



# Legal considerations - STOs

Security Tokens Realised, Hong Kong

June 2019

# ABOUT US

- **DLA Piper** is one of the world's leading law firms in FinTech, recognised by both Chambers and Legal 500. We have been awarded the Fintech Law Firm Award 2018 by *Legal 500*
- **Martin Bartlam** is recognized as Leading Lawyer (Tier 1) in Fintech by *Legal 500*, 2018 and 2019



## **Martin Bartlam**

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The team at DLA Piper fields 'excellent, knowledgeable' lawyers and 'excels in the strength and depth of its global practice'.

*The Legal 500, Fintech  
2019*



# Need for clarity

- Huge demand for digitalisation of financial products and rapid growth in activities
- Lack of clarity as to APPLICATION of EXISTING regulatory/legal framework and potential inconsistency by different country regulators causes cost and confusion

- Well established rules for offering securities/financial instruments
- Well established rules for selling assets/services
- Investment type product covered by MIFID definition of equity/debt, eg transferable securities – suggest guidance to confirm
- Utility products covered by consumer laws/contract laws

- Digitalisation does not change these well established rules

# Understanding the regulatory/legal regime

## Security Token

- **Characteristics of investment product** (eg equity like – MIFID II)
  - Sold to financial investors
  - Used as part of the capital to build the business
  - Risk/return relate to success or failure of business
  - Held to generate a premium/return rather than use of asset
  - Investment maybe required to build infrastructure rather than deliver asset/service

**Above test is based on a basket of characteristics applied as a whole – similar to 'true sale' analysis**

## Utility/Consumer Token

- **Characteristics of asset/service**
  - Sold to users/consumers
  - Intended to be consumed/used
  - Limited exposure to business as whole
  - Asset may increase in value but typically related to supply/demand utility of asset rather than operation of business
  - Asset likely to exist or come into existence without significant exposure to building existing infrastructure



# Regulatory initiatives underway around the world

## Financial Stability Board (FSB)

- **April 2019:** summary report to G20 Finance Ministers and Central Bank Governors on addressing regulatory gaps in relation to crypto asset regulation / Directory of regulators of crypto assets delivered to G20
- **March 2018:** it was reported to G20 that crypto assets are not posing a risk to financial stability. Continue to consider no current threat but considering wider policy issues also. Vigilance and monitoring warranted particularly in new products and services including development of stablecoin and tokenisation

## Basel Committee on Banking Supervision (BCBS)

- Aim to strengthen regulation and supervision of banks worldwide
- **March 2019:** High level supervisory expectations on crypto assets / statement emphasising the high degree of risk
- Monitoring crypto asset developments and quantifying banks exposures - collecting data as part of end 2018 Basel III Monitoring Report to be discussed at October 2019 meeting
- *Prudential treatment:* Committee considering whether to formally clarify the prudential treatment of crypto assets (credit risk, counterparts risk, market risk, liquidity risk)

# Regulatory initiatives underway around the world

## International Organisation of Securities Commissions (IOSCO)

- **January 2018:** monitoring risks relating to ICOs. Issued a communication to the general public setting out concerns
- **May 2018:** developed an ICO Support Framework to assist Regulators dealing with understanding of regulatory risks of ICOs
- **May 2019:** IOSCO developed a Consultation Report with the main focus on investor protection and market integrity. It is engaging with the International Accounting Standards Board (IASB) and has encouraged the development of an appropriate accounting standard for crypto-assets

## Financial Action Task Force (FATF)

- **October 2018:** FATF adopted changes to explicitly clarify that the Recommendations apply in the case of virtual assets. Recommendation 15 requires that virtual asset service providers regulate AML and combating financing of terrorism AML/CFT purposes, licensed or registered and subject to effective systems for monitoring or supervision
- **June 2019:** detailed implementation requirements relating to digital services providers will be adopted as part of the FATF Standards alongside new Guidance

# Regulatory initiatives underway around the world

## Organisation for Economic Cooperation and Development (OECD)

- **October 2018:** OECD examined ICOs
- **January 2019:** report published looking at the potential benefits from the use of regulated ICOs for small business capital formation, issuing and trading of tokens, tokenomics, limitations in the structuring and risks to investors and issuers. The report called for clarity and proportionality in the Supervisory Framework applied to ICOs
- **September 2019:** the second annual OECD Blockchain Policy Forum will be held in Paris

