REGULATORY INTERESTS IN ESTABLISHING CRYPTOCURRENCIES

Final Draft

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Submitted by

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To: Redha Alhaidar
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TradeLab

International rules on cross-border trade and investment are increasingly complex. There is the WTO, World Bank and UNCTAD, but also hundreds of bilateral investment treaties (**BITs**) and free trade arrangements ranging from GSP, EU EPAs and COMESA to ASEAN, CAFTA and TPP. Each has its own negotiation, implementation and dispute settlement system. Everyone is affected but few have the time and resources to fully engage. TradeLab aims to empower countries and smaller stakeholders to reap the full development benefits of global trade and investment rules. Through pro bono legal clinics and practica, TradeLab connects students and experienced legal professionals to public officials especially in developing countries, small and medium-sized enterprises and civil society to build lasting legal capacity. Through 'learning by doing' we want to train and promote the next generation of trade and investment lawyers. By providing information and support on negotiations, compliance and litigation, we strive to make WTO, preferential trade and bilateral investment treaties work for everyone.

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1. DEFINITIONS

The terms listed below when used in this Report shall have the meanings attached to them and these terms shall be interpreted accordingly. The terms listed below as used in this Report may be identified by the capitalization of the first letter of each principal word thereof. In addition to the terms defined below, certain other capitalized terms are defined elsewhere in this Agreement and whenever such terms are used in this Report, they shall have their respective defined meanings, unless the context, expressly or by necessary implication, require otherwise:

(a) **1933 Act** shall mean Securities Act, 1933;
(b) **5AMLD** shall mean the Fifth Anti-Money Laundering Directive
(c) **AG** shall mean Aktiengesellschaft, stock corporation;
(d) **API** shall mean Application Programming Interface;
(e) **AML** shall mean Anti-Money Laundering;
(f) **AMLA** shall mean Swiss Anti-Money Laundering Act;
(g) **Beneficiary** shall mean Redha Alhaidar;
(h) **BitMal** shall mean the social cryptocurrency the BitMal Organization is attempting to establish (not to be confused with the Organization itself);
(i) **CAN-SPAM Act:** The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003;
(j) **CHF** shall mean Swiss Franc;
(k) **DGCL** shall mean Delaware General Corporation Law;
(l) **DLT** shall mean distributed ledger technology;
(m) **EC** shall mean the European Commission;
(n) **EU** shall mean the European Union;
(o) **ESMA** shall mean European Securities Markets Authorities;
(p) **Federal AMLO** shall mean Swiss Anti-Money Laundering Ordinance;
(q) **FinCEN** shall mean Financial Crimes Enforcement Network;
(r) **FinHub** shall mean SEC's Strategic Hub for Innovation and Financial Technology;
(s) **FINMA** shall mean Swiss Financial Market Supervisory Authority;
(t) **FINMA AMLO** shall mean Swiss Financial market Supervisory Authority Anti-Money Laundering Ordinance;
(u) **GmbH** shall mean Gesellschaft mit beschränkter Haftung, limited liability company;

(v) **ICO** shall mean Initial Coin Offering;
(w) **IRC** shall mean Internal Revenue Code;
(x) **IRS** shall mean International Revenue Service;
(y) **JOBS Act** shall mean Jumpstart Our Business Startups Act, 2012;
(z) **MiFiD II** shall mean Market in Financial Instruments Directive (2014/65/EU);
(aa) **NASCO** shall mean National Association of State Charity Officials;
(bb) **NPO** shall mean Non-Profit Organization;
(cc) **Organization** shall mean organization that is being set up by the Beneficiary. This Report is being prepared from the context of the Organization;
(dd) **PATRIOT Act** shall mean Providing Appropriate Tools to Intercept and Obstruct Terrorism Act;
(ee) **PRI** shall mean program-related investments;
(ff) **SE** shall mean Societas Europaea;
(gg) **SEC** shall mean Securities Exchange Commission;
(hh) **Security** shall mean any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities(including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing (as defined under the 1933 Act);
(ii) **SRO** shall mean Self-Regulatory Organization;
(jj) **TCPA** shall mean Telephone Consumer Protection Act of 1991;
(kk) **TRIPS** shall mean Agreement on Trade-Related Aspects of Intellectual Property Rights;
(ll) **UBIT** shall mean Unrelated Business Income Tax;
(mm) **US** shall mean the United States;
(nn) **WIPO** shall mean the World Intellectual Property Organization.

2. SCOPE OF REPORT

2.1. Background

A student team at Georgetown University Law Center, through the International Economic Law Practicum in the TradeLab network, has conducted research contained in this report (**Report**) to understand the different legal and regulatory implications of several issues related to the establishment of a blockchain-based social enterprise. The beneficiary of this Report is the BitMal Organization (**Organization**), an unincorporated enterprise that aims to establish and popularize its own blockchain-based platform to serve as a marketplace for affiliated NGOs, social entrepreneurs, and volunteers to contribute into the platform by investing and volunteering. The Organization issues tokens (**BitMal**) to be utilized on the platform in order to facilitate interaction between users to more efficiently record and transfer social value. For a more detailed description of the Organization and BitMal, refer to Section 4. For ease of reference, BitMal will be referred to throughout this Report as a "cryptocurrency." However, in order to more fully understand the BitMal token's status as a cryptocurrency, please refer to Section 3.3.1 – "Regarding Cryptocurrencies."

2.2. Scope of Work

The project scope of work, as discussed and agreed with the Organization, is outlined below. This Report does not constitute legal advice but is meant to summarize a review of rules and regulations in select jurisdictions that highlight considerations important for the Organization, including**:**

(a) Considerations related to different business structures with examples of rules for incorporation under select jurisdictions;

(b) Legal considerations related to securities regulation under the laws of the United States, Hong Kong, Saudi Arabia and Switzerland;

(c) Implications of Know Your Customer Regulations and Anti-Money Laundering Laws in the United States, European Union and Switzerland;

(d) Overview of international Intellectual Property law under TRIPS.

2.3. **Limitation of Scope**

The Organization recognizes that the scope of this Report is limited by the following considerations and other specific considerations indicated in the Report:

(a) This Report is a non-technical work produced by students and aims to provide general information for the purpose of educating the Organization about aspects it may have to consider in moving towards formal incorporation.

(b) Any recommendations arising from this Report are research based and purely academic in nature. They are not to be construed as recommendations or advise validating any future transactions to be entered by the Organization.

(c) The regulatory landscape with respect to tokens such as BitMal is rapidly changing, and the information expressed in this Report may not reflect the current state of regulatory affairs.

2.4. **Sharing of Report and Confidentiality**

As this report has been produced for purely academic purposes, it does not contain any confidential information and may be used by the students in other forms or shared with other persons.

2.5. **Contact**

In case of any queries relating to this Report, the Organization may contact the academic supervisor for the project, Mrs. Katrin Kuhlmann, Adjunct Professor at Georgetown University Law Center, at kak84@georgetown.edu.

3. EXECUTIVE SUMMARY

This Report presents research relevant to social enterprises interested in issuing and exchanging socially oriented cryptocurrencies about the international legal framework surrounding their activities. It approaches this goal through the lens of the Organization (See Section 4 for a detailed description). The Report focuses on the evolving regulatory frameworks of the US, Switzerland, and EU as guides to understanding the international regulation of cryptocurrencies. These three jurisdictions were selected for specific reasons. The US is one of the largest and wealthiest markets in the world with a well-developed legal regime, but it is becoming more and more active in regulating cryptocurrencies. Switzerland has a cryptocurrency-friendly regime and also ranks high in terms of ease of doing business. Finally, the EU was chosen because it would be helpful for the Beneficiary to have an overarching understanding of the implications of establishing a presence in any given EU country. Because this Report is meant to assist organizations at a nascent stage of development as they move towards formal establishment, it also includes information that does not relate solely to cryptocurrencies (such as forms of incorporation). The Report does not provide a step-by-step procedural analysis of the law. Rather, it explains the law in a way that will guide the Organization's understanding of the legal implications associated with the structure and functions of its business.

Several questions are pivotal to the successful establishment of a socially oriented cryptocurrency platform, such as that contemplated by the Organization. These questions serve as the guiding focus of this Report: (1) What is the ideal corporate form for such an enterprise?; (2) Depending upon the corporate form and the goals of the enterprise, what types of funding are available under the law, and is securities law triggered?; (3) What are the implications for an enterprise of this nature under evolving anti-money laundering rules?; Finally, while not particular to establishing a blockchain-based social enterprise, the Organization also specifically requested information regarding (4) What form of intellectual property protection might be best suited to this type of enterprise?

3.1. **How to Use this Report – A way forward**

This Report is meant to be used as a guide for groups such as the Organization as they begin to make decisions that will be consequential to their success in establishing a socially oriented cryptocurrency platform. While the entirety of the information contained in the Report may appear overwhelming, it is meant to guide decision-making in the following way. First, the Executive Summary summarizes important information in the

Report to provide an understanding of the full scope of potential legal interests. As the Organization begins to make concrete decisions regarding its funding sources and corporate form, it can refer to these sections in the body of the Report specifically relevant to the decisions it is trying to make. While it is likely that more research may need to be performed to reach a final decision, the information in the body of this Report is intended to serve as a starting place to gain a global understanding of the legal consequences of certain decisions.

3.2. **Outline of the Report**

Section 4 of the Report introduces the Organization and explains how its cryptocurrency, BitMal, is meant to function. In brief, BitMal is planned as a "pegged" cryptocurrency (valued at 2 BitMal per 1 unit of underlying fiat currency) issued using blockchain technology, and it will be available on a platform established by the Organization in order to facilitate interaction between socially oriented projects and persons interested in supporting such projects. Section 5 covers the laws relating to incorporation (establishing a legally recognized business). It outlines possible corporate forms the Organization might take, focusing on models which the Beneficiary has proposed and addressing relevant laws in the three jurisdictions. Section 6 of the Report deals with how the Organization might fund its business and the implications that funding decisions may have with regard to securities laws. Here, securities regulations, crowd funding regulations, and venture capital regulations may apply, and, again, the Report focuses on how these regulations differ depending on the jurisdiction. Section 7 of the Report will outline anti-money laundering regulations which will likely apply to the Organization's business. Section 8 of the Report, per request of the Beneficiary, provides an overview of intellectual property rights law. Finally, Section 9 sets out recommendations based on the contents of the Report.

3.3. **Summary of Relevant Findings**

3.3.1. Regarding Cryptocurrencies

While there is no specific definition for what constitutes a cryptocurrency, most have the following traits in common: 1) they are digital/virtual (these terms are not distinct, but different regulators use one or the other); 2) they use encryption and blockchain technologies to generate/verify transfer of currency units; and 3) they operate independently of a central bank (no government authority guarantees their value). Also, while there are

myriad uses for cryptocurrencies, most derive their value from the combination of their immediacy and irreversibility; where bank transfers of fiat can take up to a day, and can be stopped in that time, a cryptocurrency transaction finalizes within a few seconds after a button click and is irreversible.

What worries most regulators about cryptocurrencies is their independence from a central authority and their encrypted nature. The combination of these aspects can make it difficult (but not impossible) for regulators to track transfers of funds when necessary and can expose purchasers/investors to a large degree of speculative risk. Because cryptocurrencies are relatively new, and the blockchain technology that underlies most of them relatively complex, some countries and regulators have instituted what amounts to a ban. India is the largest market to date which has taken this stance, prohibiting all financial institutions from dealing with individuals or businesses which themselves are involved in cryptocurrencies.[1] Numerous Middle Eastern countries, such as Jordan (which is specific interest to the Organization) have similarly taken a critical stance toward cryptocurrencies, prohibiting financial institutions from dealing in them, and discouraging the general public from engaging with them.[2]

However, many countries are taking steps to try to fold cryptocurrencies into their existing regulatory frameworks. For such countries, the research performed in creating this Report suggests that there are no special regulations for "cryptocurrencies." Blockchain technology can be used to create many different things, all of which may colloquially be called a "cryptocurrency." Yet, regulators (at least, those in the US, EU, and Switzerland) do not focus on the term "cryptocurrency" in making regulatory decisions. Rather, they focus on the *function* of a cryptocurrency and the *relationship* that is created between its issuers, buyers, and users.

In developing a socially oriented cryptocurrency, entities such as the Organization should be aware of and consider the reasons why regulators might be concerned about cryptocurrencies. Primarily, regulators are concerned about the extremely large swings in value that have been witnessed in cryptocurrencies such as Bitcoin. This is especially true where the utility of the cryptocurrency (which should underpin the cryptocurrency's value) is unclear or more speculative than would first appear. Sophisticated traders might be able to understand the risk involved in purchasing/investing in such cryptocurrencies, but unsophisticated traders may not. Regulators worry that such cryptocurrencies could be used to defraud purchasers/investors of the money they pay for the cryptocurrency, and thus, may require the issuer of the cryptocurrency to register it as a security. Additionally, regulators

worry that the decentralized nature of a cryptocurrency could allow individuals or organizations who raise funds through illegal activities (such as narcotics or human trafficking) to disguise the source of these funds.

Where these concerns can be relieved within the process by which the cryptocurrency is issued/used, the regulatory interest in the cryptocurrency decreases significantly. In this regard, two aspects of BitMal are particularly interesting. First, the fact that BitMal will be pegged to an underlying fiat currency decreases the potential that purchasers might expect to gain value by purchasing/holding/using BitMal, thus decreasing the likelihood it would be considered a security. Second, the fact that only social projects registered on the BitMal platform and vetted by the Organization itself can convert BitMal back in to fiat currency (see Section 4 for a fuller explanation) significantly decreases the potential for BitMal to be used by criminal actors to launder illegally procured funds.

This is not to say that these aspects completely relieve BitMal of all regulatory burdens – the relevant regulator in each country in which BitMal operates would make this decision for itself. However, by continuing to maintain these aspects of the platform (or potentially to enhance them, for example in the case of money laundering concerns, by completely removing the ability to convert BitMal to fiat currency), the Organization may be able to approach regulators in order to make a case that it should not be subject to the same regulatory burdens as other cryptocurrencies.

