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Secretariat for Multidimensional Security

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FOR THE CONTROL OF MONEY LAUNDERING  
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**PRESENTATION  
PERSPECTIVE OF VIRTUAL ASSETS IN COLOMBIA**

# Perspective of virtual assets in Colombia

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# Global map of crypto-regulation



## Global Defenders

Pioneer nations whose governments have taken steps towards the promotion of cryptocurrencies.



## Promoters

Countries that are advancing towards obtaining an egalitarian treatment for virtual currencies, but still face challenges.



## Fence-sitters

Governments that do not prevent individual operations with cryptocurrencies and have already abstained themselves from granting legal or regulatory protection to cryptocurrency users.



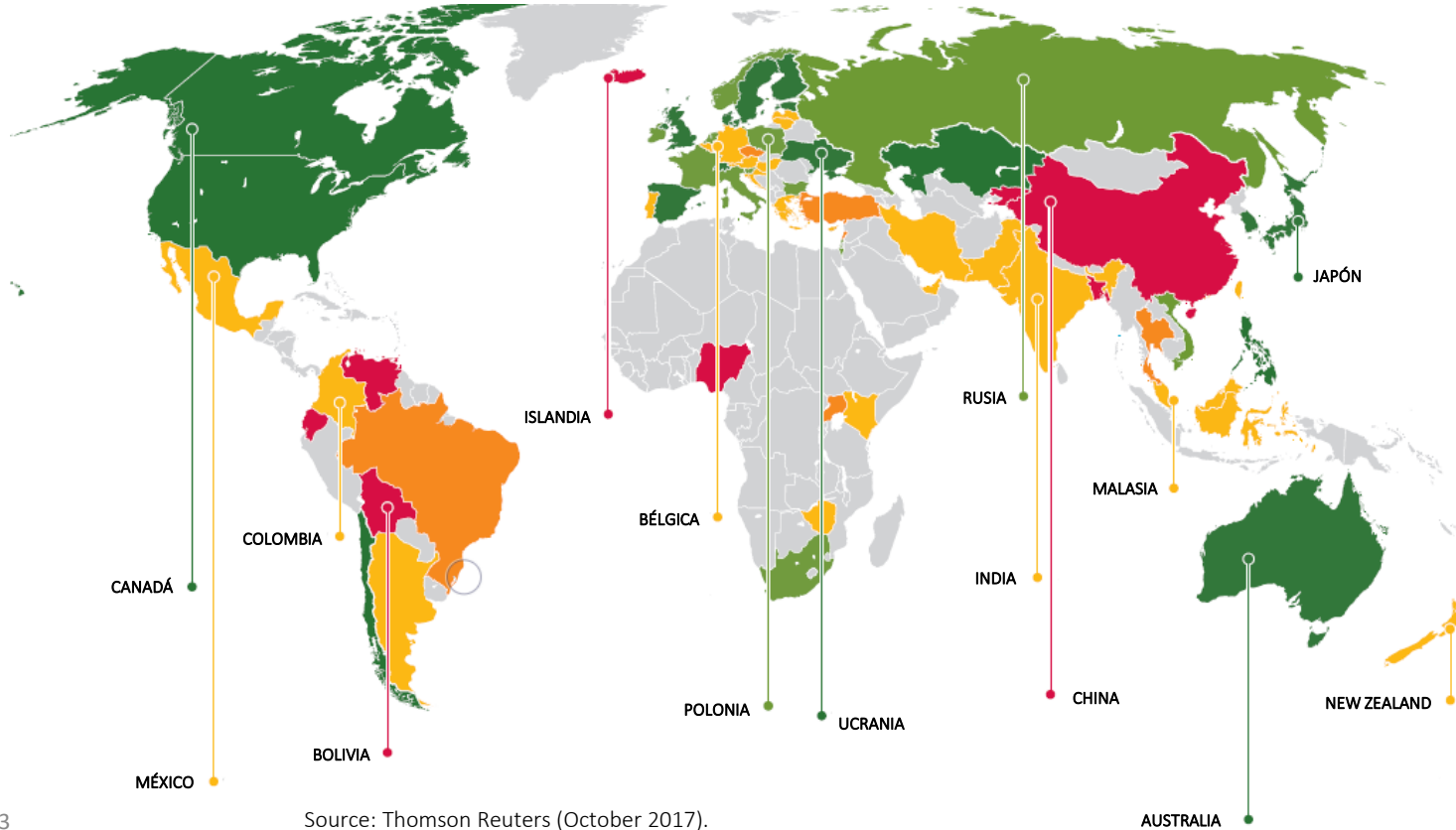
## Hostility

Governments that have taken actions to mitigate the use of virtual currencies, but not to the point of banning individual operations.