# Regulatory initiatives underway around the world

## Committee for Payments and Market Infrastructures (CPMI)

- Paying attention to innovation in payments, clearing and settlement
- CPMI has been developing analytical reports and frameworks to aid central banks in their assessments. Various joint working groups with other SSBs

### *Current work plan*

- Advising central banks to proceed with caution on Central Bank Digital Currencies (CBDCs)
- Continued monitoring of CBDCs and digital tokens used for payments (including asset backed second generation cryptocurrencies)
- Information exchange and analysis: reviewing innovation in wholesale settlement and new variants of money
- Legal issues - a workshop took place in April 2019 and considering follow up work



# LawTech Delivery Panel – The UK Law Society

## Issues being reviewed

- Crypto-assets as property or contract rights
- Ability and formalities for creating securities
- Nature of assets under insolvency laws
- Transferability and negotiability issues
- Can a crypto asset constitute goods?
- Enforceability of smart contracts constituted in code only

# About DLA Piper

40+

COUNTRIES

90+

OFFICES

\$2.8

Global revenue in  
\$USD billions for 2018

214K

Pro bono and community engagement  
hours donated in 2018

8

GLOBAL  
PRACTICE AREAS

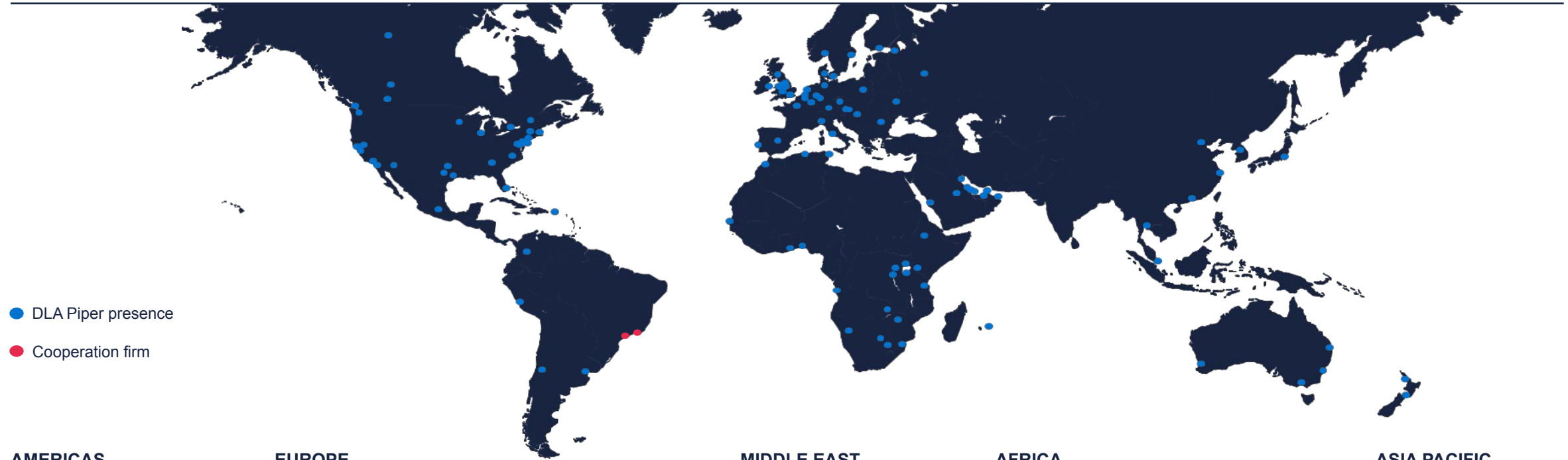
Corporate  
Employment  
Finance and Projects  
Intellectual Property and  
Technology  
Litigation and Regulatory  
Real Estate  
Restructuring  
Tax

10

GLOBAL  
SECTORS

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Industrials  
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Real Estate  
Technology

# Global Presence



- DLA Piper presence
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Kenya  
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## ASIA PACIFIC

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Thailand

# Thank you

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