3.3.2. Regarding Corporate Form

The ideal corporate form an entity like the Organization should take depends both upon the activities in which the Organization plans to engage and the sources from which the Organization will derive its funding. Given the Organization's social orientation and its heavy focus on facilitating contributions (both monetary and non-monetary) to projects aimed at promoting social good, it seems to make the most sense to initially incorporate as an NPO. This would carry two primary benefits. First, NPOs are typically granted favorable tax treatment, which comes in two forms: 1) NPOs do not need to pay taxes on much of the income they receive (whether this comes in the form of donations, grants, or very limited for-profit activities); 2) Individuals and organizations which donate to NPOs often can receive tax exemptions on the value of the money they donate. Second, incorporation as an NPO is an important signal of an organization's commitment to their social cause. In fact, incorporation as an NPO often requires organizations to make a legal commitment to promoting their socially-oriented cause.

However, the Organization has also expressed that it may need to generate funds through for-profit activities and/or venture funding. Because the type of funds an NPO is allowed to generate is limited, it is likely that in this case the Organization would need to incorporate as an entity that is able to earn profits (a "for-profit" entity) in the event it wants to expand its functions. While there are many different types of such for-profit entities described in this Report, whichever type the Organization chooses to incorporate as, the social orientation of the Organization's underlying activities may be worth protecting as an NPO. Here, the Organization could consider a hybrid model. A hybrid model is a type of parent-subsidiary corporate form in which the parent and the subsidiary take on two different forms of incorporation. Here, it may be possible to derive the benefit of both for-profit entity and an NPO by establishing in this way. The main drawback to this method is that it requires strict separation of assets, and the paperwork can become complicated.

As the Organization's goals may change over time, it is important to note that it is possible to incorporate in one form, and then change its structure as it develops. Thus, this Report also introduces some methods by which an NPO could evolve into a hybrid entity, which appears to be a likely path for the Organization. It is also feasible to reincorporate an NPO as a for-profit entity. However, this process is likely more difficult than adopting a hybrid structure in the future, as it would require the dissolution of the non-profit at first, and the creation of a new corporate entity.

Additionally, because in some jurisdictions NPOs are exempt from securities regulations, one strategy of moving forward could be to incorporate as an NPO and expand the platform's activities gradually. In doing so, the Organization could seek confirmation from the relevant regulator (for example, in the US, by requesting a "no-action letter" from the SEC) to ensure that the regulator will not take regulatory action with regards to the expanded activities. In this way, the Organization could grow in a step-by-step manner as it chooses to expand its activities. Please refer to Section 5 for detailed information about the various corporates forms the Organization can opt for and why.

3.3.3. Regarding Funding and Securities Laws

While the form that a corporation takes will affect the types of funding that are available to it, an equally important factor to consider is whether the source of funding will trigger securities law. Put simply, a security (**security**) is a "tradable financial instrument," but what can constitute a security requires significant analysis. Perhaps the trickiest issue with securities is that there is no universal definition, and different jurisdictions will regulate

different things as securities. While many factors may be considered in determining a security, perhaps the most important factor is whether the person who is purchasing the instrument in question has an expectation that they might be able to profit by purchasing the instrument (such as a stock-certificate).

In the context of the Organization, there are two "levels" of securities interest. At the first level, the Organization could create a security in generating the funds necessary to sustain itself. If the Organization incorporates as an NPO, the inherent limitations on what types of funds NPOs can collect significantly limit the possibility that the Organization would incidentally issue a security. Funding for NPOs primarily come from grants and donations, and grantors/donors almost never expect to be able to profit from their granting/donating activities. However, if the Organization decides to expand (as a hybrid or related for-profit entity) and to raise money by issuing instruments that resemble a traditional security (such as shares of the for-profit company) then it could fall within securities regulations.

At the second level, BitMal (the cryptocurrency, not the platform) itself could be considered a security if it were structured in a way such that purchasers might expect to be able to profit by purchasing it. This is more commonly the case with ICOs, during which investors are given the first chance to purchase coins, expecting that after this initial purchase the value of the coin may go up or down. As the Organization has described the basic functionality of BitMal (pegging it to fiat currency and restricting conversion back to fiat currency to only those to whom BitMal has been "donated"), it seems unlikely BitMal could be considered a security. However, as BitMal's functionality expands, this could change. For example, if the BitMal platform expands to provide general purchasing of goods/services amongst all BitMal users, and if the Organization were to somehow offer deep discounts on the general market value of these goods/services, it might be possible that a purchaser of BitMal could reasonably expect to be able to profit by purchasing BitMal, and that BitMal could thus be considered a security.

Please refer to Section 6 to understand the various forms of funding that are available to the Organization and when securities laws can be triggered while using these funding options. To see how use of BitMal token can trigger securities law, specifically refer to Section 6.3.

3.3.4. Regarding Anti-Money Laundering Regulations

Anti-Money Laundering (**AML**) regulations aim to make it difficult for people who have earned money through illegal means to disguise the source of their money – to "launder" the money to make it appear "clean." AML regulations are quickly evolving in the cryptocurrency space, and most developed nations have updated, or are in the process of updating, their AML regulations to bring cryptocurrencies under existing AML regimes. As a general rule, whenever a business is involved in administrating (issuing/redeeming) or exchanging (buying/selling) cryptocurrencies, or in any other way helping facilitate the transfer of wealth between its customers, that business's operations will need to comply with AML regulations. While the exact requirements of these regulations differ depending on the jurisdiction, in general, businesses are obligated to 1) Confirm the identity of their customers or the sources of their customers' funds, 2) Keep records of certain types of transactions, and 3) Report certain suspicious transactions to authorities.

There seem to be few opportunities to relieve the regulatory burden posed by compliance with AML regulations. However, this Report identifies three potential opportunities. First, a socially oriented business could establish its cryptocurrency so as to remove the ability of users to extract fiat currency entirely. Technically, the AML regulations of some jurisdictions (notably, the US) might still apply to such a cryptocurrency regime. However, because such a "one-way" system could remove the underlying regulatory interest, adapting the cryptocurrency in this way would create an opportunity to engage regulators to confirm that compliance is not necessary.

Second, the business could restrict trading to minimum thresholds, if such thresholds exist in the country in which the business is incorporated. Minimum thresholds are amounts/frequencies of transactions under which the obligation to comply with AML regulations can be waived. Not all countries apply minimum thresholds, and, typically, minimum thresholds apply to relationships with individual clients (meaning that to significantly reduce the compliance burden, the platform would need to restrict all client trading to amounts/frequencies under these thresholds).

Third, a business could choose to incorporate in a jurisdiction that has a very minimal, or no AML regime in place. This is unlikely to be a beneficial course of action, and it is only mentioned here to dissuade any business thinking of taking this course of action. First, these are typically countries with poor legal regimes and insecure financial markets. Second, even if a business incorporates in one of these countries, if the business has enough users in other jurisdictions (for example, the US), the other jurisdiction may decide to apply its laws extraterritorially to hold the business accountable for not

complying with its AML regime. Third, incorporating in these jurisdictions sends a poor message to users – it can make it look as though the business is trying to avoid having to comply with AML, or potentially even subvert AML regulations and support money laundering. Please refer to Section 7 for detailed information about the AML regulations applicable to the Organization.

3.3.5. Regarding Intellectual Property Rights

Intellectual property rights can be used to protect the ideas, image, and brand value of an organization. The most common types of intellectual property protections include Trademarks (used to protect an organization's brand value by prohibiting others from using the organization's name, symbols, images, etc.), Copyright (used to protect creative works such as books, movies, paintings, etc.), Patents (used to protect innovative ideas which are disclosed to the public and potentially duplicable, such as a newly invented machine, chemical formula, or compute code), and Trade Secrets (used to protect innovative ideas which are not disclosed to the public, such as secret manufacturing processes, chemical formulas, or ingredients in foods).

There are no intellectual property rights which are unique to the cryptocurrency space – all such rights can be applied for and used by groups such as the Organization to protect their intellectual property in the same manner that any other business could use them. There are even international legal regimes which simplify the application process for intellectual property protection, and allow protections applied for in one country to hold force in other jurisdictions. Here, we would like to specifically mention the applicability of patent protections in the area of blockchain technologies. It is possible to receive a patent for a new type of blockchain technology, so long as it meets the underlying requirements for a patent (see Section 8 for more details). However, where a cryptocurrency is issued through an existing blockchain platform, such as Ethereum, it is unlikely these requirements would be met.

4. INTRODUCTION AND OVERVIEW

In order to better understand the context in which this Report was prepared, we begin here by describing the Organization in more detail.

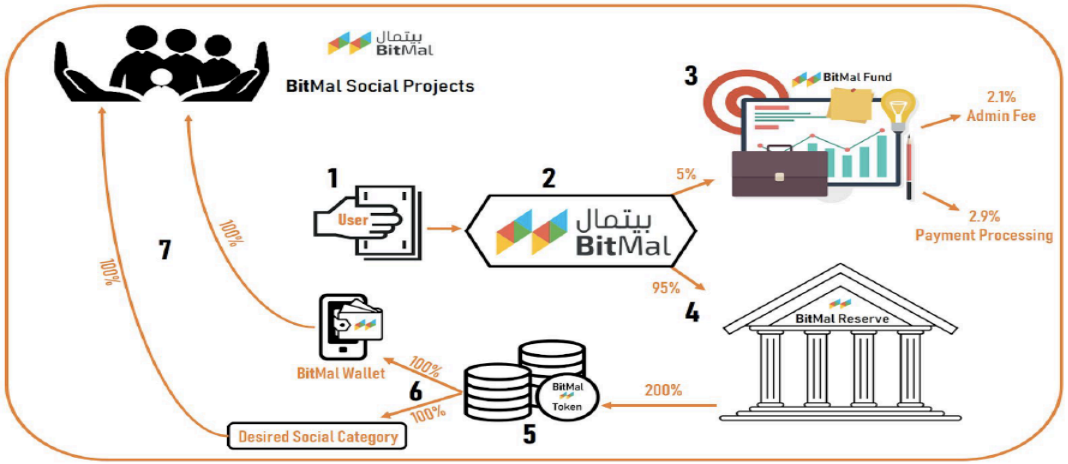
General Overview of the BitMal Organization

The BitMal Organization is an unincorporated entity aiming to establish and popularize a unique blockchain-based socio-entrepreneurial platform. The Organization is also proposing to provide services like information technology services, marketplace services, and payment settlement functions.

The Organization issues tokens (**BitMal**) as a form of "social currency" to be used as a mechanism for facilitating transfer of value between parties interested in promoting social good. BitMal is made for use solely within its own BitMal-ecosystem and is issued using blockchain. By creating this ecosystem, the Organization aims to minimize administrative and management fees typically charged on donations to social organizations and to make it easier for financial donors and volunteers to assess the value of social projects and more easily make contributions to projects they think are worthwhile. At the same time, the Organization hopes that BitMal tokens will provide a new mechanism for measuring the amount of good individuals are contributing to their communities.

Functioning of the BitMal Platform: BitMal is planned as a pegged cryptocurrency, valued at a 2:1 ratio in comparison to the underlying fiat currency to which it will be pegged. The functioning of the platform is described in Figure 1:

Figure 1: Process of Issue and transfer of BitMal token



Step-by-Step Analysis

1. *User donates fiat currency or crypto currencies like Bitcoin to the Platform.*
2. *A 5% fee is deducted, where 2.1% is an administrative fee and 2.9 % is a processing fee.*
3. *BitMal tokens are generated when fiat currency is donated on the BitMal Platform.*
4. *The remaining 95% of fiat currency is placed in the BitMal Reserve (a bank account).*
5. *Two times the amount of fiat placed in the BitMal Reserve sum is generated in BitMal.*
6. *Half of the total amount of BitMal generated is sent to a Social Category indicated by the donor and is divvyed to social projects listed in this social category by the BitMal Organization. The other half of the generated BitMal is put in to the donor's BitMal Wallet.*
7. *The BitMal going to social categories is distributed by the BitMal Organization, and the User can use the BitMal in their BitMal Wallets to promote*

the specific projects they wish to support. The platform is also open to people looking to volunteer their time/skills. Volunteers can sign up to assist with projects listed on the platform and earn BitMal in return for their services, either from Users or from registered social projects. Volunteers can then use these BitMal to donate to social projects they wish to support.

Financial Structure: The financial infrastructure of the platform is based on a smart contracting and value trading system. This allows the transfer and trading of value without anyone or anything within the BitMal platform having to have physical access to underlying assets. Examples include the creation of BitMal itself, which should be financially stable relative to other modes of value transfer, i.e. fiat and sovereign currencies. As previously mentioned, BitMal's initial value will be pegged against a fiat currency. This will lock down the value of the BitMal token that gives it stability and avoids the chance of it plunging in financial value. The peg will be maintained by storing fiat at a ratio of one unit to two BitMal. Fiat will be stored in the BitMal Reserve.

BitMal is also expected to be relatively immune to a peg-breaking event because of limitations set on the actors eligible to extract fiat from the BitMal Reserve. Pegs can be broken under a number of circumstances, commonly because for one reason or another, holders of the cryptocurrency lose faith that the administrator of the cryptocurrency has faithfully kept the amount of fiat reserves necessary to exchange all cryptocurrency in circulation. This may come about due to malfeasance (the fiat currency account holder misappropriating the fiat), or by "attacks" – massive purchases or sales of the cryptocurrency to try to influence small market fluctuations in the value of the cryptocurrency in order to arbitrage the difference in separate exchanges. In a worst-case scenario, a broken peg could incite a "run on the bank" scenario, where cryptocurrency holders panic and try to exchange all their currency at once, greatly undermining the market value of the currency. This is essentially what happened in late 2018 to Tether,[3] a cryptocurrency that was supposed to be pegged at a value of 1:1 to the US dollar but saw its market value fall as low as .9:1.

Here, BitMal is relatively immune to such attack due an inherent limitation on holders' ability to exchange BitMal for fiat. The only BitMal holders that can exchange BitMal for fiat are social projects, recognized and vetted by the Organization, whose needs cannot be met within the BitMal ecosystem. In doing so, the exchanged BitMal will be destroyed, so as to maintain the 2:1 pegged ratio.

