

UNIVERSITY LUXEMBURG
FINTECH

ELI PRINCIPLES ON THE USE OF DIGITAL ASSETS AS A SECURITY

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Plan

Definitions

Principle 1: Scope and Purpose

Principle 2: Digital assets as Security

Principle 3: Creation of Security Interests in Digital assets and applicable law

Principle 4: Effectiveness of Security Interest in Digital assets against third parties and applicable law

Principle 5: Enforcement and Extinction of Security Interests in digital assets

Principe 1: Scope and Purpose

Background

Private parties

Consensual

Not seizure

Without treatment of other regulations

Principle 2 Digital assets as Security

Can be used as a security in accordance with the terms of the security agreement

Declaratory nature

Create awareness of this possibility

Principle 3. Creation of Security Interests in Digital assets and applicable law

* Applicable law for the creation of a security of the type intended by the parties for example

The qualification of cryptocurrencies

* Security agreement : Rome I regulation

* Creation of a security interest

Lex rei sitae : very difficult

Law of the jurisdiction where the *security provider* has, at the time of creation of the security interest

- its *place of business*

- its central administration (more than one place of business)

- habitual residence

Principle 3. Creation of Security Interests in Digital assets and applicable law (2)

Clearly connected with one particular jurisdiction, the law of that jurisdiction

DLT established in one jurisdiction

Issuer in one jurisdiction

Operations in one legal system (mortgage administration)

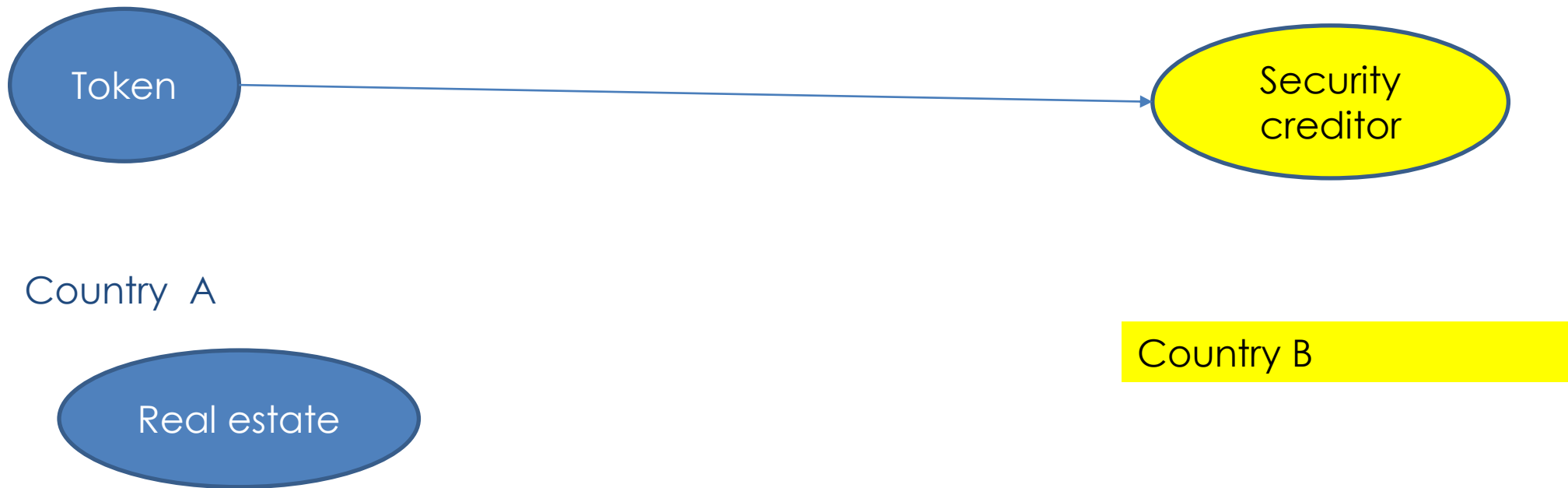
Elective situ

Law of the intermediary

Principle 3. Creation of Security Interests in Digital assets and applicable law (4)

Underlying asset in the real world

Then the law of this asset (lex rei sitae/ lex registrationis)



Law of country A

Principle 3. Creation of Security Interests in Digital assets and applicable law (4) intellectual property right/ valuation

Physical delivery: control is sufficient

Security provider : limited by a licensing agreement: security still valid if the security provider has still an interest

If mechanism of valuation, it remains valid

Principle 4 Effectiveness of Security Interest in Digital assets against third parties and applicable law

Requirements for effectiveness against third parties

Same rules:

- * Law of the place of business of the security provider
- * Clearly connected
- * Asset in the underlying real world

Filing system: through compliance with this system subject to necessary adaptations (for instance physical delivery of the assets)

If not: when the secured creditor has gained *effective control*

Principle 5: Enforcement and Extinction of Security Interests in digital Asset

Provisions of the security agreement and without involvement of the courts

Good faith and commercially reasonable manner

Acting in accordance with the applicable insolvency and enforcement laws

Access to the private key through an escrow account

Conclusions

A source of inspiration for the national legislator

Take into consideration the technology