## Ban

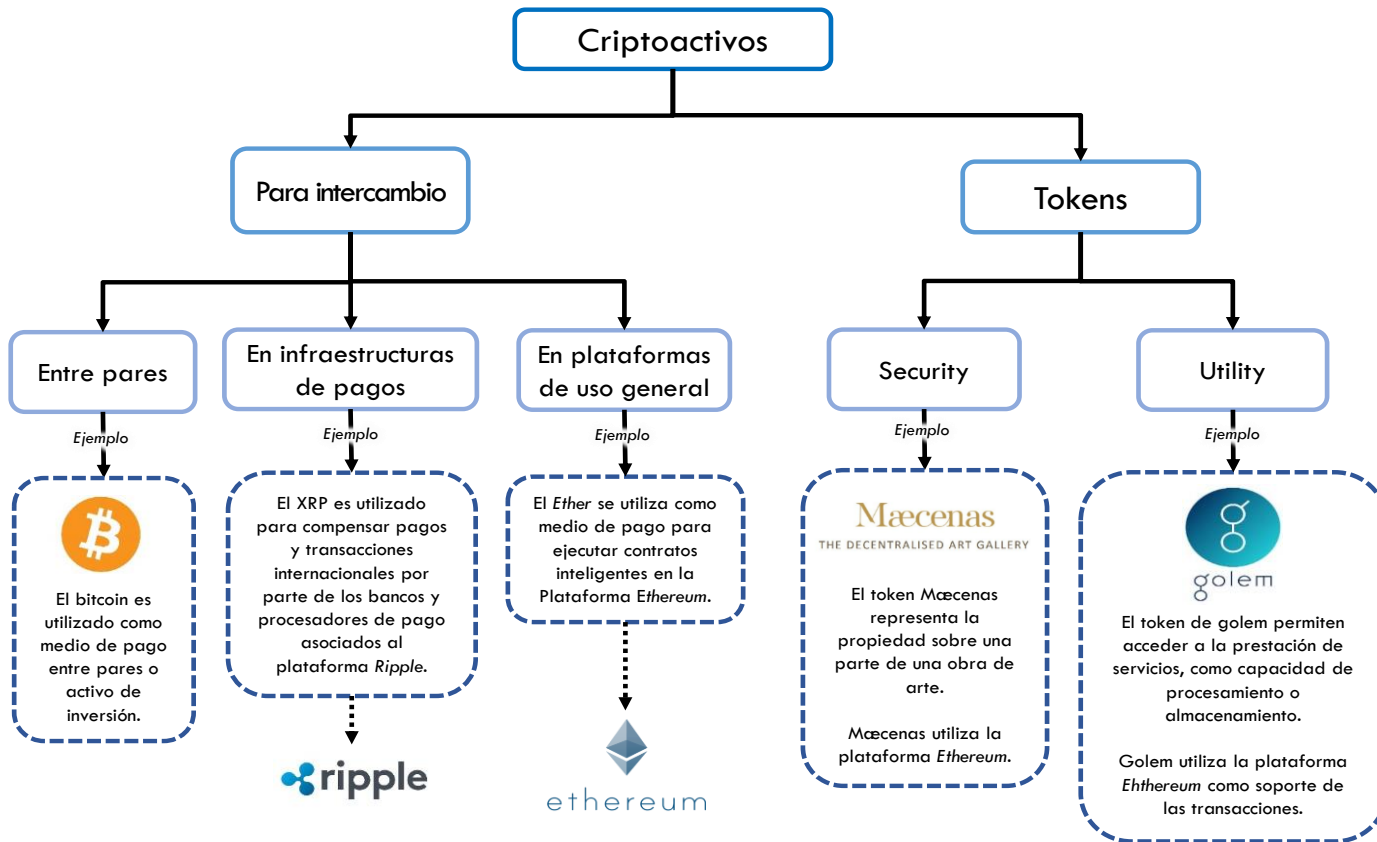
Nations that have banned cryptocurrencies inside their borders, some with punitive sanctions to individual users.



