

Tokenisation webinar **‘How to Tokenise an Asset’**

Monday 14th June 2021



Moderator Welcome

Vicky Dalziel, Associate Investment Director - Real Estate,
Product Strategy & Investment Specialists
at Aberdeen Standard Investments
& Member of the AREF Technology Working Group

Agenda for today

- 10.15 Webinar start
- 10.15 Welcome and housekeeping - Vicky Dalziel, Aberdeen Standard Investments
- 10.20 Presentation on Tokenisation in the Real Estate Industry - Claus Skaaning, Digishares
- 10.30 Presentation on Legal & Regulatory Aspects - Charles Kerrigan & Alan Omogbai, CMS UK
- 10.40 Presentation on Tokenisation in the FinTech Industry - Adi Ben-Ari, Applied BlockChain
- 10.50 Member discussion
- 11.15 Closing remarks from Vicky Dalziel
- 11.15 Close

Speakers



Adi Ben-Ari

**Founder and CEO
Applied BlockChain**

Charles Kerrigan

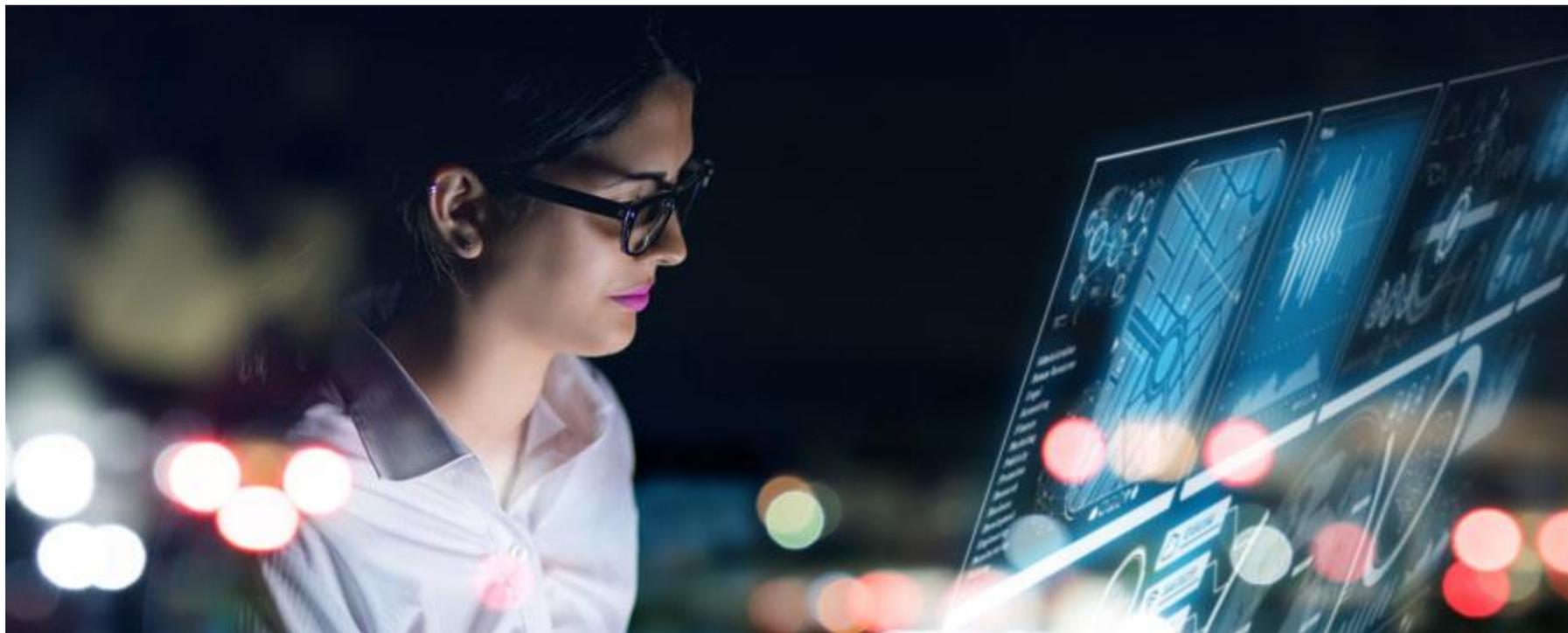
**Partner
CMS UK**

Alan Omogbai

**Associate
CMS UK**

Claus Skaaning

**Co-Founder and CEO
Digishares**



Claus Skaaning
Co-Founder and CEO
Digishares



Real Estate Tokenization

ABOUT ME

- Ph.D. in computer science (machine learning)
- Project lead Hewlett-Packard R&D (7 patents granted)
- CEO Dezide ApS (AI spinout, exit in 2015)
- Mentor and advisor for many university startups
- 2017-now: CEO DigiShares