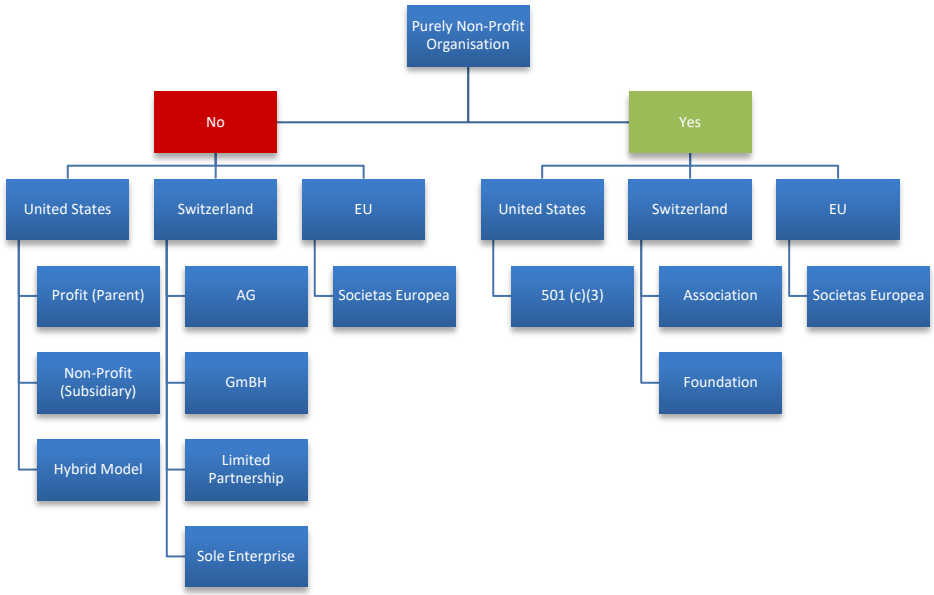
BitMal Business Model: The Organization is currently considering different funding models, which will have implications for the legal structure of the Organization. Importantly, depending on the types of activities in which the Organization eventually engages, it may consider whether to establish as a for-profit company, non-profit organization or a hybrid model – a combination of for-profit and non-profit entity.

- Administration Fee Model: This guarantee the functioning of the platform and takes care of all the administrative expenses.
- BitMal Social Token Model: The Organization provides services for social organizations to build their own social currency and ecosystem or use the BitMal ecosystem. The social organizations can purchase the smart contract Application Programming Interface (API) of the Organization to build a token based on a social standard. (APIs are essentially the building blocks computer programmers use to build software).
- Expanding IT services: The Organization is considering whether to provide Blockchain IT solution services for enterprises that seek to use the BitMal platform. This could be done by creating a fee structure for the organizations that are using the platform or by selling the platform as white label interface (a “blank slate” platform) for other companies to use.
- Marketplace: The Organization anticipates growth to an extent that it can be strategic partners with large companies that may want to use the BitMal model and create a marketplace for sale of good and services within the marketplace.
- Corporate Sponsorship: The Organization is also hoping for corporate sponsorship in its social projects posted on its platform
- Venture Funding: The Organization is also looking for private investors to invest for a return of investment basis. The return is expected to flow from the different services performed by the Organization.

5. STRUCTURE

The Beneficiary has informed us that he has set up pilot projects in different countries however the Organization is yet to set up as a formal legal structure. Setting up as a formal legal structure is important to the functioning of the beneficiary as there are many advantages of formalizing a business some of which include legal protection, investor protection, limitation of liability and enforcement of rights provided under law. The most ideal corporate form for the Organization depends on current goals of the Organization. As of today, the goal of the Organization is the development of its charitable purpose that makes a non-profit structure the most suitable model. However, the Beneficiary has discussed growing its operations and possibly wants to function as a for-profit structure. Keeping in this context, we have devoted this section to discuss the various forms that the Organization can take including a wholly profit or a hybrid structure as commonly seen in the US. We have focused on incorporation laws in the US, EU and Switzerland.

Figure 2: Possible Corporate forms based on a profit/non-profit model



5.1. **The United States**

5.1.1. Reasons to Choose the US as Place of Incorporation

The US has the biggest consumer market in the world with a population of 325 million people and GDP of $20 trillion. It is ranked 8 in the Ease of Doing Business Rank assessed by the World Bank Group in the 2019 report.[4] The factors used in the ranking include regulations for starting a business, dealing with construction permits, employing workers, getting credit, protecting investors, taxes, trading across borders, enforcing contracts, getting an electricity connection and closing a business.

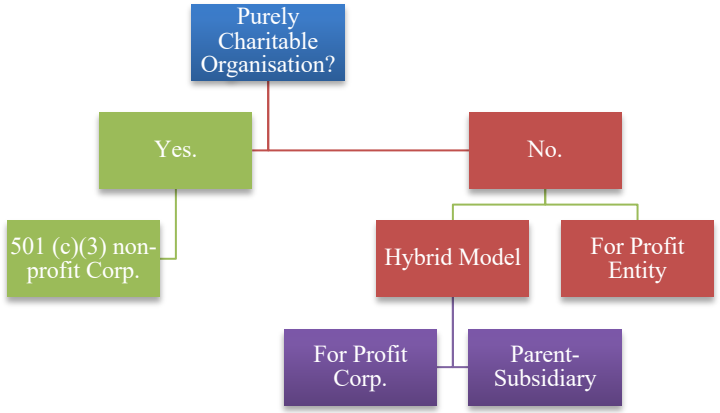
In addition, the investment in US financial services industry offers significant advantages for business set-up. As of 2017, at least 133 of Fortune's Global 500 companies have chosen to locate their headquarters in the United States to take advantage of its creative, competitive, and comprehensive financial services sector.[5] The industry offers the greatest array of financial instruments and products to allow consumers to manage risks, create wealth, and meet financial needs.

The United States also has a deeply-rooted culture of innovation and has registered more international patents than any other country. This is a factor that should be considered by the Organization, because investors are prone to accept the business model of the Organization and people are more willing to contribute voluntary services which are vital to the operation of the Organization.

5.1.2. Corporate Forms

Figure 3 illustrates the most forms of incorporation most likely of interest to Organization in the US, considering its proposed business model. The overarching forms of incorporation can be divided into either non-profit corporations (colloquially referred to as non-profit organizations, or NPOs), and for-profit corporations. Based on these two forms, there are also hybrid models, which combine both non-profit and for-profit entities into a single ownership structure.

Figure 3: Proposed forms of incorporation for the Organization in the US



5.1.2.1. Non-profit Corporation

The most significant features of a non-profit corporation are the tax benefits (including tax exemptions and tax deductions for gifts and other income) and the attraction of funding from socially conscious investors. These features are big concerns for the Organization because it is in a nascent stage of development and will likely need to attract funding to establish itself.

Table 1: Description of Non-profit Corporations

What is it?	A non-profit corporation conducts businesses for the benefit of the general public without shareholders and without a profit motive.[6]
Characteristics	⇒ There cannot be profitable motives in its operations; ⇒ It is created according to state law; requirement includes filing a statement of corporate purpose with the Secretary of State, articles of incorporation, holding regular meetings, and other obligations to achieve and sustain corporate status; ⇒ No shareholders, but may or may not have members; members cannot have any franchise or ownership interest; ⇒ Funding comes from individual donors as well as grants, loans, and programs offered by federal, state and local governments;[7] ⇒ The funds acquired by non profit corporations must stay within the corporate accounts to pay for reasonable salaries, expenses, and the activities of the corporation; they cannot be inured to personal benefits of any individual.

Benefit	⇒ Possibly qualified for tax exemption/deduction (discussed in the following row); ⇒ Able to attract funds from socially conscious investors; ⇒ Puts the non-profit's mission and structure above the personal interests of individuals associated with it; ⇒ The founders, directors, members, and employees are not personally liable for the non-profit's debts.
Tax exemptions	⇒ Non-profit corporations are exempt from federal taxation under § 501(c)(3) of the IRC if they are organized and operated exclusively for charitable, religious, educational, literary, scientific, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals exempt purposes.[8] Organizations should file Form 1023 to IRS to apply for recognition of exemption from federal income tax under § 501(c)(3). ⇒ Other tax benefits: ⇒ Tax deductions of donations and gifts made to the qualified non-profit, tax-exempt corporations.[9]
Red flags under tax exemptions	⇒ The Organization is subject to tax on UBIT; that is income from a trade or business, regularly carried on, that is not substantially related to the charitable, educational, or other purpose that is the basis of the organization's exemption;[10] ⇒ The Organization must not be organized or operated for the benefit of private interests, and no part of a § 501(c)(3) organization's net earnings may inure to the benefit of any private shareholder or individual; if the organization engages in an excess benefit transaction with a person having substantial influence over the organization, an excise tax[11] may be imposed on the person and any organization managers agreeing to the transaction;[12] ⇒ The Organization is restricted in political and legislative (lobbying) activities.[13]
Challenges	⇒ Limited funding because it cannot solicit venture capitals like for-profit companies; ⇒ Financial statements are subject to public scrutiny; ⇒ Restriction in engaging in political and legislative activities; ⇒ Compliance with state laws requires close inspection.

5.1.2.2. For-Profit Entity

Although non-profit corporations can receive tax exemptions and fit into the Organization's current aims, they also impose limitations and restrictions in order to receive such tax exemption status (for example, the organization would be limited in its ability to engage in profit-making activities). In addition, the funding of a non-profit corporation is limited, and it cannot collect equity investment. On the other hand, for-profit entities are able to collect equity investment and generate profits, they are not eligible for the same types of tax exemptions. The most obvious advantage to establishing as a

for-profit entity is the wider variety of access to methods of raising starting capital and easier path towards expansion (such as setting up a subsidiary or a hybrid model in the future). If the Organization is going to expand their services in the future, the for-profit entity should be on the list of their options.

Figure 4: Proposed Forms of Incorporation as a For-Profit Entity Under US Law

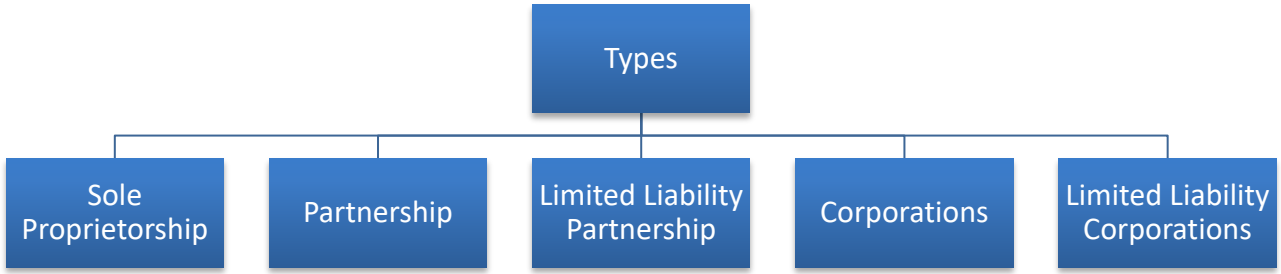


Table 2: Description of For-profit Entities

What is it?	A for-profit entity is a legal entity owned by its shareholders or partners. At face value the company is looking to make profit. There are different considerations to see what type of structure should be adopted while starting a business. Most of the considerations listed below are based on Delaware state law and IRS classification of the structures. However, obligations will vary depending on state law.		
Jurisdiction	Companies incorporate in a particular state depending on two factors, based on their location in relation to target markets and favorable laws. However, most companies, including start-ups, choose to incorporate in the State of Delaware, as Delaware corporate law has developed in the most favorable manner towards corporate organizations. The step-by-step procedure for setting up a business in Delaware was released by the Delaware Division of Revenue and is provided here.		
	Sole Proprietorship: an incorporated business owned and run by one individual.	***General Partnership***: a business association comprised by two or more persons. They are co-owners of a business for profit, whether or	***Limited Partnership***: an association one formed by one or more persons which limits the liabilities of each

<table>
<tr><td rowspan="4">General Types of Corporations</td><td>The owner is the operator and bears all liabilities of the business.[14]</td><td>not the persons intend to form a partnership. Each partner can be held fully liable for the obligations of the entire partnership.</td><td>partner. [15] The general partner is responsible for managing the company's day-to-day activities. Limited partners do not participate in making managerial decisions for the business.</td></tr>
<tr><td>Corporation: an association incorporated or organized under state corporation by any person, partnership, association or corporation. [16] A corporation has its own legal personhood, and is subject to taxation itself, in addition to taxation on employees' income.</td><td>Limited Liability Partnership: a general partnership in which the liability of the partners for the obligations of the partnership has been limited. All partners of the company are allowed to make management decisions for the company.</td><td>Limited Liability Company (LLC): a corporation incorporated under state law with limits the liability of its owners. [17] Unlike a corporation, LLC itself does not pay taxes.</td></tr>
<tr><td colspan="2">Corporation:
Advantages:
• Corporate Shield: shareholders and officers of the company are protected from personal liability.
• Public Offer: The corporate personhood of the corporation makes it easier to go public.
Disadvantages
• Subject to double taxation: corporate tax and income tax;
• Requires a definite management structure in regard to the corporate board and its members</td><td colspan="2">LLC:
Advantages
• Corporate Shield: Same as Corporation
• Tax flexibility: can choose a structure based on internal cash flow. Can adopt to be taxed as an S corporation (see below).
• Can have a flexible structure for management.
Disadvantages
• Public offer: cannot go public with an LLC.</td></tr>
<tr><td>Taxation</td><td colspan="3">An entity is taxed based on its corporate structure. Usually, where an entity is registered as a corporation or an LLC, it is subject to three kinds of taxes – income tax, social security tax and Medicare tax. The default structure to be taxed is as a C corporation and, if the Company wants, it can elect to be taxed as an S Corporation, which has certain tax benefits. The general structure and application of taxes for each of the structures set out above has been detailed in the table below released by the Delaware Division of Revenue.</td></tr>
<tr><td></td><td colspan="2">C Corporation:</td><td>S Corporation:</td></tr>
</table>

	• A C corporation is taxed separately from its owners (resulting in double taxation); • Taxes included: - Income tax: Form 1120 - Estimated tax: Form 1120-W - Employment taxes: include social security and Medicare taxes and income tax withholding and federal unemployment tax. - Excise taxes: taxes paid when purchases are made on specific goods, such as gasoline.	• Shareholders of S corporations can file personal tax returns, thus avoiding double taxation on the corporate income.[18] • Requirement of an S corporation: - Be a domestic corporation - Have only allowable shareholders ○ May be individuals, certain trusts, and estates; ○ May not be partnerships, corporations or non-resident alien shareholders - Have no more than 100 shareholders - Have only one class of stock - Cannot be an ineligible corporation (i.e. certain financial institutions, insurance companies, and domestic international sales corporations),[19] - Submit Form 2553 signed by all shareholders.

