
</tr>
<tr>
<td>Asset token</td>
<td>Represents assets such as a <strong>debt</strong> or <strong>equity claim on the issuer</strong>. Analogous to equities, bonds or derivatives.</td>
<td>= Security token</td>
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<tr>
<td>Hybrid token</td>
<td>Token with <strong>mixed</strong> characteristics of the above tokens</td>
<td>Example: payment token with security token features</td>
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</table>
Activities requiring anti-money laundering compliance:

- Banking
- Payment services
- Exchange services
- Securities trading/brokerage
- Casino/gaming
- Precious metals
- Real estate
- … and other transactions
R&D: Innovation Space and Regulatory Sandbox

1. Less stringent legal requirements for Fintech/Regtech proof of concept

2. Specific boundaries and safeguards

3. Different approaches:
   - **Regulatory sandbox** – regulators approve and monitor sandbox participants
   - **Innovation space** – no specific approval required until the legal boundaries are breached

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**Regulatory sandbox principles**
- Boundary
- Customer protection measures
- Risk management controls
- Readiness and monitoring
## Blockchain Legal Heat Map

<table>
<thead>
<tr>
<th>Topic</th>
<th>Singapore</th>
<th>Hong Kong</th>
<th>Switzerland</th>
<th>Japan</th>
<th>Vietnam</th>
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</thead>
<tbody>
<tr>
<td>Cryptocurrency</td>
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<tr>
<td>Exchange</td>
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<td>ICO</td>
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<tr>
<td>R&amp;D</td>
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<tr>
<td>Regulatory Sandbox</td>
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