- **Blockchain ideologist: disintermediation, self-sovereignty, democratization, non-inflatable assets**



DIGISHARES PLATFORM

ISSUANCE

- ✓ Investor registration and verification (KYC / AML)
- ✓ Token purchase
- ✓ Electronic document workflow and signatures

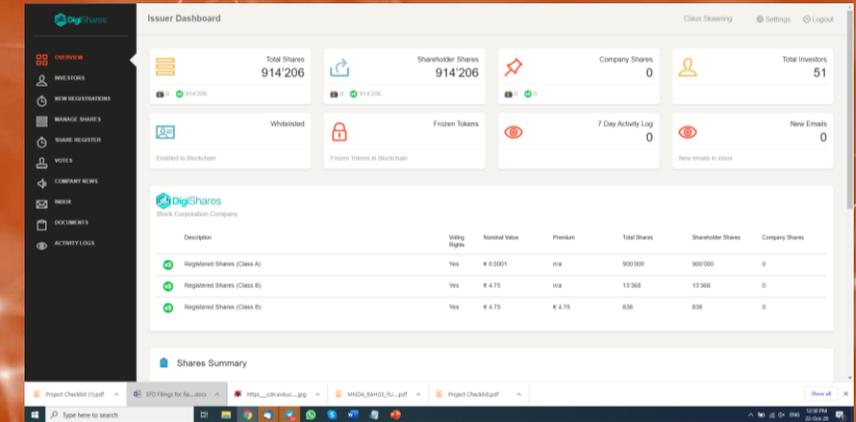
CORPORATE MANAGEMENT

- ✓ Share cap table over multiple share classes
- ✓ Shareholder meetings and votes
- ✓ Dividends and interest payout in crypto and fiat
- ✓ Reissuance of lost tokens

TRADING

- ✓ Internal bulletin board marketplace with atomic swap
- ✓ Circle USDC integration for full automation and non-crypto use

Issuer Dashboard



Token Holder Cap Table

The Share Register provides a detailed view of the company's shareholding structure. Key metrics include:

- Total Shares: 1,241,000
- Shareholders Shares: 20,720 (1.67%)
- Company Shares: 1,220,280 (98.33%)

The table lists individual investors and their holdings:

Investor	Quantity	Invested Amount	Voting Power	Dividend Entitlement
John Smith				
Central Park London - 1 (square yards)	1,800	\$ 7,200,000	1,800 (8.69%)	1,800
Hashim Builders & Properties (square yards)	1,000	\$ 1,500,000	1,000 (4.83%)	1,000
Total	2,800	\$ 8,700,000	2,800 (13.51%)	2,800
Chad Stevenson				
AIM Real Estate (square foot)	4,000	\$ 40,000,000	4,000 (19.31%)	4,000
Luxury Homes in Miami	2,000	\$ 24,000,000	2,000 (9.65%)	2,000
Central Park London - 1 (square yards)	200	\$ 800,000	200 (0.97%)	200
Total	6,200	\$ 64,800,000	6,200 (29.92%)	6,200
Shahzad Aslam				
AIM Real Estate (square foot)	620	\$ 6,200,000	620 (2.99%)	620
Luxury Homes in Miami	1,100	\$ 13,200,000	1,100 (5.31%)	1,100
Central Park London - 1 (square yards)	8,000	\$ 32,000,000	8,000 (38.61%)	8,000
Total	9,720	\$ 51,400,000	9,720 (46.91%)	9,720
Jalal Sons & Industries				
Forces Estates - 2 (square foot)	2,000	\$ 12,000,000	2,000 (9.65%)	2,000
Total	2,000	\$ 12,000,000	2,000 (9.65%)	2,000
Total Shares Sold	20,720	\$ 136,900,000		

PROBLEMS OF REAL ESTATE INVESTMENT

Inefficient transfer and record-keeping processes: administrative work = 50-75% of an issuer's total operating costs

Illiquidity: 1% of the world's real estate assets are traded on national stock exchanges

Inaccessibility: most people are excluded from investing in real estate

Lack of transparency: a lot of real estate markets suffer from a critical lack of transparency