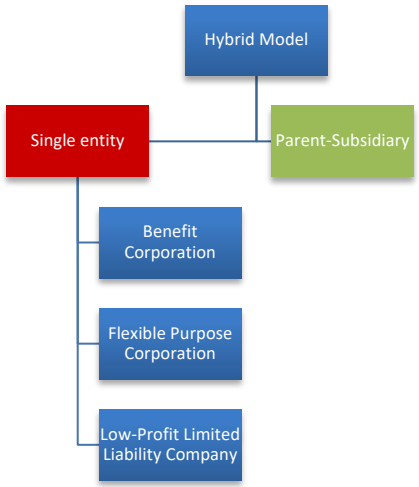
5.1.2.3. Hybrid model

For-profit companies have private owners, are able to raise private capital, and distribute profits generated to investors. In addition, they are free to engage in a range of activities beyond the exercise of board discretion. But they are also subject to income taxes and are not entitled to receive tax-deductible contributions or grants from socially conscious investors or the government. Tax-exempt, non-profit corporations generally do not have "owners," may not distribute profits, are inhibited from raising private capital, and are subject to significant restrictions on their activities, including as to executive compensation, political campaign activities, and lobbying. They are also subject to enhanced oversight by governmental authorities, including the IRS and state attorneys general, and to public disclosure of their activities, compensation, and finances. Both forms have advantages and disadvantages.

Combining the advantages of both forms would allow an organization to pursue charitable purposes at the same time as generate profits. Here, a "hybrid model" allows such a combination, providing more flexibility to organizations that want to do social good and generate profits at the same time. Common forms include a benefit corporation, low-profit limited-liability corporation, flexible purpose corporation, and parent-subsidiary combination of

both a for-profit and a non-profit entity. Some forms are able to combine most features of the two forms, and some combine only a limited amount of the features of both forms.

Figure 5: Possible Forms of a Hybrid Organization



5.1.2.3.1. *Benefit Corporation*

A benefit corporation is a form of corporation that combines an NPO's ability to raise funding from socially conscious investors with the for-profit entity's ability to raise various types of funding. They do this by incorporating the goal of pursuing "general public benefit" into their business structure, allowing them to attract the attention of socially conscious investors.

Table 4: Description of Benefit Corporations

What is it?	A form of corporation that must deliver a "general public benefit" (a material positive impact) on society or the environment, taken as a whole, assessed against a third-party standard.
Characteristics	• The purpose of the corporation is to provide a general public benefit;

	• Must be founded as a C corporation and subject to relevant statutes related to the formation and governance of a for-profit corporation; • An independent third-party must annually review the general public benefit, as well as the efforts made to achieve the general public benefit or the circumstances that hindered that achievement; if the benefit corporation has a website, it must post the annual report stated above on its site; • Directors have a duty to consider a broader spectrum of interests beyond shareholder profits; • Where the corporation does not fulfill its public benefit obligations, it may be subject to a "benefit enforcement proceeding."
Benefits	• Legally protect the public good purpose of the corporation; • Attract investors, customers, employees because of the public benefit purposes pursued by the corporation; • Build the company as a community.
Challenges	• Does not incur any kind of significant business advantage (such as favorable tax treatment); • Expanded annual reporting requirements to the shareholders; • Higher expectations of transparency; • Uncertainty on how courts will interpret their mandate to consider potential benefits to society; • Uncertainty on the impact on raising capital and how angel investors and venture capitalists will react.

5.1.2.3.2. *Flexible Purpose Corporation*

The purpose of "general public benefit" of a benefit corporation is a high-threshold standard. If the Organization finds this purpose too hard to fulfill, and they still want to attract socially conscious investors, they can consider the form of a flexible purpose corporation. The flexible purpose corporation is a corporate form that requires the organization to list the flexible purposes of the corporation in its articles of incorporation. The threshold of flexible purposes is lower than the "general public benefit."

A flexible purpose corporation requires boards and management to agree on one or more social and environmental purposes with shareholders, while providing additional protection against liability for directors and management. A flexible purpose corporation is formed and files a return like a corporation; the difference is the articles of incorporation. A flexible purpose corporation is required to list its flexible purposes in the articles of incorporation, in addition to any other lawful purpose, that the corporation shall engage in, which may include, but are not limited to, charitable and public purpose activities that could be carried out by a nonprofit public benefit corporation.[20] Flexible purpose corporations have only been approved in California and Washington.

The benefit of a flexible purpose corporation is that it only needs to identify one or more special purposes it intends to pursue. It does not need to pursue a broadly stated general benefit like a benefit corporation does. However, the flexible purpose corporation has to provide shareholders with annual reports that include certified financial statements of the corporation, together with a detailed management discussion and analysis regarding the corporation's stated purpose.

5.1.2.3.3. *Low-Profit Limited Liability Company (L3C)*

L3C is a hybrid business form, which combines a socially beneficial mission with a for-profit business entity. It is a variation of limited liability companies where partners' liability to the company is limited. It takes advantage of both non-profit and for-profit sources of capital, both investments from socially conscious investors and other private sources of funding. It is also an option the Organization should keep in mind because of its simple filing process, almost the same with LLCs, compared to corporations.

To qualify as an L3C, the company must operate to significantly further a charitable goal as required by IRS § 53.4944-3(a) to attract philanthropic capital and program-related investments (PRIs) from foundations and private investors for socially beneficial purposes. PRIs are those in which: (1) the primary purpose is to accomplish one or more of the foundation's exempt purposes, (2) production of income or appreciation of property is not a significant purpose, and (3) influencing legislation or taking part in political campaigns on behalf of candidates is not a purpose.[21] PRI allows private foundations to meet the tax obligation that requires them to give at least five percent of their assets every year to charitable causes. Individuals and businesses are entitled to own, control and profit from the organization and are shielded debts and obligations from the organization. However, only 10 states have approved L3Cs: Illinois, Michigan, North Dakota, Kansas, Louisiana, Maine, Rhode Island, Utah, Vermont, and Wyoming.

5.1.2.3.4. *Parent-subsidiary Model*

None of the hybrid models stated above are tax-exempted. However, there is one solution to combine the tax-exempt status of non-profit corporations and the attraction of capital investment enjoyed by for-profit entities: the creation of a parent-subsidiary form for a for-profit and a non-profit entity. This can be accomplished in two ways. The board of a non-profit corporation may decide that the corporation's mission and goals would be served by engaging in a for-profit model, however, if this for-profit part is likely to be taxable, the board may consider establishing a for-profit subsidiary, or entering

into a joint-venture arrangement with a for-profit entity. By way of example, this is what led the non-profit Mozilla Foundation (best known for its Firefox browser) to create its for-profit subsidiary, Mozilla Corporation. On the other hand, a for-profit may desire to set up a private foundation in the same name to carry out grant making in support of charitable causes that are of interest to the for-profit as well. Each *entity* is taxed as if it is independent of the other. Non-profits are still exempt from federal income tax, as well as taxes in states and localities in which their tax-exempt status is approved. For-profits are taxed according to their corporate structures.

There are many ways a parent-subsidiary hybrid organization can fund for itself. One approach is to adopt a differentiated funding strategy that accesses profit-seeking investors for commercial activities and non-profit fundraising and public subsidies for social activities. For example, this is the approach used by Sanergy Inc., a waste conversion startup that installs toilets in some of the poorest slums in the world. Under this hybrid structure, the for-profit develops and scales up capital-intensive sanitation technology and infrastructure, and the non-profit supports sanitation infrastructure and services in low-income communities.[22] Below we have highlighted a case study of Mozilla Foundation which set up a hybrid structure to conduct its profit and non-profit business. Though the hybrid structure exists in principle, it can be difficult to establish give activities. n the divergent aims of for-profit and non-profit activities. Usually, for-profit companies aiming to receive investments from socially conscious investors will choose one of the previously stated models instead of establishing a non-profit subsidiary.

i. <u>Case Study: Mozilla</u>

In 2005, the Mozilla Foundation announced the creation of Mozilla Corporation, described as "a taxable subsidiary that serves the non-profit, public benefit goals of its parent, the Mozilla Foundation, and that will be responsible for product development, marketing and distribution of Mozilla products."[23] Mozilla Corporation is a wholly owned subsidiary of the Mozilla Foundation, a taxable entity. The public benefit purpose of Mozilla Foundation is to "promote choice and innovation on the Internet."[24]

Mozilla Foundation supports the existing Mozilla community and oversees Mozilla's governance structure. It also actively seeks out new ways for people around the world to recognize and steward the Internet as a critical public resource. The Mozilla Corporation works with the community to develop software that advances Mozilla's principles. This includes the Firefox browser, which is well recognized as a market leader in security, privacy and language localization. These features make the Internet safer and more accessible.

The Organization could use the business form of Mozilla as a reference for its own establishment. Mozilla Foundation is a non-profit corporation, which qualifies for the tax-exempt status, however, it has restrictions on the activities it could engage in and the sources of funding. The Mozilla Foundation brings in just over $222,000 from charitable donations. In addition, it cannot inure net earnings to the benefit of any private shareholder or individual. With the creation of a for-profit entity, the Mozilla Corporation, these problems were solved. The Mozilla Corporation collected about $104 million a year from revenue-sharing agreements with its partners, including companies like Google and Yahoo.[25]

5.2. **European Union**

5.2.1. Introduction

The EU consists of 27 member states. Because of the single market created by the EU, capital can move more freely across borders, which makes it a good place to incorporate. In addition, 18 countries within the Eurozone share the same currency, and most of the countries rank highly in OECD rankings, both of which speak towards the ease of doing business in the EU.[26] As we turn towards the EU, because of the aims of the Organization, we begin with a look at non-profit organizations. We will also keep for-profit entities as options if the Organization expands its services in the future.

5.2.2. Corporate Forms

5.2.2.1. Non-profit corporation

The EU takes a lasses-faire approach to the regulation of the NPOs in its member states, which means, there is not a standardized document regarding the regulation of non-profit organizations within EU.[27] The regulations of non-profit corporation are based on the regulations of each member state. Every member state has a different process of establishment, so it is preferable that the Organization establish a non-profit corporation in just one member state instead of a cross-border organization. Here, we look Germany as an example of types of EU member state corporations.

There are mainly three types of non-profit organization forms in Germany: Associations, Foundations and GmbH. They are generally covered by federal law. Sometimes foundations can be subject to state law. An overarching general description of the entities is described below:

- **Association:** An Association is a membership organization whose members have come together to permanently pursue a common purpose.[28] It can be formally established by notary deed. To register, an association must have at least seven members.[29] Once registered, an association may have fewer than seven members, but not fewer than three.
- **Foundation:** A Foundation is a legal entity whose earnings on assets are used to pursue a specific purpose set forth by the founder. A foundation has legal personality, which it receives upon recognition by the competent authority in the state in which the foundation seeks to be headquartered.[30] The authority must recognize the foundation if it meets the legal requirements. Both natural and legal persons may be the founder of a foundation.
- **GmbH:** A GmbH is a commercial company in corporate form with legal personality. It is registered and regulated under corporation law. The concrete rules will be explained in the for-profit part of incorporation in Switzerland, because they are similar.

Like in the US, NPOs in Germany are able to receive preferential tax treatment. Tax privileges are granted to organizations that pursues either public benefit or benevolent purposes. According to the first subsection of Fiscal Code §52, an organization pursues public benefit purposes if "its activities aim to support the general public materially, intellectually, or morally."[31] The beneficiaries of the public benefit pursued by the Organization must not be limited to a closed circle of people, such as members of one family or employees of one corporation. An organization pursues "benevolent purposes" if it aims to support and help people in need, either because of their economic situation or because of their physical, psychological, or mental condition.[32] The reasons to suggest establishing a non-profit organization in EU are the same with those in US, which are the preferential tax treatment the Organization could get and the reputation of pursuing social good in order to attract more funds from socially conscious investors.

5.2.2.2. For-profit entity

Like non-profit entities, types of for-profit corporations also vary on a member state basis.[33] An example of a generally incorporated for-profit entity is a joint-stock company which is a business entity owned by shareholders. This is similar to corporations or limited liability corporations in the US. Each shareholder owns a portion of the company proportionate to his or her ownership of the company's shares. Shareholders may transfer their shares to others without having any impact on the continued existence of the company.

There is no substantive EU-wide corporate law, but there is a host of minimum standards are applicable to companies throughout the EU. All member states have to make sure that their corporate laws are in compliance with the Directives and regulations set by the EU.[34] However, there are exceptions.

- **Societas Europaea**: This is a public corporation registered in accordance with corporate law in the EU. Founding a SE requires registration in the company's home state. This might appear to preclude any difference in incorporation costs between the SE and the national companies of its home state.[35] However, in many cases setting up an SE is more difficult, and more costly, because company registers and advisers are less familiar with this type of corporation.
- **State Level Corporation**: A common type of business form on a member state level is a joint-stock company, which is a business entity owned by shareholders. This is similar to corporations or limited liability corporations in the US. Each shareholder owns a portion of the company proportionate to his or her ownership of the company's shares.

5.3. **Switzerland**

5.3.1. Why choose Switzerland as the place of incorporation?

In the international competitiveness index, Switzerland has been ranking the first in 2017 in the World Economic Forum for nine consecutive year.[36] Switzerland scored highest for innovativeness, a strong education system, and a flexible labor market.

- **Relationship with Europe and the rest of the world**: Switzerland shares a border with three huge European markets: Germany, France, and Italy. Their languages of these three countries are also national languages of Switzerland, and are spoken by many Swiss in addition to English.[37] Except these three countries, Switzerland has a close economic relationship with the Europe. It is fully integrated in the European market although without EU membership. Switzerland has more than 30 free trade agreements with 40 partners compliment the EFTA Convention and the Free Trade Agreement with the EU, enabling the free movement of goods and services.[38] In addition to the connection with EU, Switzerland has a good relationship with the rest of the world as well. It has a network of 28 free-trade agreements with 38 partners outside the EU and it is a member of the WTO.[39] The wide connections Switzerland has with the rest of the world are beneficial to the Organization since it is easier for them to introduce the business to others and collect funding.

- **Reliable governance**: Switzerland has a very stable federal structure, which creates strong links between government, business, and civil society. The Swiss government has committed to be neutral, and thus is not a member of EU or NATA.[40] There will rarely be disruptions in the business because of politics.
- **Sound financial and capital market**: The Swiss franc is a very stable currency. Swiss finance companies like UBS, Credit Suisse, Swiss Re, and Zurich Financial Services enjoy an excellent reputation around the world in the area of private banking, asset management, and insurance.[41] The Organization may take this factor into account this because currency stability and financial convenience is important.
- **Attractive taxes**: Switzerland's taxes are determined and imposed at three levels: federal, cantonal, and municipal.[42] At federal level businesses pay corporate income tax of just 8.5% and if a company creates jobs in Switzerland, it may even be granted a full or partial tax exemption.[43] Double taxation for corporate income tax from both Switzerland and another country only occurs in rare cases, so there is no such worry for the Organization.[44] Since the Organization is only in a start-up stage, the lower tax is a big attraction.