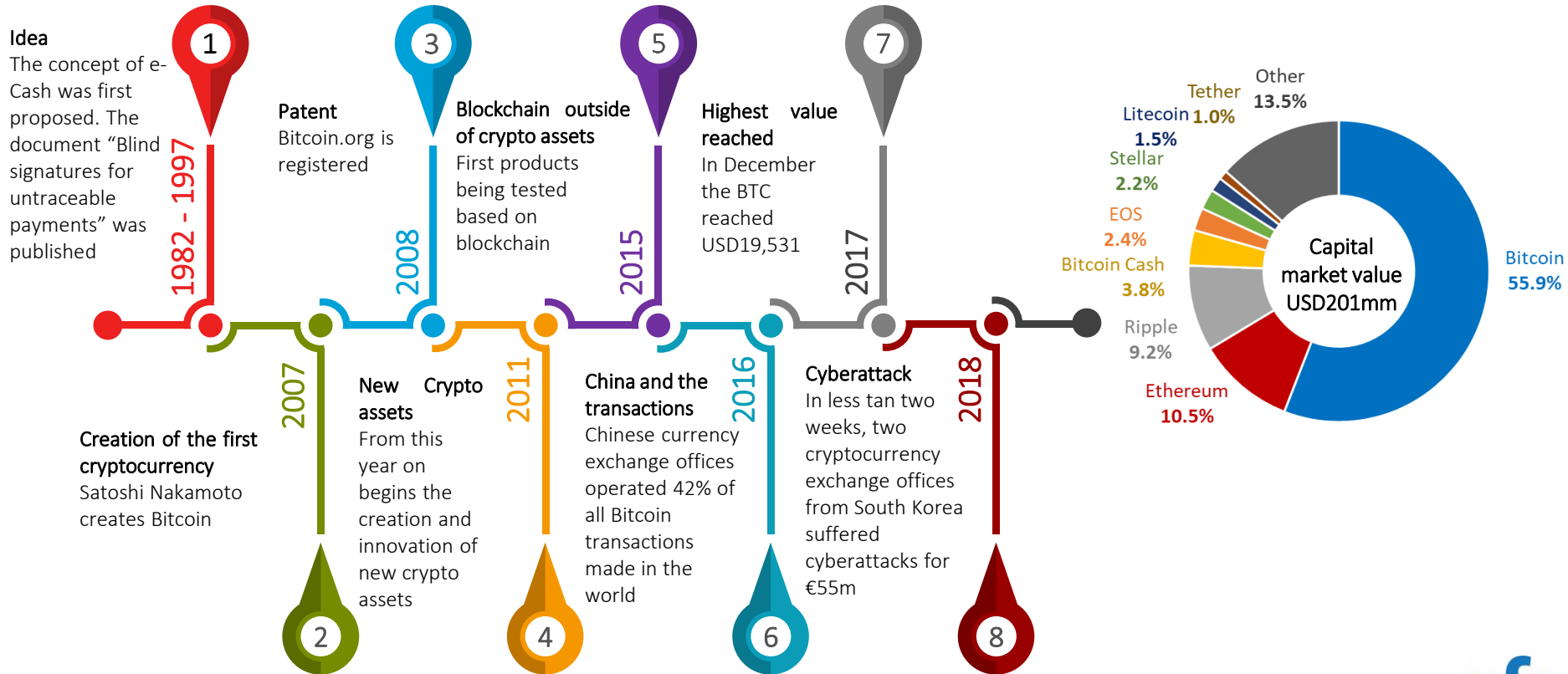
Analyzing the international experience, there is no predetermined model or regulatory focus

Source: Thomson Reuters (October 2017).

