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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 . . .



. . . more?

Blockchain Regulators

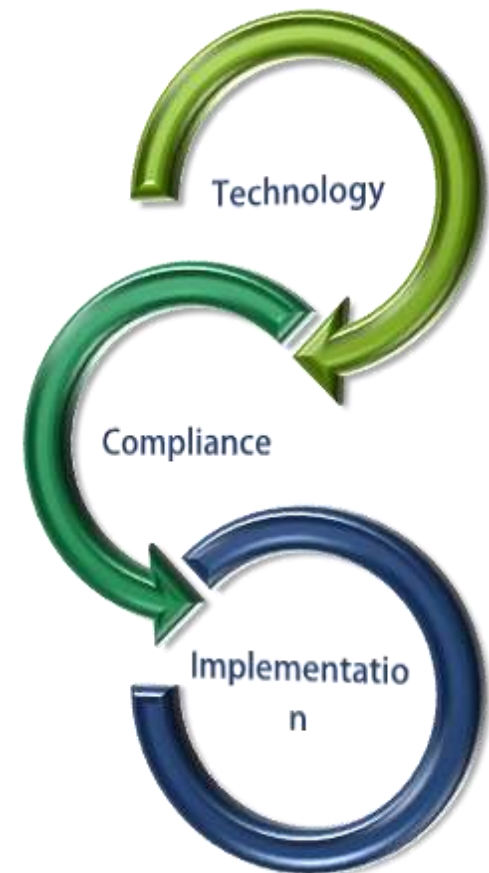
- Central government and ministries
- Financial conduct and monetary authorities
 - Securities and exchange authorities
 - Central banks
 - Insurance authorities
- Tax and customs authorities
- Personal data commissioners