TOKENIZATION SOLVES THE PROBLEMS

Automation of middlemen processes: Tokenization could save \$1.7 billion in expenses in the US alone

Improved liquidity: cost-effective secondary markets + fractionalization

Lowered barrier to investment: Tokenization enables fractionalization + significantly reduced transaction and administration costs

Increased transparency: Tokenizing real estate will make the market more transparent

Value Proposition For Real Estate



Pains

- Costly, paper-based, and time-consuming processes
- Almost zero liquidity



Primary Gains

- Digitized and automated processes
- Immediate trading and liquidity (premium: 20-30%)

Secondary gains

- Ability to fractionalize/democratize – reduced ticket size – increased diversification
- Access to new types of investors
- Access to new global infrastructure of investors and secondary liquidity
- Programmable tokenized shares for automation of cross-border transfers, lock-up periods, dividend payment, etc.
- Smart “functions”: custody, DeFi lending, atomic transfer, etc.
- Increased security by removal of human errors
- Transparency and traceability

Barriers to Adoption

Crypto Discomfort

- Self-custody of tokens
- Stablecoin discomfort
- Crypto onboarding



Compliance & Legal

- Few countries support tokenization (more or less)
- In Europe: Switzerland, Liechtenstein, Germany, the UK
- In Asia: Singapore, Hong Kong
- North America: Wyoming, Ohio
- Notification, registration & approval with regulators
- Very very few secondary exchanges licensed yet (Archax, Open 1exchange)

Costs:

- High incorporation & banking costs > EUR 100,000
- High legal costs, often > EUR 50,000

REAL ESTATE EXAMPLES



US commercial real estate

US real estate investment and trading platform. For listing of third party projects.

First projects go live in Dec.

Project size between \$10-50m

Legal units in Wyoming

<https://Redswan.io>



South African real estate

Real estate developer with own and third-party properties.

First 3 projects planned as a mix of finished and pre-construction projects,

between \$1-20m, and a mix of commercial and retail.



US container houses

Container-based houses in the US, many projects around \$200k in size.

Legal units in Wyoming

<https://www.bahgsfund.com/>



US hotel project

Financing of large hotel acquisition, \$80-220m. Hotel is underperforming.

Consortium with project manager, lawyers and DigiShares for platform.

Many subsequent projects if first is successful

* Pictures are not from the real projects

SAMPLE PROJECTS



US residential real estate

US real estate investment and trading platform.
Based on Ravencoin (first!)
First project around \$525,000

<http://www.blockchainrealtor.com>



Finnish real estate

Project with Finland-based real estate
developer APK Kiinteistöt
Project carried out in collaboration with
Finnish FSA
EUR 1.5 m commercial property

<http://www.apk-kiinteistot.fi/>



South African crowdfunding

3 initial projects
(1) Leasing fund for trucks, \$250m (\$25 per token)
(2) Agricultural project, \$28m (\$15 per token)
(3) 420 residential units, Hyde Park, \$28m (\$15 per token)

<https://afri-x.com>



Australian/NW real estate

- 1) Properties in Victoria, AUS, \$1m
- 2) New Zealand properties \$2m

<https://waichain.co/>

* Pictures are not from the real projects

The Tokenization Process

Business

Select project for PoC, considering:

- Private vs public sale
- Retail, sophisticated, institutional
- “Normal” vs crypto investors
- Ticket size
- Equity, debt, etc.
- Marketing & investor relations

Develop sales materials

Market property through diff. channels

Legal

- Status of tokenization in your jurisdiction
- Select jurisdiction re. legal & tax
- Determine KYC/AML requirements
- Create SPV if necessary, prepared for tokenization
- Create subscription agreements
- Create prospectus

Technical

- Acquire server in cloud
- Determine requirements, customization & integration
- Install platform on server
- Customize
- Integrate (custody, payments, KYC)
- Test
- Train users

LAUNCH



Thank You!

ADVANTAGES WITH DIGISHARES



- ✓ Your own real estate crowdfunding platform
- ✓ Digitizes and automates many processes related to financing and management of investors
- ✓ Advanced share cap table module
- ✓ Allows investing in most currencies
- ✓ Uses audited smart contracts for high safety and security
- ✓ Offers instant liquidity through our OTC marketplace
- ✓ Shareholder meetings, votes, etc.
- ✓ Electronic signatures
- ✓ Tokens are compatible with exchanges, custodians, etc.