5.3.2. Corporate Forms

5.3.2.1. Non-profit Organizations

Like in Germany, there are two main kinds of legal forms used for charitable purposes: foundation and association. A detailed description of both types of non-profits is provided in the table below.

Table 5: Description of Non-profit Organizations in Switzerland

	Association	*Foundation*
What is it?	A corporately organized a group of persons that pursues a basically ideal (non-economic) purpose and has a legal personality.[45]	An independent pool of assets that has a legal personality and is dedicated to a special purpose.
Characteristics	• Not subject to state approval (concession) or state supervision, but subject to the provisions pertaining to commercial register;	• The founder is generally free to determine the purpose of the foundation (so-called freedom of foundation); general legal restrictions are to be observed when determining the

	• The purpose of the association may be political, religious, scientific, cultural, charitable, social or of other non-economic nature; does not primarily strive for monetary and financial benefits for its members • At least two natural and/or legal persons are required to form an association	purpose; in particular, the purpose may not be in violation of objectively mandatory laws or fundamental moral views; • The foundation may have a public benefit or a private purpose but cannot be of a self-serving nature (no "foundation for the founder," no "self-purpose foundation"). Political purposes are allowed within the general restrictions; • The law does not regulate the nature of dedicated assets; • The relevant public opinion determines if an activity is in the general public interest; • Public benefit may be promoted by activities in charitable, humanitarian, health promoting, ecological, educational, scientific and cultural areas;[46]
Tax	• Non-profit organizations that achieve an annual revenue of up to CHF 150,000 are exempted from the subjective obligation to pay taxes;[47] • The cantons have the exclusive competence to regulate the imposing of inheritance and gift taxes. Donations to non-profit organizations are often exempt from those taxes.	• If a foundation that exclusively pursues non-profit purposes and is therefore exempt from taxes makes a profit from the sale of its real property, any profit from gains on this property will be subject to taxes.
Benefits	• Possible tax exemption status; • Attract socially conscious investors.	• Possible tax exemption status; • A lower requirement of members for establishment; • Attract socially conscious investors.

5.3.2.2. For-profit Entities

Although non-profit entities are subject to tax exemptions in Switzerland, there are also many advantages of establishing a for-profit entity in Switzerland for the Organization. Economic freedom allows anyone to operate a business or to form a company in Switzerland. There is no requirement of approval by authorities, membership in chambers of commerce or professional associations, or annual reporting of operating figures to establish a business. However, foreign nationals must have both work and residence permits in order to conduct a business personally on a permanent basis.

There are two main types of corporations in Switzerland: partnership-type unincorporated companies (sole proprietorship, limited partnership, or general partnerships) and capital-based incorporated companies (stock corporation or AG, limited liability company or GmbH).

The most common types of companies established by foreign entrepreneurs in Switzerland are AG and GmbH.

5.3.2.3. Stock Corporation (AG)

The stock corporation is the most important and most common type of corporate structure in Switzerland. This type of company shares is offered to the general public and traded on a public stock exchange. Shareholders' liability is limited to their investment. The shareholders are not responsible for the company's debts, and their assets are protected in case the company becomes insolvent. There are also other business forms such as sole enterprises and limited partnerships.

The AG's supreme body is its board of directors. It consists of one or more members, who are not required to be shareholders. There are no requirements regarding the nationality or legal residence of the directors, however, at least one member authorized to represent the company must reside in Switzerland. The benefit of incorporation as a stock corporation in Switzerland is the same as that in the US, which is that it generally attracts more private funding.

5.3.2.4. Limited Liability Company (GmbH)

A GmbH can be formed by one or more individuals or commercial companies, and its stated capital (nominal capital) is specified in advance. Each shareholder has an interest in the nominal capital in the form of one or more nominal shares having a nominal value of at least 100 Swiss francs. The nominal capital must total at least 20,000 Swiss francs and must be deposited in full. A nominal share can be easily transferred in writing. The owner of the invested capital must, however, be entered in the commercial register. All shareholders are entitled to joint management of the company and at least one of them must have their place of residence in Switzerland.

The structural costs of a GmbH can be kept comparatively low because it does not require a board of directors. A GmbH has the advantage of less share capital compared to an AG, however, the disadvantage of the lack of anonymity. All shareholders must be disclosed to the public. The Organization might consider this form because it is currently in its start-up stage and do not have so many directors on board for now. Less share capital is also attractive.

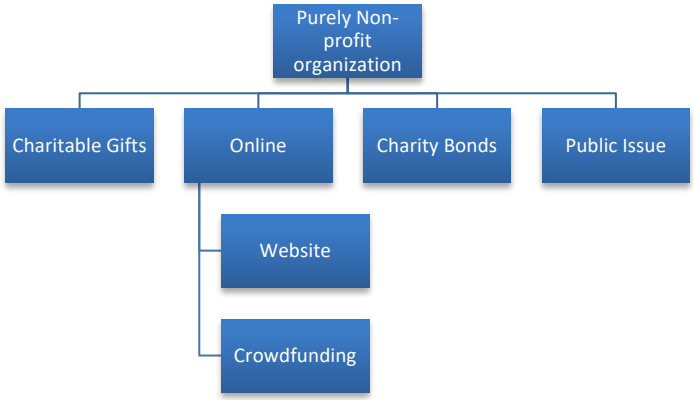
6. **FUNDING**

As stated in the executive summary, the Organization should acquaint itself with securities regulations to understand when and how the Organization's functions may trigger securities regulations. First, it is important to recognize the kinds of funding available to the Organization. Funding options vary based on the kind of corporate form the Organization chooses, the functions of BitMal (the token), and the scale of the business. We have identified three possible scenarios for the Organization in relation to the degree of separation between the function of the Organization and the functions of token. Under scenario 1, the Organization is registered as an NPO and derives all of its funds from outside sources (none from issuing BitMal tokens, other than administrative fees). Under scenario 2, the Organization is a for-profit company, but still does not derive funding from the issue of BitMal tokens. Under scenario 3, the Organization issues BitMal tokens to generate funds. Understanding these scenarios is useful no only to recognize the various kinds of funding available to the Organization depending on its corporate form, but also, to understand when securities laws can be triggered and what are the implications of the same.

6.1. **Scenario 1: Clear separation between the Organization (non-profit) and BitMal the token**

The Organization aims to facilitate social good by operating an online platform that creates social currency to be used in funding various non-profit projects. Here, in terms of funding, if the Organization acted solely as a non-profit, it would have access to various funding sources typically accessible to such organizations. In such a situation, the functions of the BitMal tokens would not interfere with any funding options, and thus, it is not necessary to explore any regulatory implications of the token. In this sub-section of the Report, we have set out funding sources for non-profits in the US, EU, and Switzerland. The below flowchart sets out the various possible funding available to non-profit organizations:

Figure 6: Possible Sources of Funding for a non-profit



6.1.1. Gifts

Table 6: Description of Gifts in Multiple Jurisdictions

What is it?	This involves a donor and a charity whereby the donor transfers cash or property mostly in exchange for a tax deduction. Funding in the form of gifts can be procured by identifying major donors have the desire and means to provide such gifts.		
Regulatory Implications	US • Within US borders, in addition to registration with the IRS, the charitable organization may wish to contact the appropriate state agency to learn more about the requirements that may apply within the state for solicitation. Many states require the charitable contribution to register and report their gifts, among other potential	EU • There is a broad range of national tax incentive schemes to encourage philanthropy. Details of the same can be found here in an official Tax Survey Report published by the European Fundraising Association. These incentives	Switzerland • At the Federal level, donations granted by individual or corporate donors to a recognized charitable organization domiciled in Switzerland are fully tax deductible to a maximum amount of 20% of the annual net income of the individual donor. • The portion in excess of the donation is not tax deductible. • At the Cantonal level, the same principle applies. • No income tax relief is available for Swiss domiciled donors (whether individual or corporate donors) on

	requirements. Registration is generally uncomplicated.	encourage donors to donate to non-profit organizations.	contributions made in favor of foreign charitable organizations unless an International Tax Agreement has been concluded (e.g. Agreement between France and certain Swiss cantons regarding the tax treatment of donations with selflessness purposes).

6.1.2. Online

i. Direct Fundraising through a platform website

The Organization can also set up a fundraising platform on its official website. This invites a number of regulations in relation to communication laws, data privacy, etc. Apart from the tax deductions provided **Error! Reference source not found.**, the following regulations will apply:

Table 7: Description of Direct Online Fundraising in Multiple Jurisdictions

US	• *Communications Laws Restricting Solicitations*: ⇒ Email: CAN-SPAM Act, sets out the national standards for sending commercial email and requires Federal Trade Commission to enforce its provisions; ⇒ Telephone/Texts: TCPA; State laws will apply; • *Privacy and Date Collection*: the US has sector-specific laws but no single comprehensive law protecting private data. Sector-specific laws include the following: ⇒ Adhere to promises made to donors regarding privacy; ⇒ Implement reasonable and appropriate measures to protect personal data against theft; ⇒ Disclose whether the organization will sell or share data; • *State Regulation*: ⇒ Mostly states require charities to register; ⇒ Disclosure requirements such as disclosing when soliciting, notification of fundraising relationships etc.; • *Internet Solicitations*: NASCO drafted voluntary advisory guidelines for registration depending on the domicile and activities of the NPO. Guidelines can be found here: ⇒ When domiciled in the state, then the NPO should register; ⇒ When not domiciled, but has “substantial” or “repeated on-going” contributions in the state or if the website sends targeted emails, it must also register; ⇒ The Organization can ensure compliance by registering in all states or filing for exemptions.

EU	Fundraising regulation is a timely subject in Europe; countries keep revisiting their framework on the subject. The legislative changes show diverse trends: many aim to reduce administrative burdens and regulatory control on fundraising activities while others have increased state oversight. In the UK, the Charities (Protections and Social Investment) Act, 2016 has set out reporting requirements, standards for fundraising, set out laws regulating privacy intrusions, the laws governing professional fund raisers and solicitation laws.

6.1.3. Crowd Funding

Crowd funding is a different mechanism from raising funds directly through the NPO's website. Crowd funding is when a "crowd" sponsors a project on a crowd-funding platform. Under a purely non-profit model, crowd funding would be treated as one large donation (below, "crowd donating"), so long as there are no direct rewards to the funders.

Figure 7: Possible Sources of Funding

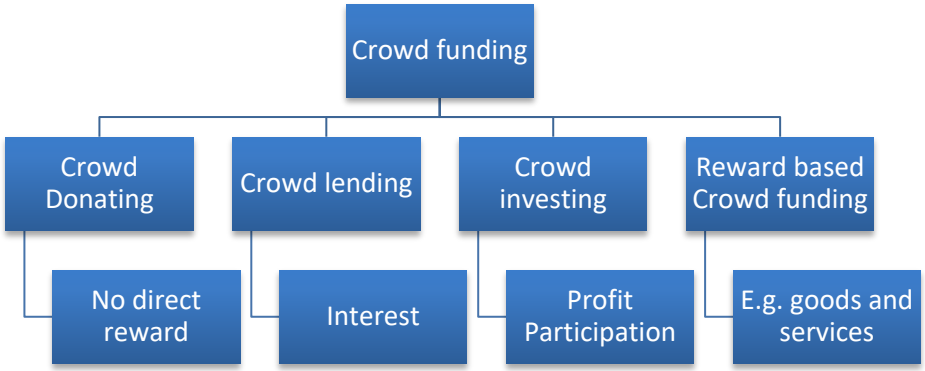


Table 8: Description of Crowd Funding in Multiple Jurisdictions

US	• Crowd Investing: In the US, purely charitable organizations are exempt from crowd-funding regulations and SEC regulations. Organizations which are not purely charitable are bound by the obligations under the said JOBS Act (addressed under 6.2.4). • Reward-based crowd funding: The difference between reward-based crowd funding and equity crowd funding is that for the investor's monetary contribution, they are provided rewards whose monetary value is not comparable to the investment amount. E.g. in 2012, Oculus raised a substantial amount on Kickstarter and for their contributions, Oculus backers received T-

	shirts and other rewards. So long as the reward is up front, and there is no expectation that its value would change over time, this type of funding is outside the bounds of SEC regulations. • Crowd lending: This can invite banking regulations. • Crowding donating: Tax exemption and solicitation laws may apply.
EU	Fundraising laws differ by country
Switzerland	Tax exemptions will apply here (both federal tax; and laws of cantons). This will apply to both individual donors and entities. Marketing and brokerage fees may also apply.

6.1.4. Charity Bonds

Charities bonds offer charities and enterprise a different way of engaging with social investors. These types of bonds are tradable loans which offer the investors a fixed rate of interest. There are advantages in issuing charitable bonds, as they usually are not secured. Charitable bonds are common way of fund raising in EU member countries like the United Kingdom, however not as prevalent in the US. Detailed information on charity bonds can be found here. This link provides a review of charity bonds raise through Allia Impact Finance's Retail Charity Bond platform, which is a platform that facilitates the issuance of charitable bonds to investors. The documents do not cover legal issues pertaining to charitable bonds, but aim to provide a general review of the benefits and risks of charitable bonds to both the charity and the investor.

6.1.5. Publicly Issued Securities

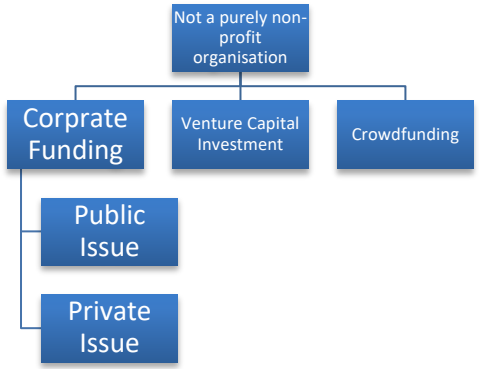
While NPOs cannot issue stock like that issued by publicly traded companies, they sometimes are allowed to issue instruments which may look like securities. Here, in the US, Section 3 (a)(4) of the 1933 Act provides exemption for NPOs.[48] An organization that has any substantial non-charitable purpose or that is in reality organized or operate for the benefit of private purposes will not qualify for the exemption.[49] The SEC will not issue a no action letter in the absence of a ruling by the IRS that an issuer qualifies as a tax exempt NPO. Additionally, while Section 3 (a)(4) provides an exemption from registration of securities, it does not provide an exemption from anti-fraud provisions of the 1933 Act.

