



# **Legal Aspects of Digital Assets and Services**

8 February 2024

JVI Webinar

Gerald Lederer, IMF

# Digital Assets and Services

## - Benefits and Risks

- Enabling **innovation & *potential* benefits**
  - Higher speed, greater reach, transparency, lower cost, programmability...
- Must be balanced against risks to
  - Inform and **justify** regulatory and supervisory intervention
  - Shape **objectives & scope** of **legal framework, mandates & powers** of supervisors

Loss of funds/trust

Investor/Consumer Protection

Manipulation/information abuse

Market Integrity

Currency substitution

MonPol Transmission

Means of exchange

Functioning of payment  
systems

Interconnections

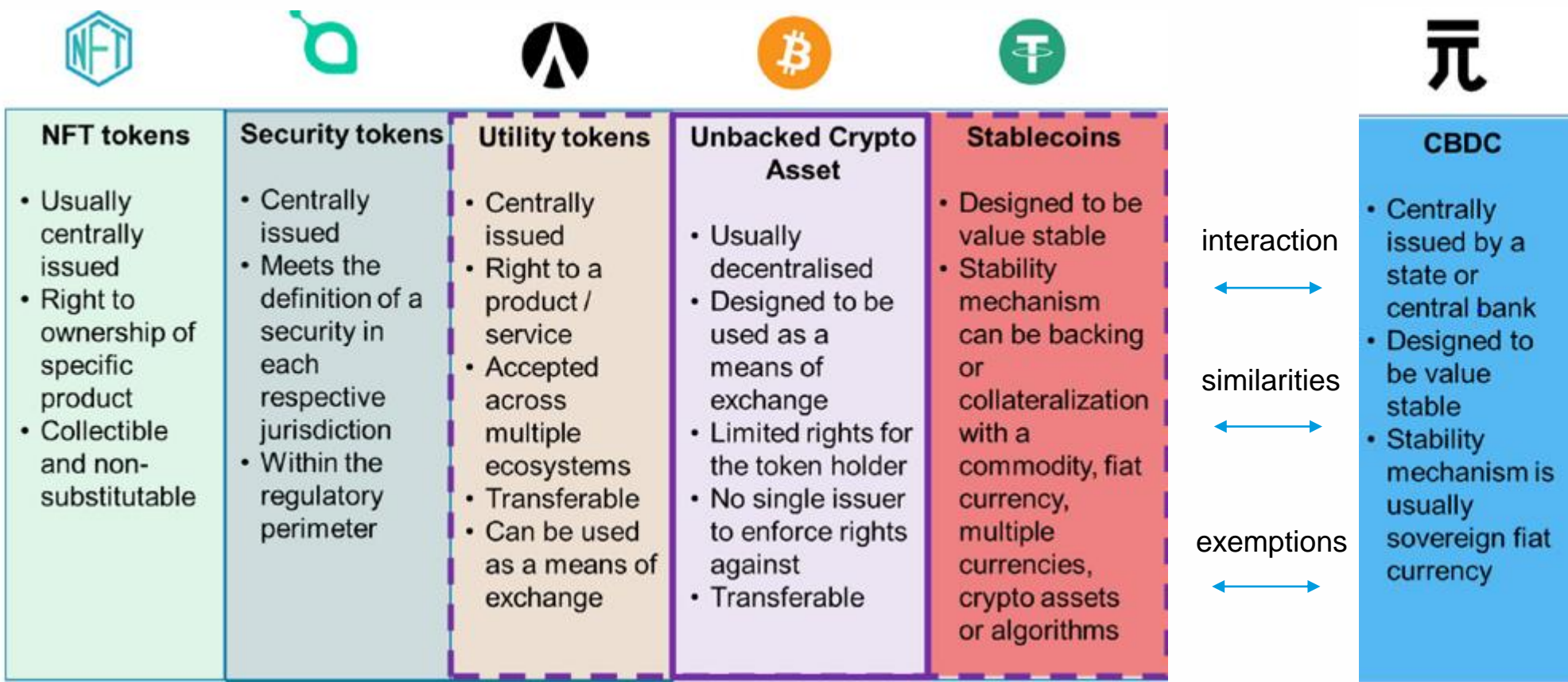
Financial Stability

Illicit transaction

Financial Integrity

# Digital Assets and Services – Types of tokens

- Multitude of tokens – multitude of functions – multitude of risks
  - Single Framework? Single Supervisor? Cooperation?