Charles Kerrigan

Partner

CMS

& Chair of the AREF Technology Working Group

Tokenisation: Legal Framework

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Introduction: Tokens; Digitalisation; Automation; and UX

Company Law Requirements

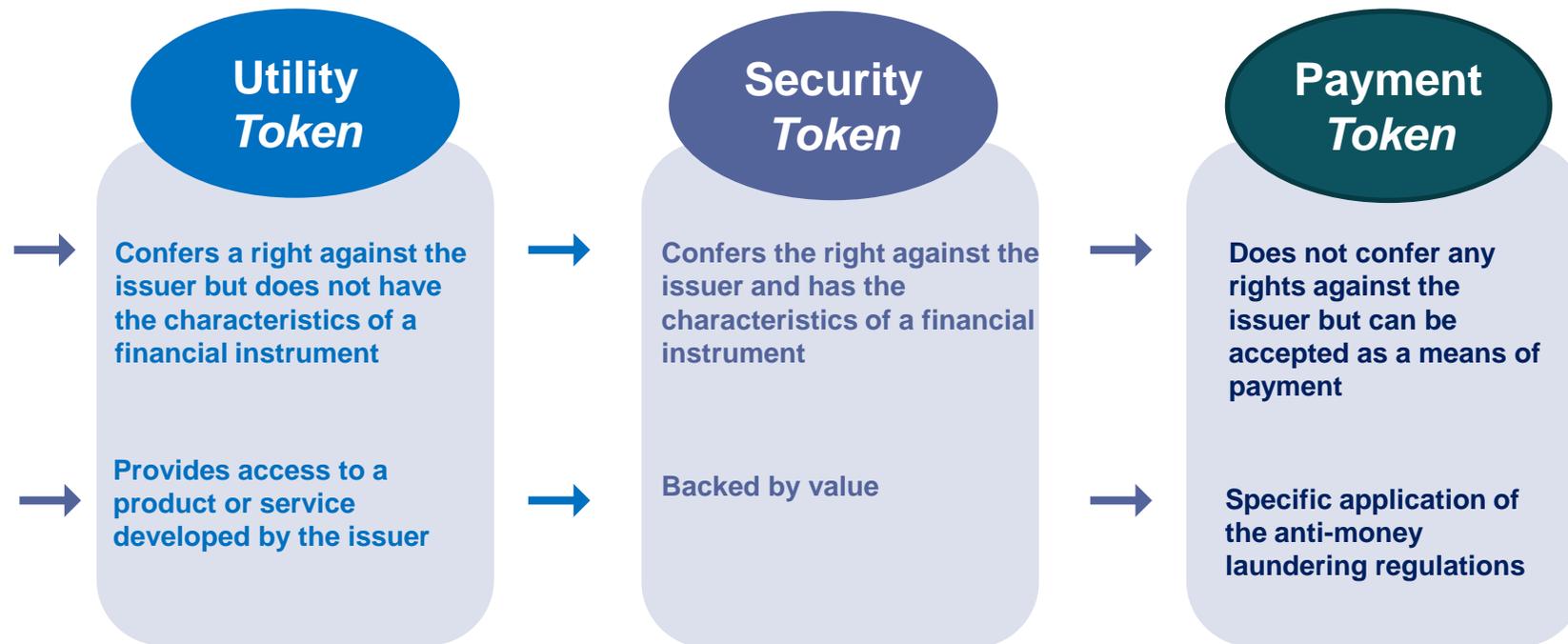
Finance & Funds Law Requirements

Conclusion

What is a Token?



ESMA and EBA reports of 9 January 2019 on the supervision of crypto-assets in the E.U. establishing a classification of the tokens in three categories





- Blockchains are databases that allow participants to establish a shared and immutable record of ownership – a ledger
- Process of adding new assets to a blockchain is called tokenisation

Asset + verification of ownership + digital representation on platform + onboarding of investors = issuance and secondary market

Tokenisation: Legal Form



Note: the same considerations that apply when dealing with funds generally also apply to real estate funds in a digital tokenisation context.

The options for an intermediate ownership structure (i.e. the entity that has title to the underlying assets) include:

- Company
- Limited Partnership
- Joint Venture
- Trust
- REIT

The legal form used will have tax implications

UK Company Law Requirements

Company Records

- The Companies Act 2006 (the “**Act**”) does not contemplate tokenisation or issuance of securities on a blockchain platform.
- The rules required a company to keep a register of members (ss112 to 121; 1134 to 1138 and 1168, Companies (Company Record) Regulations 2008).
- The register must be capable of being rectified pursuant to a court order.