# Main uses of CA, traditionally understood



# Milestones of Crypto assets



# The international line: Plenary in Paris, October 19, 2018

## 1 Addition to recommendation 15 of New Technologies regarding virtual assets (VA)

To mitigate the emerging risk of virtual assets, countries must make sure that service providers, such as exchanges, are:

- **Regulated** regarding the risk of ML/FT.
- **Authorized** by national supervisors for the administration, mitigation and monitor of the risk of ML/FT.
- **Aligned** with the recommendations from FATF.

## 2 Change in the denomination with a definition of virtual assets - (VA)

## 3 Definition of service providers of virtual assets (VA)

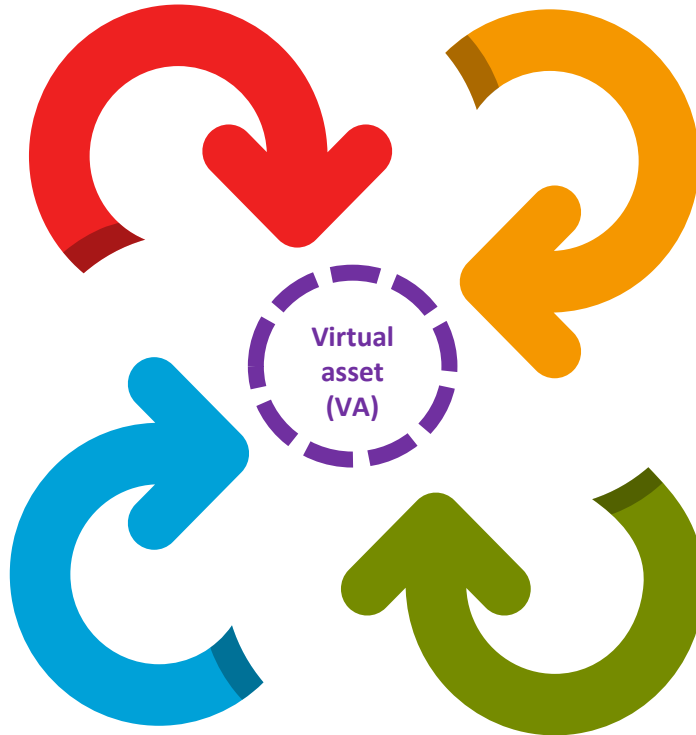
Natural or legal person not indicated in any of the current FATF R-40 and who develops **one or several of the following activities** for or in favor of another natural or legal person:

- **Exchange** of virtual assets for fiat currency.
- Exchange between different types of virtual assets.
- **Transfer** of virtual assets - make a transaction in favor of another person who makes the movements of the virtual assets from one address or account of virtual assets to another.
- Safe **Storage** and/or administration of virtual assets or of instruments that allow the control of those assets.
- Participation and provision of **financial services related** with the offer of a sender and/or the sale of a virtual asset.

# FATF established a change of denomination ... From crypto assets (CA) to virtual assets (VA)

1. Digital representation of value

3. It does not include digital representations of legal or fiat currency (e.g. *e-cards* in COP, USD, euros)

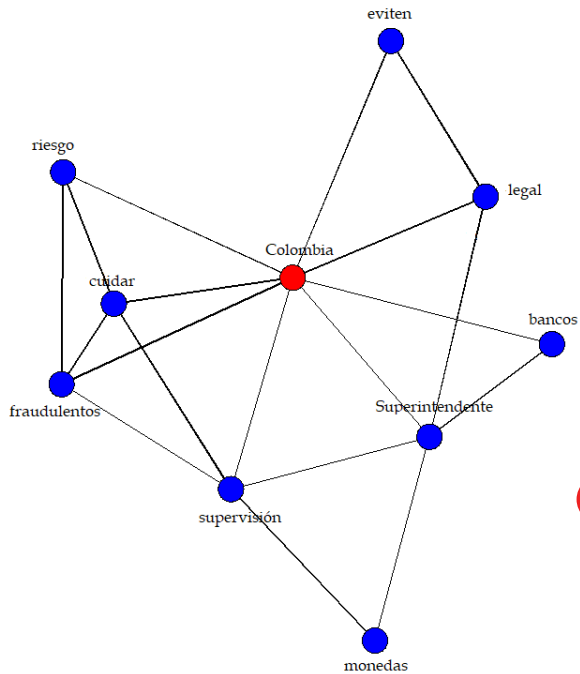


2. Used to make payments or for investment purposes

4. Nor values or other financial assets that are already currently covered by the recommendations of FATF for the purpose of prevention and control of the risk of ML/FT.