HONG KONG MONETARY AUTHORITY
香港金融管理局

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

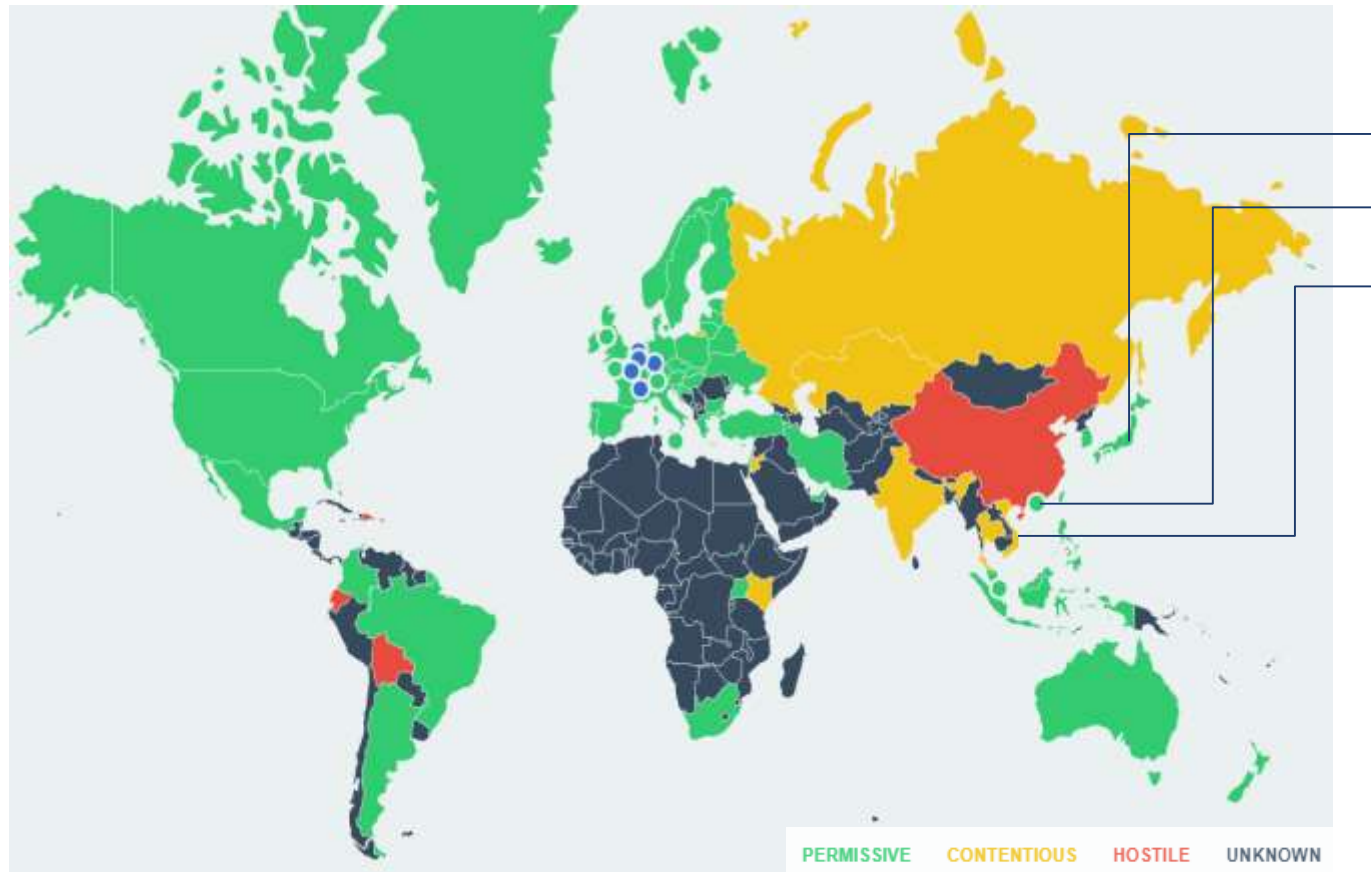


Image source: <http://bitlegal.io>

Regulatory Status

- Regulated virtual currency
- 🌸 Unregulated virtual commodity
- ★ Illegal payment method

Other ★ considerations

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

ICO: Blockchain to Raise Funds



Banned or “unauthorized”



Permitted and regulated

- Regulators issued guidances
- Compliance with AML, banking, securities, and other laws may be required depending on each ICO’s and token’s characteristics
- No action letters




No guidance and generally not prohibited



Token Sale Timeline



ICO: Token Categories (🇨🇭 FINMA)

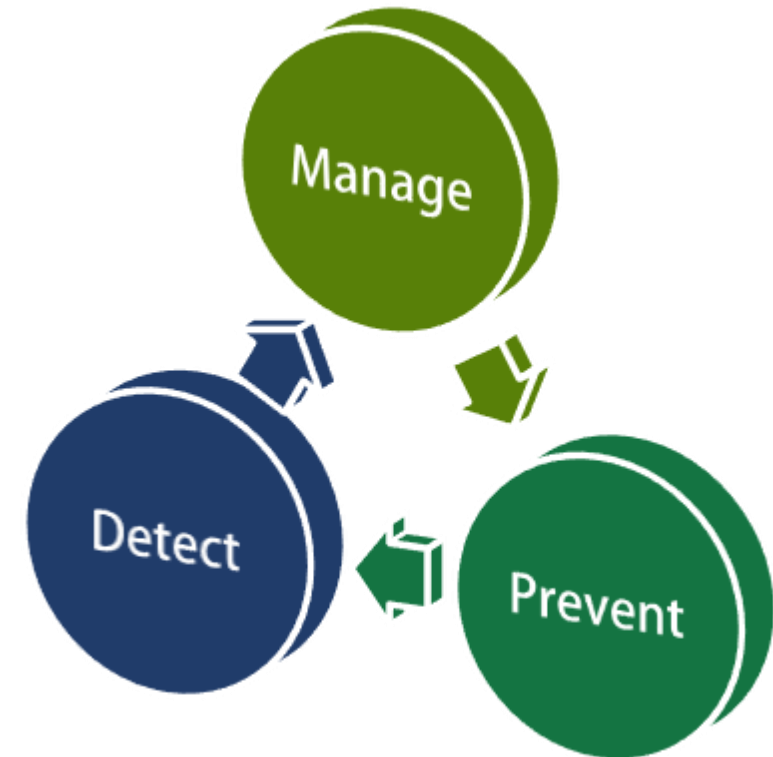
Category	Characteristics	Notes
Payment token	To be used, now or in the future, as a means of payment for acquiring goods or services or as a means of money or value transfer . Cryptocurrencies give rise to no claims on their issuer.	= Cryptocurrencies
Utility token	Provides access digitally to an application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

AML/KYC

Activities requiring **anti-money laundering** compliance:

- Banking
- Payment services
- Exchange services
- Securities trading/brokerage
- Casino/gaming
- Precious metals
- Real estate
- ... and other transactions

AML Principles



... and reporting requirements?

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

Regulatory sandbox principles

- Boundary
- Customer protection measures
- Risk management controls
- Readiness and monitoring

Blockchain Legal **Heat** Map

Topic	 Singapore	 Hong Kong	 Switzerland	 Japan	 Vietnam
Cryptocurrency	Light Green	Light Green	Light Green	Green	Red
Exchange	Light Green	Light Green	Light Green	Green	Light Red
ICO	Green	Light Green	Green	Light Green	Light Red
R&D	Light Green	Light Green	Light Green	Light Green	Green
Regulatory Sandbox	Light Green	Green	Light Green	Grey	Grey

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