Transfer of Shares

- A company may not register a share transfer in the company before a [duly stamped] proper transfer instrument has been delivered to it (s 770 of the Act).
- Legal title to shares cannot pass (subject to exceptions) before a proper transfer instrument has been executed by the transferor and stamped by HMRC. This is in conflict with the way that blockchain technology and tokenisation operate which is instantaneous in nature.
- Only beneficial title passes upon execution of a transfer agreement (i.e. a smart contract) for the transfer of shares. The transferor retains legal title to the shares.

UK Company Law Solution

Nominee Company Approach

- A nominee company can hold the legal title to shares.
- The nominee company can decide to record the owners of the beneficial interests in the company on a blockchain and the investors in the company can transfer the beneficial interests using smart contracts that add a block to the blockchain.
- The investors in the company only own and can only transfer the beneficial interest in the shares in the company.
- This enables transfers to be effected using a digital representation, a **security token**.
- English company law does not prescribe how ownership of beneficial interests should be recorded, if at all.
- Nonetheless, for practical reasons, the nominee vehicle or its agent should keep a record of beneficial interests so that the company is aware who to contact in relation to the rights attached to the beneficial interests.

Other UK Company Law Considerations

Transfers of beneficial interests must be in writing and signed (s 53(1)(c) of the Law of Property Act 1925

- A readable electronic document displayed on a screen providing for the transfer together with an “I accept” button, or something similar, is sufficient to meet this requirement (Poplewell J. in *Bassano v Toft* [2014] EWHC 377 (QB)).
- In practice this should be recorded in a smart contract, or similar.

Electronic signatures

- Stamping - an electronic signature may satisfy a statutory requirement for a signature provided that there is an intention to authenticate the document (e.g. s 1(1) of the Stock Transfer Act 1963).
- Generally - electronic signatures are now more widely accepted following the coronavirus (COVID-19) pandemic.

UK Finance & Funds Law Requirements

- A **security token** is a ‘specified investment’ under the Financial Services and Markets Act (2000) (FSMA) (Regulated Activities) Order 2001 (The “**RAO**”). Some argue that article 80 of the RAO is the most appropriate classification because a security token is not a share itself. It is a digital representation of beneficial interest in a share(s).
- **Tokenisation is a regulated activity under section 22(1)(a) FSMA. Therefore, firms carrying out tokenisation must be authorised by the FCA. If no exemption is available, an FCA-authorized person must be engaged (section 19 FSMA – the general prohibition).**
- Note: A security token could also be a ‘financial instrument’ under the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (the “**Consolidated MiFIR**”), but this has implications for the responsibilities placed on the financial intermediary providing the services to the client.
- A ‘specified investment’ under FSMA and a “financial instrument” under the Consolidated MiFIR (and MIFID II) are two different legal concepts with different definitions. However, a security token in the UK is likely to be deemed a security token in the EU.
- FCA authorisation may be required to provide investment services in relation to security tokens.
- The issuer of a security token **must comply with the other applicable legal requirements also.**

UK Finance & Funds Law Requirements (cont.)

Prospectus Requirements (Prospectus Regulation)

Unless an exemption applies, a prospectus is required where a security token is:

- a transferable security for shares or debt; and
- the token will either be offered to the public in the UK; or
- admitted to trading on a regulated market.

The UK Prospectus Regulation does not apply to:

- Units in a collective Investment Undertaking, other than those which are close-ended; or
- An offer of securities to the public with a total consideration in UK of less than EUR 1 million, over the previous 12 months.

For a public offer of securities in the UK, the prospectus must be reviewed and approved by the FCA. The Prospectus Regulation imposes certain disclosure requirements on Companies which must be complied with. Listed issuers of tokens or of tokens admitted to trading on a recognised investment exchange will have similar requirements in addition to continuing obligations (e.g. pursuant to the Disclosure Guidance and Transparency Rules and Market Abuse Regulation).

UK Finance & Funds Law Requirements (cont.)

