CRYPTO-SECURITIES AND THE RULE *LEX REI SITAE*

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Crypto-securities: securities registered in tokenized/digital form in a DLT platform

Forms of registration:

- (Physical) certificates
- Uncertified securities
- Book-entry (electronically with an intermediary)
- Tokenized (digitally in DLT)
Does the crypto-security holder have a restitutionary claim?
Does the crypto-security holder have a restituyonal claim?

The answer varies across jurisdictions: which law applies?
Traditional rule to determine the national law applicable: *lex rei sitae* (the law of the place where the “thing” is located)

Securities?
- Certificate form (*lex carta sitae*)
- Uncertified form (issuer’s domicile for equity, issuance law for debt)
- Book-entry form (*lex conto sitae*)
(2) **LEGAL CONTEXT**

- **Intermediated securities (book-entry form): lex conto sitae or PRIMA rule**

  - **Issuer**
    - **Spain**
    - **Iberclear: central register (Int-1)**
    - **Participating Entity (Int-2)**
  - **Intermediary: global custodian (Int-3)**
    - **Intermediary: local custodian (Int-4)**
  - **Germany**
  - **New York**
  - **Centralization**
  - **Intermediation**
  - **Investors**

Previous rules do not directly apply to crypto-securities

Source of inspiration?
Analogy with intermediated securities

- (Restricted) choice by the platform participants
- Place of the relevant operation authority (PROPA)/ primary residence of the encryption master key holder (PREMA)
Analogy with uncertified securities

- Issuer’s registered office (equity)
- Law chosen for the issuance (non-equity)

- Coincidence proprietary rights with rights attached to the securities
- Consistent with technology neutrality principle
- Foreseeable
- Works for both permissioned and permissionless platforms