⇒ Since it is at the development stage, the Organization may consider growing in a phase-by-phase manner. Initially, the Organization could establish itself as an NPO and apply to the SEC for a no action letter (a letter stating that the SEC will take no regulatory action against the Organization). No action letters are issued by the staff of the SEC and are not binding on the SEC, although they do inform the recipient whether the SEC is likely to bring legal action or will take no action if a given transaction occurs. So long as the Organization does not make any changes to its form or functions, the Organization could rest easy with regards to SEC regulations, including any action with regard to the structure of token distribution, the business model, and all other functions of the Organization until that date. Then, in the event the Organization wants to grow it business or expand the functions of its platform, it can keep applying for no action letters to ensure that any future changes would not incur securities obligations.

6.2. **Scenario 2: Clear separation between the Organization (for profit) and BitMal the token**

The Organization may decide based on the assessment of risks and compliance requirements under different jurisdictions that it wants to expand its activities beyond its charitable functions. This might call for the Organization to raise funds from different sources, leading them to transition from a non-profit model to a for profit model. As a for-profit Organization, it can raise funds through a plethora of sources. Here, this Report focuses only on those that invite high regulatory interest and were expressly mentioned by the Beneficiary.

Figure 8: Possible Forms of Funding for a For-profit



6.2.1. Publicly Issued Securities

Table 9: Description of Publicly Issued Securities in Multiple Jurisdictions

US	The SEC is the regulatory authority monitoring the issuance of securities to the public in the US. If the Organization issues a Security to the public, they will be monitored by the SEC and be subject to SEC securities regulations. Two functions of the Organization that can invite SEC regulations – (1) one obvious way is the issue of Security to the public; (2) second, in the event the BitMal tokens as traditional securities or if they qualify as securities under different jurisdictions. The implication of this is that the Organization will have to comply with the extensive registration requirements set out by the SEC in Form S-1. This Report does not discuss these regulations in detail, except to the extent of discussing it in context of BitMal token being issued as securities (discussed in section 6.3).
EU	The EU has established a comprehensive set out rules on investment services and activities with the aim to promote financial markets that are fair, transparent, efficient and integrated. MiFID is the financial instruments directive (Directive 2004/39/EC) which governs the provisions of investment services in financial instruments by banks and investment firms and operation of traditions stock exchanges and alternate trading venues. In June 2012, the EC adopted new rules revising the MiFID framework. These consist of a directive (MIFID II) and regulation (MiFIR). These have been applicable since January 3, 2018.[50] The different between EU Directive and EU Regulation is that EU Regulation is immediately applicable and enforceable by law in all member states while member states have a process for implementation of an EU Directive and must adapt their legislation to meet the aims of the director by a specific date given in the directive. Details of these regulations are discussed below in the context of BitMal tokens qualifying as securities.

Switzerland	Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act, FMIA), 2016 governs the organization and operation of the financial market infrastructures and the rules of conduct of financial market participants and derivative trading. The features of FinIA and FinSA are discussed below in the context of BitMal tokens.

6.2.2. Private Issue

In the US, private issues are exempt from SEC registration under the 1933 Act.[51] The following are some features of private issues:

- ⇒ The company cannot engage in general solicitation or advertising to market the securities except if all investors are accredited investors[52];
- ⇒ The company sells its securities to an unlimited number of "accredited investors" and up to 35 other purchasers. The non-accredited investors must be sophisticated; and
- ⇒ The company must not provide any information that is fraudulent or misleading.

6.2.3. Venture Capital Investment

This is a very niche area of law. We have listed it out here for the Beneficiary to understand that this is an available source of funding, but we recommend approaching sophisticated resources to understand the implications of venture capital investing.

6.2.4. Crowd funding

Table 10: Description of Crowd Funding in Multiple Jurisdictions

US	Crowd funding is one of the leading ways in which capital is raised for new projects. Under the JOBS Act, companies are allowed to raise up to $1 million by selling stock to investors. Title III of the JOBS Act (constituting crowd funding) amended the exemption clause under Section 4 of the 1933 Act, which exempts crowd funding companies from SEC registration. The Organization can advertise and solicit within the limitations set out in the JOBS Act. However, to qualify for crowd funding regulations, the Organization will have to incorporate as an American corporation. The Organization must consider the following before deciding to sell Securities through crowd funding: ⇒ Crowd funding investment can only be made through an online platform operate by an intermediary (as registered broker or dealer or funding portal, registered with the SEC); ⇒ The amount that can be raised is capped at $1,070,000; ⇒ There are limits on the amounts the individual investors are allowed to invest based on their income; ⇒ There are still disclosure requirements, but these are not extensive are the disclosure requirements set out under the 1933;

	⇒ There are limitations on advertising. The SEC has published a Compliance Guide for Crowdfunding under the JOBS Act.
EU	This varies depending on the country.
Switzerland	Crowd funding is not subject to any specific regulatory requirements under Swiss law, which means that all currently valid laws governing financial markets apply. Because business models relying on crowd funding vary greatly, it is necessary to clarify on a case-by-case basis whether a license is required. Platform operators must verify whether they need a license under the Banking Act whenever project financers' funds are channeled through their accounts. If a crowdfunding platform operator accepts funds on a commercial basis and, rather than forwarding them to the project developer within 60 days, holds them for some time (in order, for instance, to ensure that the amount is available at the end of a lengthy collection period), a license under the Banking Act must be obtained prior to taking up business. However, before transferring the funds to the platform, project financers must be made aware that the platform is not supervised by FINMA and their deposits are not protected. Funds channeled through a platform operator's accounts are generally also subject to money laundering provisions if the operator renders a professional service, because they constitute a payment transaction service that requires a license. If a platform operator is not already required to have a license under the Banking Act, they must either obtain a license from FINMA as a directly supervised financial intermediary or become a member of a self-regulatory organization recognized by FINMA.

6.3. **Scenario 3: Using the BitMal token to fund the Organization**

If the Organization decides to issue BitMal to raise funds that can provide an expectation of profit to investors, this may invite securities regulations depending on the jurisdiction.

6.3.1. United States

Over the past few years the SEC has been cracking down heavily on companies that are active in the cryptocurrency space, especially those issuing securities through an ICO. Many ICO issuers have alleged that their tokens are not Securities that are subject to SEC oversight. However, in a public statement in 2017, SEC Chairman Jay Clayton stated that if a token has the characteristics of a security under US securities regulations, it would be regulated as one. On April 3, 2019, FinHub published a framework for analyzing in what circumstances a digital asset will be categorized as an investment contract that falls under the definition of a Security.

To give the Beneficiary context, the SEC will regulate any type of transaction that resembles an investment contract as defined under the 1933 Act. The SEC has been investigating such transactions with tokens that may not look like traditional securities but can be categorized as a Security based on the *Howey Test*,[53] taken from the seminal 1946 Supreme Court case of the same name. The SEC applied the long-standing principles set out in *Howey Test to* the *DAO case*.[54] The DAO case involved the Decentralised Autonomous Organization (the DAO), which was a decentralized venture capital fund whose coding was developed by the Slock.it team. The DAO had a creation period during which anyone was allowed to send Ether to a unique wallet and get DAO token in return. During this period, they managed to gather 12.7 million Ether. Due to loopholes in its coding, 3.6 million ETH was stolen, equivalent to $70 million. The SEC ruled that DAO tokens were Securities and used the Howey Test to prove this. Below we have set out the four prongs of the Howey Test based on the framework published by the SEC as applicable to the Organization.

6.3.1.1. Application of the Howey Test to Digital Assets

⇒ *Investment of Money*: If the BitMal token is issued in exchange for something of value, whether for fiat or digital asset, then this prong is typically satisfied.

⇒ *In a common enterprise*: This prong will be satisfied as the Organization has represented itself as a separate entity.

⇒ *Expectation of Profits*: Profits can be, among other things, capital appreciation resulting from the development of the initial investment or business enterprise or a participation in earnings resulting from the use of purchasers' funds. Price appreciation resulting solely from external market forces (such as general inflationary trends or the economy) impacting the supply and demand for an underlying asset generally is not considered "profit" under the Howey test. When assessing whether there is a reasonable expectation of profit derived from the efforts of others, federal courts look to the economic reality of the transaction. In doing so, courts also have considered whether the instrument is offered and sold for use or consumption by purchasers. In evaluating whether a digital asset previously sold as a security should be re-evaluated at the time of later offers or sales, there would be additional considerations as they relate to the "reasonable expectation of profits.

⇒ *Reliance on efforts of others*: To understand this prong, the Organization must ask itself two questions and if they are in affirmative then it is likely that this prong is satisfied:

- Does the purchaser reasonably rely on the efforts of the organization?

- Are those efforts "*the undeniably significant one, those essential managerial efforts which affect the failure or success of the enterprise",* as opposed to efforts that are more ministerial in nature?

6.3.2. European Union

Table 11: Description of Laws Related to Fundraising through Token Issues in the EU

Applicability of MiFIR and MIFID II	The law set out under MiFIR applies to investment firms,[55] defined as firms carrying out investment services and activities[56] which include reception and transmission of orders in relation to one or more financial instrument.[57] Financial instruments are defined in Article 4 (1)(15) of MiFID II as those instruments specific in Section C of Annex. These are, *inter alia*, 'transferable securities', 'money market instruments', 'units in collective investment undertaking' and various derivative instruments. Transferable securities mean those classes of securities which are negotiable on the capital market with the exception of instruments of payment. This includes (a) shares, other securities equivalent to share in companies, partnerships etc.; (b) bonds or other forms of securitized debt; (c) any other security which gives rights to acquire or sell any transferable securities or giving rise to a cash settlement determined by reference to transferable securities.
Analysis	The law set out by the EU is fairly direct as compared to US law, where there is ambiguity in relation to what is an expectation of profit under the *Howey Test*. MIFID II and MIFIR apply when the instrument issued resembles a traditional security. In relation to the specific law for cryptocurrencies, ESMA published advice on ICOs and other crypto-assets and looked at circumstances under which crypto assets may qualify as MiFID financial instruments. ESMA undertook a survey of member countries to study the implementation of national law on a sample set of six crypto-assets. They reflected characteristics as set out below: ⇒ Investment type (crypto-assets case 1 and 2); ⇒ Utility type (case 5); ⇒ Hybrid type (investment, utility and payment) (case 3, 4 and 6) The ESMA survey highlighted that most member states assessed that crypto-asset case 1, 2, 4 and 6 could be deemed as transferable securities and/or other types of financial instruments as define under MiFID II. The existence of profit rights, without necessarily having ownership or governance rights, was considered sufficient for the majority of the member states to qualify crypto-assets as transferable securities. However, most member states disagreed with this view.
Compliance Requirement	⇒ The Prospective Directive (PD) required publication of a prospectus before the offer of securities to the public or the admission to trading of such securities on a regulated market situation or operating within a Member States, unless

	exclusions or exemptions apply. The PD states that the prospectus shall contain necessary information that is material to an investor for making an informed assessment of the financial condition of the issuer and any guarantor. The prospectus rules apply only where instruments are transferable securities as defined above. The prospectus regulations are to apply from July 2019. These only apply if they qualify as transferable securities. ⇒ Exemptions from filing prospectus: o As per size: ▪ Offers below EUR 1m are exempt (over 12 months); ▪ Between EUR 1m and EUR 8m, member states will select a threshold (not higher than EUR 8m) under which national requirement apply. National requirements may vary by member state. o Offers would also be exempt if: ▪ The offer is only to qualified investors; ▪ The offer is addressed to fewer than 150 natural persons other than qualified investors; ▪ Other exemptions may be applicable as well, depending on the details of the offer.

6.3.3. Switzerland

In recent years, a remarkable ecosystem with innovative fintech and blockchain companies has developed in Switzerland, especially in the financial sector.[58] Switzerland imposes a registration process on cryptocurrency exchanges, which must obtain a license from the Swiss Financial Market Supervisory Authority (FINMA) in order to operate. In its guidelines of February 2018,[59] FINMA classified token issues in ICOs as asset, utility and payment tokens under financial market law.[60] The Federal Council said that this classification was a suitable guide to decide the implication of financial market law for tokens linked to a business model and is also attracting interest internationally. The table below describes the three token categories from an economic point of view.[61]

Table 12: Types of Tokens under Swiss Regulations

TYPES OF TOKEN	DEFINITION	ECONOMIC POV	SECURITY?
Asset Tokens	May consist of a claim against the issuer under contract law or a membership right. It represents a value outside the blockchain	Predominantly investment related or speculative asset	Probably. The token is most likely to be classified as a security and if so, will have implications under the FMIA and FinSA.
Utility Tokens	Give access to a digital application or service provided on or via a blockchain based infrastructure. Example: vouchers, chips or keys redeemed for contractually owed services.	Based on a contractual relationship. Related rights are fungible and a duty to keep uncertificated securities record applies.[62]	No.
Payment Tokens	Tokens which are actually accepted or intended by the ICO organizer to be accepted as a means of payment for acquiring goods or services or as means of money or value transfer.	These are not issued in the form of ICOs but the creation of crypto currencies through ICO is feasible.	No.

i. Securities Regulations: Securities regulations in Switzerland are primarily described by the following three regulations:

A. ***Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act, FMIA), 2016***: This Act governs the organization and operation of the financial market infrastructures and the rules of conduct of financial market participants and derivative trading:

I. Securities: With respect to DTL based applications, the central definition of "securities" is particularly relevant. *Securities are defined as certificated and un-certificated securities, derivatives and intermediated securities that are standardize and suitable for mass trading.* These instruments are suitable for mass trading if they are publicly offered for sale in the same structure[63] and denomination, or are placed with more than 20 clients, insofar as they have not been created especially for individual counterparties.[64,65] As the definition of securities is neutral with respect to technology, tokens may be classified as securities.[66] If they are classified as securities, authorization

as a securities dealer (or securities firm) is needed for commercial trading, and the trade of such securities-tokens on a platform is subject to specific requirements. The classification of tokens as securities gives rise to numerous questions, primarily with regard to the secondary market (e.g. crypto-trading platforms).