Prospectus Requirements (Prospectus Regulation): Relevant Exemptions

- Admission to trading '20% threshold' exemption (**Article 1(5)**)
- Offers to the public:
 - Qualified Investor (**article 1(4)(a); and defined in Article 2(e)**)
 - Fewer than 150 natural or legal persons (**article 1(4)(b)**)
- Offer of securities:
 - at least EUR 100,000 denomination per unit (**article 1(4)(c)**)
 - at least EUR 100,000 consideration from one investor on one offer (**article 1(4)(d)**)
 - Takeover by means of an exchange offer, but information document must be provided (**article 21(2)**)
 - Existing or former director or employee offer (**article 1(4)(i) and article 1(5)(h)**)
 - EUR 8,000,000 UK threshold (**article 3(2)(b)**) and (**section 86(1)(e) of FSMA 2000**)

Conclusion

Why? A move to digital: UX, transparency, efficiency, liquidity, democratisation

What? New technology but old regulations: prospectus and disclosure requirements

How? A suitable project, a vehicle, tax advice, a service provider, a steps plan and a documents list

<https://enzyme.finance/> – Fast & cost-effective way to build, scale and monetize investment strategies.

<https://dhedge.org> – Decentralized asset management protocol connecting the world's best investment managers with investors on the Ethereum blockchain in a permissionless, non-custodial, trustless fashion.

‘Blockchain-based governance of fund management is the next big opportunity’ – Mark Cuban



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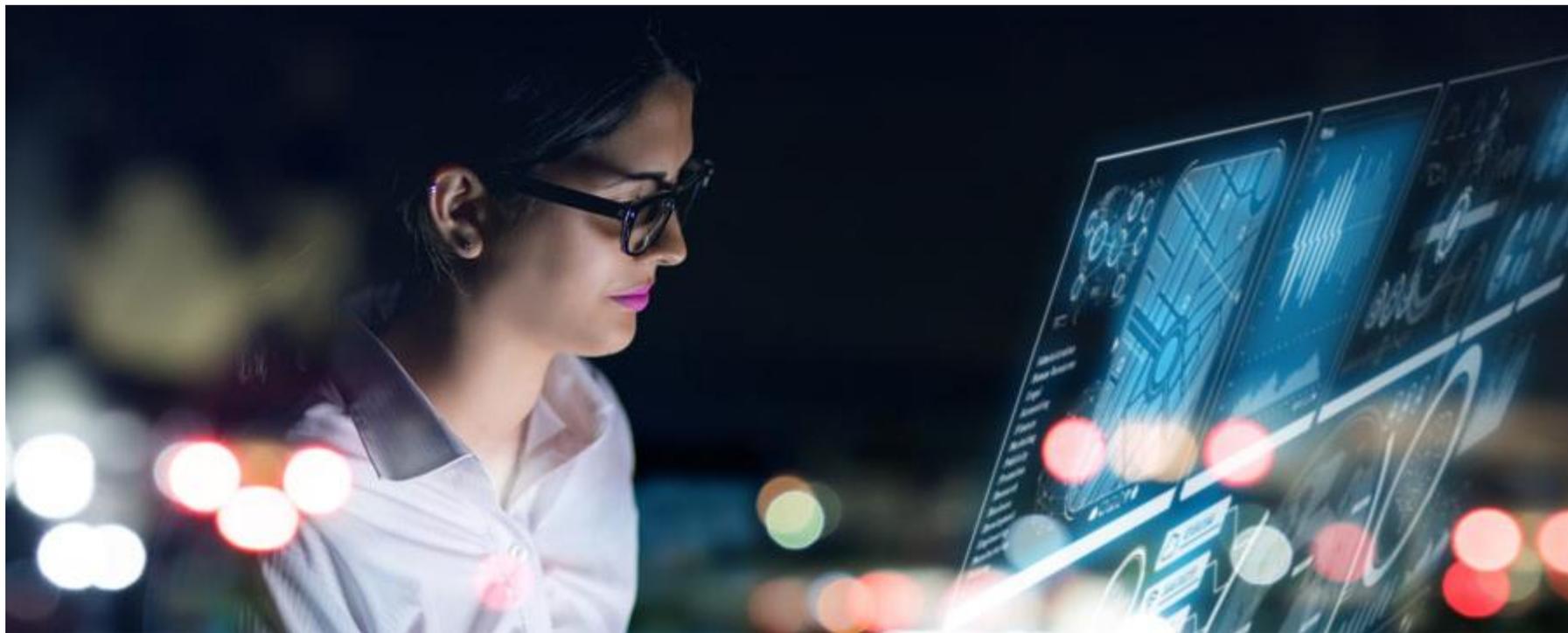
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cms.law



Adi Ben-Ari
Founder and CEO
Applied BlockChain



Q&A Discussion

To ask a question to the panel:

Click the Q&A button at the bottom of your screen to bring up the Q&A board



Thank you