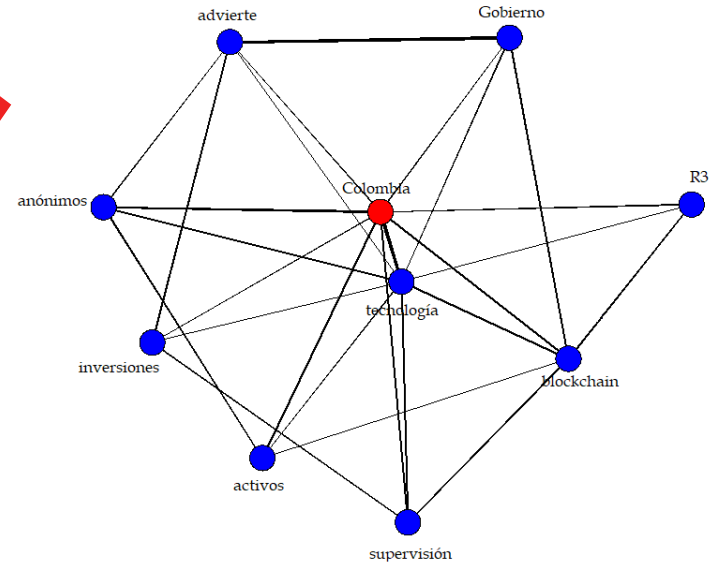
# What is being said in Colombia?

2014, 2015 and 2016



Evolution

2017 and 2018





# Situation in Colombia - Authorities



- No 'virtual currency' has been recognized as currency by the legislator or any monetary authority.
- The lack unlimited liberator power for the extinction of obligations.
- They have not been recognized as currencies by the Colombian exchange system, do not count with the support or participation of central banks.

Source: JDS-27301 del 22 de diciembre de 2017, JDS-14890 del 18 de julio de 2017 del Banco de la República.

Virtual  
Currencies/  
Assets



Virtual assets

In Circular Letters 29 of 2014, 78 of 2016 and 52 of 2017 the risks of supervised entities in operations with CA were reminded.

- Mainly the risk of ML/FT for anonymity in the transactions and in the platforms.
- Frauds in the collection or theft of resources.
- Inexistence of mechanisms to force its compliance.



**SUPERINTENDENCIA  
DE SOCIEDADES**

Virtual currencies

- “(...) *Company activity under the multilevel modality for the sale or placement of a virtual currency is illegal (...)*”
- “(...) *at the moment there is no kind of legal regulation regarding this virtual currency and no state entity has control over them: thus, those who acquire or make transactions with them voluntarily risk their wealth*”.

Source: Oficio 220-207096 del 25 de septiembre de 2017 de la Superintendencia de Sociedades disponible en [https://www.supersociedades.gov.co/nuestra\\_entidad/normatividad/normatividad\\_conceptos\\_juridicos/OFICIO%20220-207096.pdf](https://www.supersociedades.gov.co/nuestra_entidad/normatividad/normatividad_conceptos_juridicos/OFICIO%20220-207096.pdf)



# The position of the **sfc** regarding virtual assets

Superintendencia Financiera de Colombia



- Its use is not prohibited in Colombia, but being alert to the risks of ML/FT, fraud and volatility\* is recommended
- A **regime of authorized activities** of supervised entities exists (safeguard, investment and mediation, advice with AC)\*
- Revision of the adoption of the **modifications to the R-15 FATF – New Technologies**
- Adopt a common denomination of **Virtual Assets**
- Interinstitutional working group of crypto assets in Colombia
- The VA identification problem **Is regulation the solution?**

\*These Circular Letters are available in <https://www.superfinanciera.gov.co/publicacion/61145>

# Understanding of VA in Colombia

CHALLENGES

01

Definition of a position in the working group in Colombia

02

Regulate?, function of the legislative power – Should there be a role for the SFC?