II. Licensing requirement for crypto-trading platforms: The operation of platforms for tokens classified as securities requires authorization. By contrast, operation of a trading platform for non-securities (e.g. pure payments tokens) does not require authorization as a financial market infrastructure. Under the current system, there is no authorization requirement for exchange platforms and distributed peer-peer platforms in accordance with FMIA. The current legal situation for trade with token in the secondary market can be summarized as follows *(Trade with tokens in the secondary market area)*:

Table 13: FMIA Classifications

	Classification pursuant FMIA	Other
Exchanges platform/crypto brokers	No authorization requirements pursuant to FMIA	If the operator also offers custody services, it must be examined whether such services are subject to the Banking Act or whether fintech authorization must be obtained. If such brokers trade with tokens that are classified as securities, authorization for securities dealers, may be necessary.
Centralized trading platforms	The operation of such a platform may require authorization pursuant to FMIA, if the tokens qualify as securities	If such platforms also offer their clients administration (e.g. for margin settlement) and hold the cryptocurrencies in pooled accounts on the blockchain, it must be examined under the Banking Act.
Decentralized trading platforms	The operation of this kind of platform may be subject to authorization in accordance with FMIA	
Distributed or peer-to-peer platforms	The operation of this kind of platform is *not* subject to any authorization requirements today in accordance with FMIA, irrespective of whether the	

	transactions brokered on the platform are related to securities.	

B. ***Financial Institutions Act (FinIA)***: The FinIA sets out the requirements applicable to the activities of financial institutions, that is portfolio managers, managers of collective investments, fund management companies and securities firms. The question can be asked as to what extent FinIA is applicable to blockchain and DLT based business and whether it is appropriate. The Federal Council issued clarification that whether it is an issue of tokens or trade with tokens; it requires an authorization as a securities firm.

C. ***Federal Financial Services Act (FinSA)***: This act aims to guarantee client protection in financial sector services and to create comparable conditions for provisions of financial services by financial services providers. The Federal Council clarified that there is a need for legal amendment to protect clients or because of requirements for providers of tokens and blockchain based systems. It regulated all activities that can lead to the acquisition of financial instruments by a client. This includes acquisition and sale of financial instruments on account of clients, irrespective of whether the financial instruments are acquired by third parties or issues, place or sold in the secondary market by financial service providers.

7. ANTI-MONEY LAUNDERING

Money laundering is the practice of concealing the origin of funds that have been raised through illegal means.[67] As such, Anti-Money Laundering regulations are concerned with ensuring that financial institutions collect enough information on the people they do business with to prevent this concealment and make clear the original sources of all their transactions. As by their nature cryptocurrencies can allow for a high degree of anonymity in their users, in recent years AML regulators have clarified their regulations to make sure that institutions that deal with cryptocurrencies are legally required to comply with AML regimes.

For the three jurisdictions researched in this Report, money laundering laws appear to applied on an all or none basis to cryptocurrencies. Thus, so long as BitMal fits in to the descriptions of regulatory requirements in each jurisdiction, as described below, it is likely that the Organization will need to comply with all AML regulations. While these regulations are described in general here for the benefit of the Organization, the information here is not meant to be a complete representation of AML compliance. AML compliance can be complicated, and generally requires the consultation of an expert.

7.1. **The United States**

7.1.1. Overview of Recent Developments in US AML Law regarding Cryptocurrencies

The US is one of the world's most stringent AML enforcers. As such, it was the earliest mover to adapt its AML regulatory system to apply to cryptocurrencies (which US AML regulators refer to as a "virtual currency"). The Treasury Department's Financial Crime Enforcement Network (**FinCEN**) is responsible for enforcing compliance with Anti-Money Laundering laws. It first took action with regard to virtual currencies in 2013, when it published a guidance document explaining that FinCEN's regulation with regard to compliance with AML laws also applied to administrators and exchangers of virtual currencies.[68] Since this time, FinCEN has begun committing more resources to enforcing AML requirements with respect to virtual currencies. In light of two high profile cases (Ripple Labs and BTC-e), and policy statements from the department of Treasury, it is likely that the US will continue to enforce AML regulations more strictly with regard to cryptocurrency exchanges and administrators, although it will probably continue to focus its attention primarily on bigger players or willful violators.

In 2015, FinCEN took its first enforcement action related to the 2013 guidance when it charged Ripple Labs (now, just "Ripple") and its subsidiary XRP II with numerous violations of the BSA, including 1) failing to register with FinCEN, 2) failing to implement an AML program, 3) failing to report suspicious transactions.[69] The enforcement action resulted in a settlement between FinCEN and Ripple Labs under which Ripple recognized its violations and paid a civil penalty of $700,000.

In 2017, FinCEN went a step further in taking enforcement action against a foreign-located exchange, BTC-e, and its operator, Alexander Vinnik.[70] FinCEN had credible evidence that BTC-e was willfully laundering large sums of money and supporting other types of criminal activity.[71] Despite the fact that BTC-e's exchange was based in Russia, FinCEN's regulations allow it to hold foreign businesses accountable under US AML laws where it does business "wholly or in substantial part within the United States."[72] In this case, FinCEN found that 21,000 bitcoin transactions worth over $296 million (as well as tens of thousands of transactions in other virtual currencies) conducted by customers located within the US, as well as the fact that the transactions were processed by US based servers, as enough of a link to require BTC-e to comply with US AML laws.[73]

These two actions (and the absence of other notable enforcement action) suggest that FinCEN is particularly concerned with targeting either high-profile actors to incentivize smaller actors to comply with AML laws, or willful violators to deter actual criminal behavior. This policy assessment is supported by the words of Drew Maloney, Assistant Secretary for Legislative Affairs at the Department of Treasury, who, in relation to FinCEN's work regarding virtual currency regulation, stated "we establish our regulatory, examination, and enforcement priorities based on numerous factors that help us assess potential harm, including, e.g., the nature and impact of the underlying crime; the size of the illicit financing flows; the scale of the financial product or service; and its vulnerability to abuse."[74] This suggests that, so long as they do not willfully (or negligently) support money laundering activity, it is unlikely smaller cryptocurrency operations would come under FinCEN's scrutiny. But even so, Maloney did also note that by 2018 FinCEN had conducted periodic examinations of one-third of the approximately 100 virtual currency exchangers and administrators that had registered with FinCEN.[75] This suggests FinCEN is becoming more serious and could in the future turn its enforcement focus towards smaller cryptocurrency operations as well.

7.1.2. The Current State of US AML Law

The US AML regime was established under the Banking Secrecy Act of 1970 (**BSA**). The AML-related portions of the BSA have been periodically updated a number of times, most notably by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (**the PATRIOT Act**), which required financial institutions to create AML programs, including establishing internal policies and procedures, designating AML compliance officers, and testing the efficacy of their programs through auditing.[76]

7.1.3. AML Laws and Virtual Currencies

Before outlining the specific requirements of the US AML regime, it is important to note the context in which AML laws apply to cryptocurrencies. The Financial Crimes Enforcement Network (FinCEN) is the bureau within the Department of Treasury charged with regulating and enforcing AML laws. In 2013, FinCEN released guidance regarding the application of AML regulations to virtual currencies.[77] Although FinCEN regulations technically are applied to fiat currency, the guidance explains that FinCEN regulations apply equally to virtual currencies. The guidance describes virtual currencies broadly, as any "medium of exchange that operates like a currency in some environments but does not have all the attributes of real currency."[78]

According to FinCEN's guidance, the BSA applies to businesses dealing in virtual currencies so long as the business is properly considered a "money services business" (MSB).[79] MSBs are defined by the type of activity in which they engage, one of which is "money transmission services."[80] A money transmitter is any business which *both* accepts currency funds from a person *and* transmits currency to another location or person.[81]

As applied to cryptocurrencies, FinCEN's guidance differentiates between "users," "exchangers," and "administrators," specifying that in most circumstances, users *would not* qualify as money transmitters (as they do not transmit currency to anyone else), while exchangers and administrators *would* qualify.[82] An exchanger is anyone involved in "the business of exchanging virtual currency for real currency, funds, or other virtual currency," and an administrator is "a person engaged as a business in issuing (putting into circulation) a virtual currency, and who has the authority to redeem (to withdraw from circulation) such virtual currency."[83]

7.1.4. AML Compliance

Under the BSA, all MSBs are required to register with FinCEN by filing a Registration of Money Services Business ("RMSB"), and renewing the registration every two years.[84] Operating an unlicensed MSB could result in fines, or a prison sentence up to five years.[85] Generally, the BSA (as amended) and FinCEN regulations require financial institutions to comply with three categories of regulations: 1) Developing an AML Program,[86] 2) Reporting Requirements, and 3) Recordkeeping Requirements.

7.1.4.1. Customer Identification Requirements

The BSA does not require financial institutions to implement specific practices, as the drafters of the BSA were afraid that requiring companies to fulfill specific practices would encourage only minimal investment in compliance with AML goals. Rather, the BSA outlines general programs and goals which individual institutions are required to fulfill, based on their specific situations. Generally speaking, these goals include the following:[87]

i. ***Implementing a Customer Identification Program (CIP)***: institutions must have a written CIP that allows the institution to form a reasonable belief that it knows the true identity of each customer. This includes verifying customers' identities, maintaining records of information used to verify customers' identities, and confirming whether the person is listed on government provided sanctions lists or whether they are a suspected terrorist. At a minimum, financial institutions must know their customers' name, date of birth, address and an identification number.

ii. ***Internal Controls***: Internal controls must be reasonably designed to ensure employee compliance with AML requirements, provide a program for continuity after changes in management, and inform corporate boards regarding compliance initiatives, among other requirements.

iii. ***Independent Testing***: financial institutions use independent auditors to test their internal procedures to monitor BSA compliance, the validity and reasonableness of customer exemptions, and the adequacy of procedures for identifying suspicious transactions and the filing of suspicious activity reports.

iv. ***Designated Person***: financial institutions must designate a senior official (compliance officer) responsible for BSA compliance, who should be fully knowledgeable of BSA requirements.

v. ***Employee Training***: financial institutions must provide training for certain personnel, depending on their degree of involvement in handling financial transactions.

7.1.4.2. Reporting Requirements

The BSA also requires financial institutions to report when certain types of transactions are made. For cryptocurrency administrators, this includes:

i. ***Currency Transaction Reports***:[88] a notification that must be filed every time a currency exchange of $10,000 or more occurs.

ii. ***Suspicious Activity Reports***:[89] a report filed with FinCEN where 1) a transaction involves more than $5,000 and the financial institution has reason to suspect that either a transaction involves funds from illegal activities, that it is designed to evade BSA reporting requirements, that the transaction has no apparent lawful purpose, or is otherwise being made to facilitate criminal activity, 2) where the transaction is more than $5,00 and there is a known violation involving an identifiable person, or where the transaction involves $25,000 or more, even if a suspect is not identifiable, or 3) there is any known or suspected BSA violation involving insider abuse, regardless of the amount of money involved.

7.1.4.3. Recordkeeping Requirements

The BSA also requires that certain records be maintained by the financial institution for certain periods of time. The longest recordkeeping requirement is for Suspicious Activity Reports, which must be kept for 5 years.[90]

7.2. **European Union**

The EU published its 5th Anti-Money Laundering Directive (5AMLD) on July 9 of 2018, obliging Member States to must implement the standards set out therein by January 20, 2020.[91] One of the most important changes 5AMLD brings to the EU's AML policies is the addition of regulations related to virtual currencies. Specifically, 5AMLD adds "providers engaged in exchange services between virtual currencies and fiat currencies" and "custodian wallet providers" to the list of entities to whom the previous EU Directives on AML apply.[92] This means that from January 20, 2020, all EU member states will be required to subject any cryptocurrency platform which exchanges virtual currencies and fiat, or provide custodian wallet services, to AML regulations like most other financial institutions (although the details of exactly how AML regulations will apply to these platforms may differ depending on the member state).

5AMLD also includes a requirement that the implementation of 5AMLD be reviewed every 3 years, and includes consideration of legislation establishing a single central database of virtual currency users.[93] 5AMLD is important in that it shows the EU's willingness to adapt AML regulation to modern technologies, and suggests that the EU is considering moving towards harmonizing AML regulation at the supra-national level. However, it is still unclear how proactive Member States will be in implementing and enforcing AML regulations with regard to virtual currencies.

Because AML regulations are promulgated at the national level, this section does not discuss any specific aspects of AML compliance in the EU. Here, the Organization should recognize that, as a body, the EU is moving towards requiring application of AML laws to persons engaged in cryptocurrencies. But, depending on the nation in which the person incorporates their business (or performs a significant amount of business), specific AML compliance requirements will differ. Generally speaking, AML requirements will likely look similar to those outlined in section 2.2. (describing the US AML regime). Thus, while in the short term the Organization may be able to avoid more burdensome AML regulation by finding an EU country which does not prioritize application of AML regulations to cryptocurrency platforms, it is likely that this benefit will be short lived as EU member states converge towards more harmonized regulation.