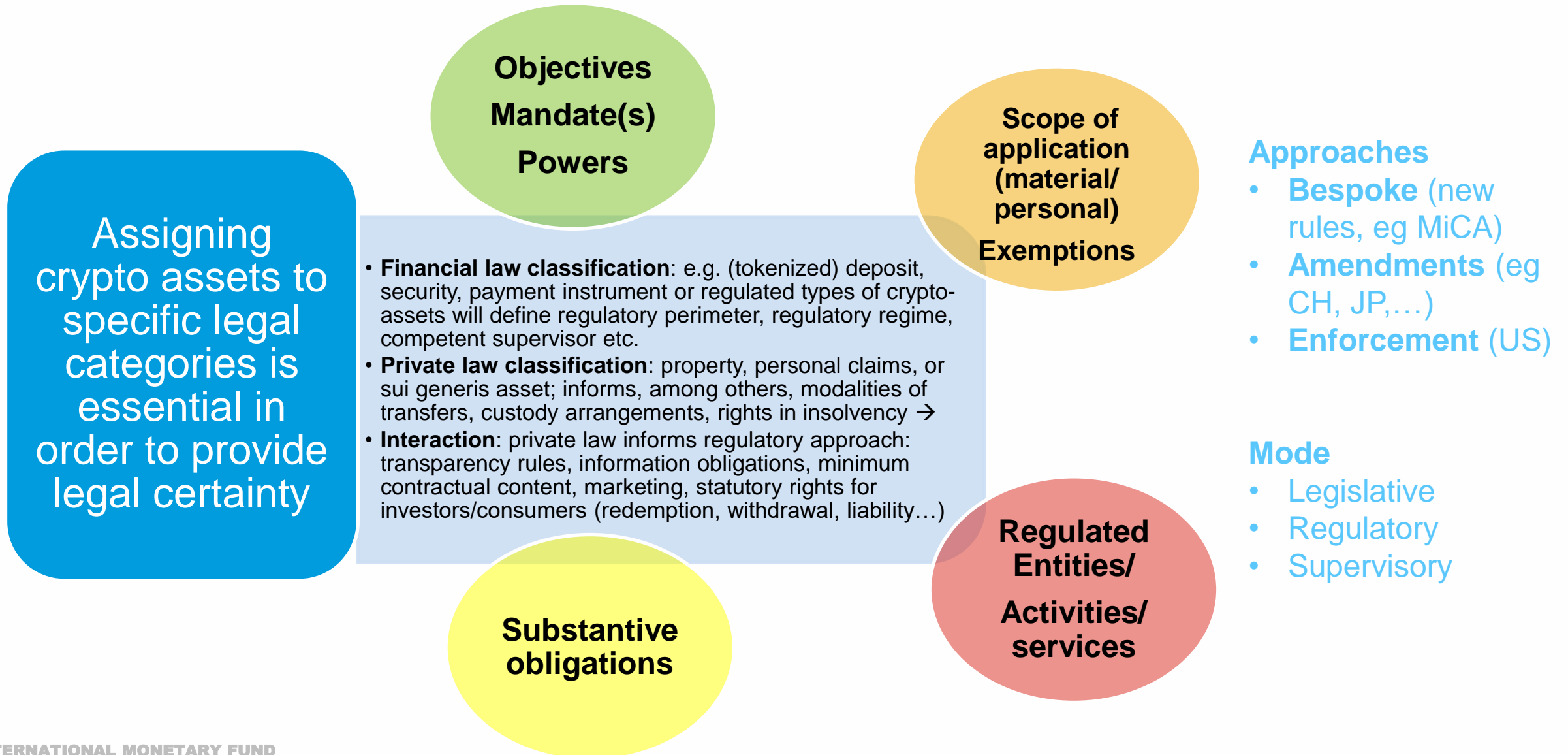
# Digital Assets And Services – Legal Design

- No internationally agreed upon taxonomy/classification
- **(Legal) Principles**
  - Same activity, same risk, same regulation
  - Technological neutrality, proportionality, risk-based
  - Powers/tools to enforce (new/existing) laws
  - Effective and comprehensive regulation, supervision
  - Cooperation and information sharing
- **Legal design questions:**
  - Principle of equal treatment/non-discrimination
  - Coherence of the legal framework
  - Translation of economic substance into legal criteria:
    - One size fits all?
    - Broad vs targeted? Flexibility? Discretion?
  - What to regulate/supervise? Activity, service-provider, product...




## Classification criteria

- **Issuer**
- Degree of (de)centralisation
- **Stabilization** mechanism
- Reference to a **currency(ies)**
- Use as a **means of exchange**
- Reference to **rights**
- **Financial use, substitution**
- Access to a **service/product/asset**
- **Claim** against issuer/reserves
- **Redemption rights**
- **Interest-bearing**
- ....

# Digital Assets and Services – Classification & the law



# Digital Assets and Services – Interaction with monetary and payment law

- **Digital Assets as a form of money?**
    - Unit of account 
    - Store of value 
    - Means of payment 
  - **Legal concept of money wider**
    - Redeemability in currency (**book money or e-money**)
    - Stablecoins?
  - **Currency: Legal tender – reserved for coins/banknotes?**
    - Official means of payment in official monetary unit as recognized by monetary law
    - Sovereign monopoly to issue, cours forcé, privileges under civil/criminal law...
    - Extension to **CBDC**, but not to privately issued assets
  - **Payment instruments**
    - neither currency nor money but legally used to effect payments in book money or currency
- While stablecoins are not currency or money, they could constitute **payment instruments or resemble book/e-money**

# Digital Assets and Services – Wrap Up

- **Classification essential for**
  - Legal certainty – regulatory perimeter – coherence of legislative framework
  - Allocation of competences – delineation of tasks – mandates – powers
- **Alignment with monetary law**
  - Preservation of “singleness of money“
  - Role of sovereign to issue and control currency – also in digital format
- **Private law considerations need to inform regulation**
  - Investor protection: eg segregation or safekeeping rules
  - Crypto-asset services: information, transparency, contractual obligations
- **Legal framework will in turn shape market practice**
  - Standardization & adequate labelling & convergence
  - Singling-out of illicit actors → credibility & trust

→ **How to do it in practice? What taxonomy under which design?**