03

Identify the role of exchanges in Colombia, Do they belong to the Financial System?

04

Who is behind non-allowed networks?

Situation of constant changes: finite number, increase in mining costs.

05

Payment system: processing speeds are slower than those from FS

06

Discussion on ICOs? We assess the potential of Blockchain technology.

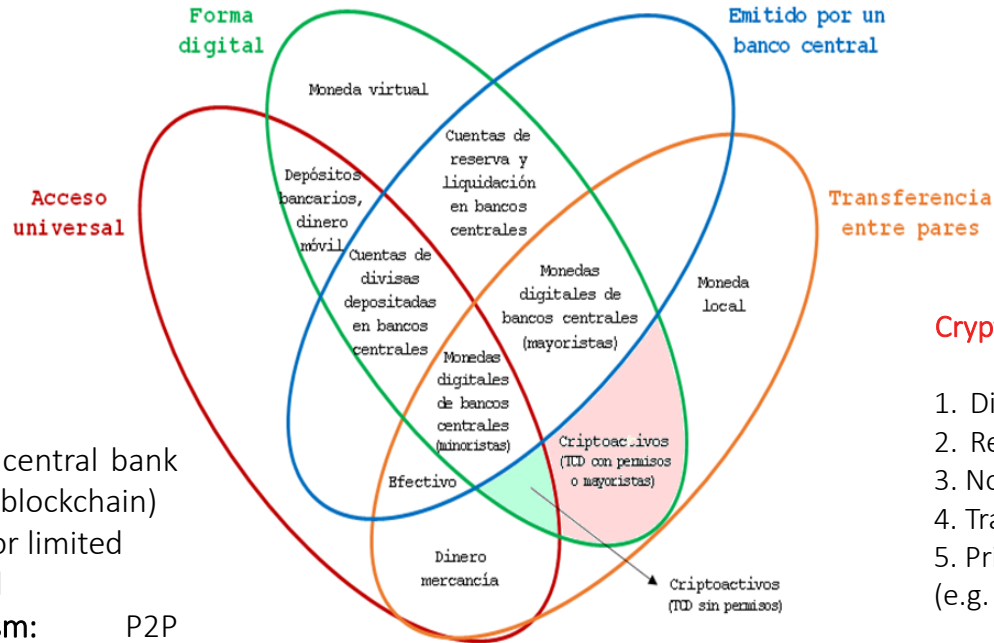
07

Use of Blockchain technology for supervision – pilots SFC

08

CHALLENGES

# The study from SFC initiated with the Money Flower...



**Crypto asset (now virtual asset) is of universal access or open**

1. Digital or electronic asset
2. Universal access
3. Not issued by a central authority
4. Transfer between peers (P2P)

**Crypto asset (now virtual asset) of limited access or closed**

1. Digital or electronic asset
2. Restricted access or with permits
3. Not issued by a central authority
4. Transfer between peers (P2P)
5. Private tokens backed by fiat money (e.g. Utility Settlement Coin - USC)

- **Sender:** emission from central bank or another participant (blockchain)
- **Accessibility:** universal or limited
- **Form:** digital or physical
- **Transfer mechanism:** P2P (decentralized) or centralized

# ...then the revision of the concept of virtual assets in different categories in Colombia

## ✓ Virtual Asset (VA)

- Asset
- Intangible asset
- Financial instrument
- Value

## ✗ Crypto Currency (CC)

- Virtual currency
  - Convertible
  - Decentralized
- Based on mathematics protected by cryptography
- On-line shopping, digital payments, E-commerce



## Currency ✗

- Issued by central bank
- Offers trust to agents in the economy
- Unlimited liberator power
- Not legally accepted currency in exchange regime
- Legal framework previously defined
- Set of policies for their purchasing power stability and stockholder confidence

## Virtual Currency (VC) ✗

- Digital representation (not physical) of legal tender, that serves as:
- means of exchange
  - unit of account
  - store of value