7.3. **Switzerland**

Switzerland's tools to combat money laundering derive from three sources: The Swiss Anti-Money Laundering Act (a federal act) ("AMLA"), the Anti-Money Laundering Ordinance (a Federal Council ordinance) (hereafter "Federal AMLO"), and the FINMA Anti-Money Laundering Ordinance (an ordinance passed by the Swiss Financial Market Supervisory Authority ("FINMA")) (hereafter "FINMA AMLO").[94] In 2016, the Federal AMLO was amended so as to state that engaging in transfer of virtual currencies would qualify a person as a financial intermediary to whom the AMLA would apply.[95]

The specific circumstances under which a business dealing in cryptocurrencies would be required to follow AML regulations is determined by FINMA. Generally, FINMA discriminates between "primary cryptocurrency markets" (ICOs), which constitutes financial intermediation, and "secondary cryptocurrency markets" (selling and trading cryptocurrencies), which does not constitute financial intermediation.[96]

Switzerland maintains a unique system under which financial intermediaries which operate on a commercial basis[97] (not specifically including businesses dealing in cryptocurrencies, but including businesses dealing in transfer of assets) may choose between two systems of monitoring and enforcement of AML requirements. First, a financial intermediary may apply to FINMA to receive a license and be regulated as a Directly Subordinated Financial Intermediary.[98] Alternatively, the financial intermediary may register with a Self-Regulatory Organization (SRO) recognized by FINMA which establish their own methods of controls to monitor AML compliance. Notably, for Article 2 paragraph 3 financial intermediaries, from January 1, 2020, all such intermediaries will no longer be able to register with FINMA for compliance monitoring, and must instead register with a FINMA approved SRO.[99] Hereafter, all information relates to FINMA regulations (as each SRO maintains its own set of similar, but slightly different regulations).

i. **Application of AML to Cryptocurrencies:** AML laws apply to "financial intermediaries," as defined under AMLA Article 2. In the cryptocurrency space, this includes specifically actors engaged in: Exchange of Payment Tokens and Utility Tokens;[100] Transactions exchanging cryptocurrencies and fiat currency; Custodial wallet relationships.
ii. **General Compliance Obligations**: AML compliance obligations are set out in detail in the Swiss Banks' Code of Conduct.[101] Generally, they include:
iii. **Identification of Contractual Parties**: Financial Intermediaries must identify the parties with whom they form a contractual obligation to provide services. This includes:

a. *Natural Persons*: must identify 1) First and Last name; 2) Date of Birth; 3) Nationality; 4) Actually domiciliary address; 5) Means used to prove identity.

b. *Legal Entities*: must identify 1) Company name; 2) Actual registered address; 3) Means used to prove identity.

c. *Beneficial Owners*: in the case of legal entities, must also identify the beneficial owners of the company who control 25% or more of voting rights. Direct or indirect control of voting rights is irrelevant to reaching the 25% threshold. If there are separate beneficial owners who control the significant assets of a company, they must be identified as well.

iv. **Exemption Thresholds**: If an intermediary has a long-term business relationship with a contractual party, it may waive due diligence compliance obligations under certain circumstances. Below is a non-exhaustive list of such circumstances.[102] However, even in these situations, if the intermediary suspects that

a. Each transaction conducted is less than CHF 1,000, and total transactions are less than CHF 5,000.

b. Transactions are limited to CHF 5,000 per month, and CHF 25,000 per year, and all transactions are paid to merchants in Switzerland using banks authorized in Switzerland.

c. Payments are limited to certain network of service providers/suppliers and are limited to CHF 5,000 per month, and CHF 25,000 per year.

v. **Suspicious Activity Reporting**: the Swiss AMLA requires financial intermediaries to report to the Money Laundering Reporting Office[103] when they suspect assets may be the proceeds of a crime, or that a criminal enterprise has access to the assets. However, there are no requirements to report transactions over a certain threshold as there are in the US

vi. **High Risk Relationships/Transactions**: Financial intermediaries are required to develop their own special criteria for dealing with relationships that are judged to be "high risk."[104] Relationships/transactions that are always high risk include (but are not limited to):

a. Relations with foreign politically exposed persons

b. Relations with legal entities that hold a majority equity interest in one or several companies to unite them under single management (holding companies)

c. Relations with foreign banks

d. Transactions where an account is opened with more than CHF 100,000 added in cash (either all at once or over time)

vii. **Clarifications for High-risks**: Depending on the circumstances, where a high-risk relationship/transaction exists, the intermediary must make further efforts to confirm the following:[105]

a. Whether the part is actually the beneficial owner of the assets
b. The origin of deposited assets
c. The intended use of the assets
d. The plausibility that larger amounts may be deposited
e. The origin of the contractual party's assets and the beneficial owner's assets
f. The profession/occupation of the contractual party and beneficial owner
g. Whether the contractual party or beneficial owner are politically exposed

8. INTELLECTUAL PROPERTY

8.1. Trademarks[106]

What is it?	Trademarks are the names, words, symbols and designs that distinguish the goods or services of a business. Trademark protection allows a business to preserve its "brand value," also allowing consumers to immediately recognize the quality of a product or service based on past experience with the business.
Requirements	**Distinguishing Indicator**: Generally, the only requirement to register something as a trademark is that the thing must function as an indicator that distinguishes the source of origin of goods or services. **Registration**: a trademark must be registered at the relevant government office which grants trademark protection. **Continuous Usage**: Trademark protection is usually not indefinite – if a business does not actively use a trademark it has registered in its business operations, trademark protection may expire after a number of years (5 years in the US) Additionally, some jurisdictions will require a business to apply to renew their trademark after a number of years (10 years in the US).
What can be trademarked?	**Examples**: A company's name; a word, words, or a slogan; symbols, drawings or shapes; distinguishing sounds (such as the "NBC chime")
What cannot be trademarked?	**Examples**: Words that only convey general information about goods; commonly used phrases; religious quotes (in some cases)
Protection	So long as a trademark is validly registered, the trademark owner can seek protection from a court. Typically, this would include enjoinment of a trademark violator (forcing the violator to stop using the business's trademark) and potentially repayment of any profits the violator made based on the use of the trademark.
Relevance to Cryptocurrencies	Trademarks do not have any special relevance to cryptocurrencies. A business which has developed a cryptocurrency may receive a trademark for any distinguishing aspect of the cryptocurrency, such as its name, a logo that identifies it, or symbols associated with the business.
International Protection	There are two ways to seek trademark protection internationally. **National Registration**: A business could seek trademark protection from each country in which the business plans to operate. Filing requirements, renewal periods, and the scope of protection differ depending on the jurisdiction.

	The World Intellectual Property Organization's "Madrid System": WIPO is an organization that seeks to harmonize intellectual property protections among its member states. If a business receives a valid trademark from any state that is a WIPO member, the business can also receive "international registration" from WIPO as well. Currently, there are 120 WIPO member states.[107]

8.2. **Copyright**[108]

What is it?	Copyright are the legal rights given to the creators of literary or artistic works.
Requirements	**Originality**: the only requirement to receive copyright protection is that a work be original. The test used to determine originality differs depending on the jurisdiction. Generally, it requires that the work not have been produced before, and that it involves some degree of creativity in its making. **No registration requirement**: generally, there is no requirement to register a work to receive copyright protection – the right "fixes" when the work is complete. However, when a work is considered complete may differ depending on the jurisdiction. Even though no formal requirement exists, many jurisdictions offer copyright registration to secure legal recognition of the date on which the work was produced. Additionally, some jurisdictions may require registration in order to bring a lawsuit.
What can be copyrighted?	**Examples**: books; music, films, paintings; maps; advertisements; computer programs (so long as they express unique ideas)
What cannot be copyrighted?	**Examples**: Words that do not denote any creativity or originality; commonly known information; ideas or methods of doing something; names, titles, phrases or expressions (although they can be trademarked)
Protection	**Rights**: Copyright gives the holder exclusive rights to the work at hand, including: protection of the work; right to determine how the work may be marketed, displayed or reproduced; the ability to copy the work; the ability to import or export the work; the right to create derivatives; the right to sell any rights under the copyright; and other rights **Duration**: Generally, copyright lasts for the life of the author plus either 50 or 70 years after the authors death (with the copyright vesting in the author's heirs).
Relevance to Cryptocurrencies	Copyright does not seem to have any relevance to cryptocurrencies.
International Protection	**Berne Convention**: The Berne Convention requires that all member states provide the same copyright protection the member grants to its own citizens to the citizens of other member states. It also established the notion that no registration should be

	required to receive copyright protection, and thus, an author must only show that he/she was first to publish his/her work in order to receive protection internationally. There are 176 states which are members of the Berne Convention.

8.3. **Patent**[109]

What is it?	A patent gives the exclusive right to make, use, or sell an invention, for a limited period, that provides a new way of doing something, or provides a technical solution to some problem.
Requirements	**Novelty**: The invention must be new, and not otherwise known to the public before its application filing date. **Utility**: The invention must have a specific, credible, and substantial utility. This utility is typically assumed, but patent examiners may reject an application if there is evidence the invention lacks utility. **Non-obviousness / inventive step**: In the US, an invention must be non-obvious to receive a patent, whereas in Europe it generally must involve some "inventive step. While different jurisdictions may interpret these terms differently, generally they suggest that there must be actual inventive effort put in to the invention.
What can be patented?	**Examples**: a machine, a process or method for production, a tool, a chemical formula (such as for perfumes or makeup), computer software, etc.
What cannot be patented?	**Examples**: An idea, a mathematical formula or scientific principle, natural substances, processes involving only physical activity, etc.
Protection	**Right to exclude**: A patent gives the patent holder the right to exclude others from using the patented invention. **Duration**: the duration of patent protection varies depending on the jurisdiction, but in the majority of jurisdictions it lasts for 20 years.
Relevance to Cryptocurrencies	By 2017 in the US a total of 602 cryptocurrency related patents had been filed (although it is unclear how many of these applications had been accepted).[110] Regardless, to receive a patent, the cryptocurrency must involve some degree of novel inventiveness, whether that be in the process by which the cryptocurrency is issued, or some novelty which improves the underlying software.
International Protection	**Patent Cooperation Treaty**: Administered by WIPO, this treaty allows patent filers to make one filing of an "international patent application" in order for consideration for patent protection in all treaty member states. However, it is the prerogative of each member state to grant or reject the application (acceptance in one jurisdiction does not guarantee acceptance in any other). There are 152 member states that recognize the Patent Cooperation Treaty.[111]

8.4. **Trade Secret**[112]

What is it?	A trade secret is proprietary information, unknown to a business's competitors, which provides the business with some kind of competitive advantage.
Requirements	**Secret**: to be a trade secret, information must actually be a secret. Even if it is not widely known to the public, it will not be considered a secret if the information is generally known among people engaged in similar types of business. **Commercial Value**: The secret nature of the information must be the basis of the information's commercial value. **Reasonable Steps to Maintain Secrecy**: A company must act reasonably to try to protect the information for it to be considered a trade secret. Generally, this is accomplished through confidentiality and non-disclosure agreements. **No Registration**: there are no registration requirements
What can be a trade secret?	**Examples**: a production technique or process; a formula; customer lists; etc.
What cannot be a trade secret?	**Examples**: widely known techniques or processes; information that has no commercial benefit; information a business does not reasonably try to keep secret.
Protection	**Misappropriation action**: where another business has misappropriated a business's recognized trade secret, the business can bring an action against the misappropriator requiring them to keep the information service, or even pay royalties on the use of the trade secret. **Duration**: trade secrets are protected for as long as they are kept secret. Once they are revealed to the public / competitors, they lose all protection.
Relevance to Cryptocurrencies	There does not seem to be a direct relationship between trade secrets and cryptocurrencies, although there may be opportunity to argue that the underlying code that produces a cryptocurrency as a trade secret if it is substantially different from other business's code and it provides a competitive edge.
International Protection	**TRIPS:** Under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), World Trade Organization member states are required to afford protection to trade secrets, although there are no minimum guidelines as to what protection must be afforded. There are 162 WTO member states.

9. OBSERVATIONS AND RECOMMENDATIONS

SL NO.	JURISDICTION	OBSERVATIONS/COMMENTS	
	Incorporation Laws		
1.	United States	From our observations, incorporating as a non-profit looks preferable to the Organization, as it is yet to have full clarity of its objectives and operations. The advantages of incorporating as a non-profit is that the Organization will be able to develop its functions while availing the benefits a non-profit. It can also apply for a non-action letter in terms of the function of the BitMal token which would help in relation to protecting the BitMal token from security regulation. At this stage, the Organization can avoid any scrutiny that would be present for a for-profit Organization. If the Organization wants to expand, it can opt for the for-profit and hybrid model (in the US). Considering these flexibilities and the market in the US, the Organization may strongly consider the option to incorporate there.	
2.	European Union	The issue with EU law is that it will always have to look at member country laws, which this Report does not cover. Therefore, we are limiting our comment on incorporation in the EU to say that the Organization should look into preferable member countries.	
3.	Switzerland	The advantages of incorporating in Switzerland is its ease of business and the accommodations that Swiss law has awarded to organizations which deal with cryptocurrencies. We believe that the Organization strongly consider incorporating in Switzerland.	
	Security Laws		
1.	United States	The US SEC has taken the route of initiating enforcement actions against companies that are engaged in the issue of tokens that maybe categorized as securities. Since the law is not definite, issuers currently cannot foresee if their tokens will fall under the ambit of securities. Issuing tokens in the US market can come under securities regulations where compliance is time consuming and expensive. They can fall under the safe harbor provisions (private issue, exclusively charitable, crowd funding regulations) but these are extremely specific, limited and come with their own sets of regulations.	
2.	European Union	The European Banking Authority has said that there is a need for EU level regulations of cryptocurrency; however, nothing has been set out yet. The Organization will have to look into specific national regulation to understand how to establish in that jurisdiction, as the EU only has overarching authority and no actual authority.	

3.	Switzerland	At this point, Switzerland is one of the only countries that has come up with cryptocurrency specific regulations and guidelines. It has branded itself to stand out as the cryptocurrency regulation haven in the world. This is so because it has clarified how tokens are going to be classified and, if they are classified as securities, they will be subject to the securities regulations of the country. Switzerland is a better jurisdiction to incorporate in as compared to the US, because the test for a token to classify as a security is not as broad and ambiguous and, therefore, a token is less likely to classify as a security.	
	AML/KYC Regulations		
1.	United States	Given the high degree of control the Organization has over the administration of the BitMal platform and that the Organization will be regularly involved with exchanging BitMal for fiat or other virtual currencies, it seems likely that the Organization would likely be classified as a Money Services Business, and thus, would be required to comply with US AML regulations as though it were any other type of financial institution. Furthermore, US regulators (FinCEN) have at least once applied US AML regulations to a foreign-based business dealing in cryptocurrencies (BTC-e, a Russian company). This was likely only because BTC-e was actively supporting money laundering and other illegal activities. However, it is still a precedent the Organization should keep in mind – if the Organization grows large and influential enough, it could one day become a target of US AML regulators even if it is incorporated outside of the US.	
2.	European Union	Although the EU has been much slower to regulate than the US, it is catching up. While there may be regulatory differences now, by January 2020 all EU countries will be required to implement AML regulations more or less on par with the US.	
3.	Switzerland	Swiss AML regulations are generally less strict than those of the US, but still require compliance by many entities dealing in cryptocurrencies. Where transaction volumes fall below certain thresholds, compliance obligations may even be relaxed. However, simply because one is incorporated in Switzerland may not exempt the entity from complying with the more stringent standards of the US, if the entity does a significant amount of business with US entities.	
	Intellectual Property		
1.	*(without regard to jurisdiction)*	The same types of intellectual property protections are available across almost all jurisdictions (although the requirements to receive them may vary to some degree), including protections for trademarks, copyright, patents, and trade secrets. It is likely that the Organization would be interested in receiving trademark protection, regardless of where it incorporates, in order to protect its name and brand value. Additionally,	

		depending on whether the Organization is able to invent a new invention or novel process in establishing its platform, it should also consider applying for patent protection.	

10. **Endnotes**

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