# Asset? Intangible? – Accounting perspective

## Asset

- ✓ Acquired
- ✓ Econ. profits
- ✓ Reliable measurement

Resource controlled by the entity as a result of past events and from which it is expected to obtain economic profits in the future

Fits the definition of asset

The Technical Commission of the Public Accounting\* considers that for accounting purposes required for the aforementioned regulation, there is no relevant or useful financial Information

## Intangible Asset

- ✓ Not monetary, but CA can be turned into fixed amounts of money.
- ✓ Identifiable
- ✓ Not physical/cash
- ✓ Exchange/ transfer

It is identifiable, with non-monetary character, with no physical appearance.

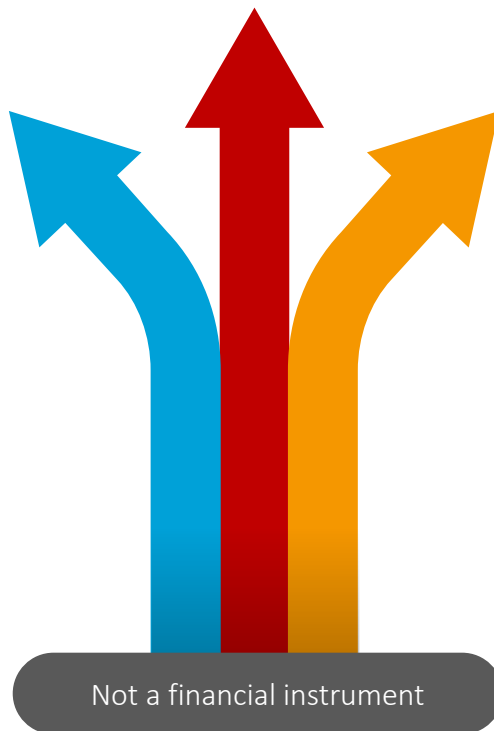
\*Consejo Técnico de la Contaduría Pública en Colombia CTPC-10-00906-2018, respuesta a consulta 1-2018-009713 del 11 de julio de 2018. Disponible en el enlace [http://www.ctcp.gov.co/ctcp\\_concepto.php?concept\\_id=2018](http://www.ctcp.gov.co/ctcp_concepto.php?concept_id=2018) (17/09/2018), cuando se indica en la pág. 9, que “las criptomonedas cumplen la definición de activo incluida en los marcos técnicos de las normas de información financiera emitidos en Colombia”.

# Financial Instrument? – Accounting Perspective

## Numeral 11 definition of the NIC 32

Any contract that leads, simultaneously, to a financial asset in an entity and a financial liability or equity in another entity.

Examples: cash, assets portfolio, investments in equity securities (stock investments), investments in debt securities (investment in term deposits, bonds).



## Financial and Accounting Basic Circular Definition - SFC. Numeral 2.13 Financial Instrument

A financial instrument is any contract that generates a financial asset in an entity and, at the same time, a financial liability or equity in another entity.

- ✗ There is no counterpart. Virtual currencies have not been created backed by an organization or a subject of law that allows them to obligate themselves.
- ✗ It is not a contract, it is not an agreement between two or more parties with economic effects, since its compliance is legally enforceable.

# Can we consider it a value? – Legal perspective

## Article 2° Law 964 of 2005

### Any financial instrument

They have not been recognized as such

### Any right with wealth content

They have not been recognized as such

### National Government recognizes the status of value

They have not been recognized as such

### Object/effect the collection of resources from the public

Genuinely they were not created to generate a P2P transaction series, this is, without the mediation of financial institutions

### Part of an issuance

Despite having generated an initial 'virtual currency', it was not done according to the rules indicated in the Colombian law.



**At the moment it is not a value**



# Can we speak of illegal collection?



## Crime definition – article 316 Criminal Code

Whoever collects without consent from the competent authority and, in order to commit it, the perpetrator must collect “money”, understood in its normative sense.

## Utilities and money in the criminal system of Colombia

Money is a normative remission to what has been defined by the monetary authority. Thus, things that are not currencies will be, for the criminal law, **“another utility”**, category in which ‘virtual currencies’ are found.

## Non-criminality – Does not shape this crime

As the criminal definition is committed against “*money*” and not against “*other utilities*”, the criminality rule makes it impossible to confirm that we are facing a conduct from the aforementioned article.

# We manage to specify the main characteristics of VA



# The study from SFC agreed with the reports from international organisms

FATF commits itself to implement the standards to be applied to **Crypto assets**, for which they will conduct a revision of these standards so these can be adopted globally.

CA **do not comply with the requirements to be legal tender in Colombia**, nor do they have an **institution backing them and** which answers for any fraud or fault in their schemes and their **issuing protocols, likewise, their security is limited to the trust** that participants in the network place on them.



## Change of denomination to Crypto assets

- BIS (Bank of International Settlements)
- Financial Stability Board - FSB
- G20
- Bank of Canada
- Bank of England
- Monetary Authority of Singapore

# Final recommendations from SFC to the public



## Inform oneself adequately

- Types of CA, their uses, functioning.
- Companies with which one can obtain these kinds of assets and virtual wallets.
- Avoid the risk of fraud, specially when involving large amounts.



## There is no regulation of user protection

- There is no supervisor nor regulator in monetary issues regarding CA
- Market risk: Exchange prices are susceptible to great and constant fluctuations.



## No support from the State

- There is no state entity that guarantees institutional trust.
- No entity will be responsible for the loss of money that may be generated due to the fall of their prices, or for the security of their purchasing power.



## Question, research and report to the authorities

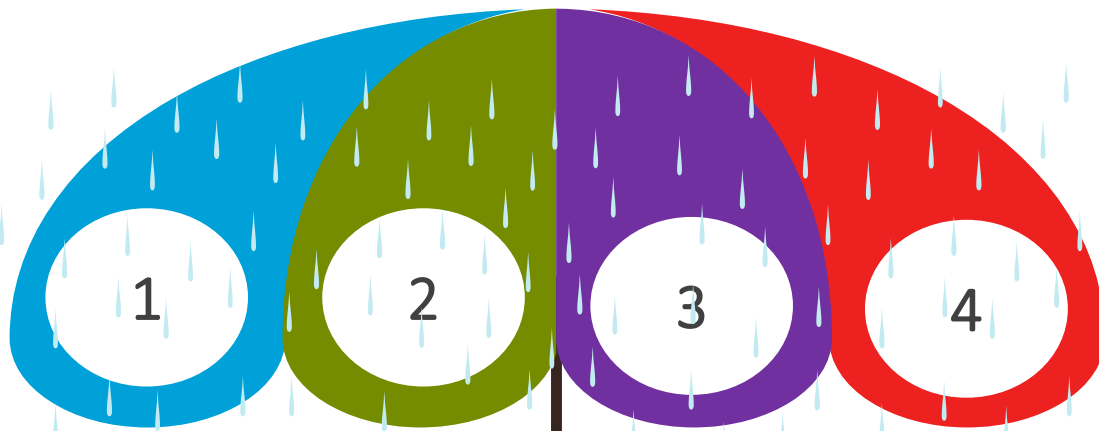
If you think something is suspicious you should inform the competent authorities like the National Police and file reports of suspicious operations to the Information and Financial Analysis Unit .



## ML/FT Risk

- CA are frequently used worldwide to finance terrorism and all kinds of criminal activities, promoting (e.g. pedophilia, child pornography and prostitution).
- Anonymous means of payment with cross-border reach – ideal vehicle for the darkest criminal networks globally.

# Risk of ML/FT in the obtaining of VA: mining or ICO



## Mining

Validation process of transactions through the resolution of mathematical problems (algorithms) in which secure units are codified (not repeated and which will be registered in a public network).

## Risk in mining

Illegal money used to acquire computer tools to make mining tasks or pay for this service.

## ICO

Initial Coin Offer - Method by which a CC or CA is issued to collect resources, for example to finance a Project.

## Risk in ICO

The risk of ML/FT when participating ICO of CA is related with illegal money promoting the initial offer or be destined to finance illicit activities.



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