

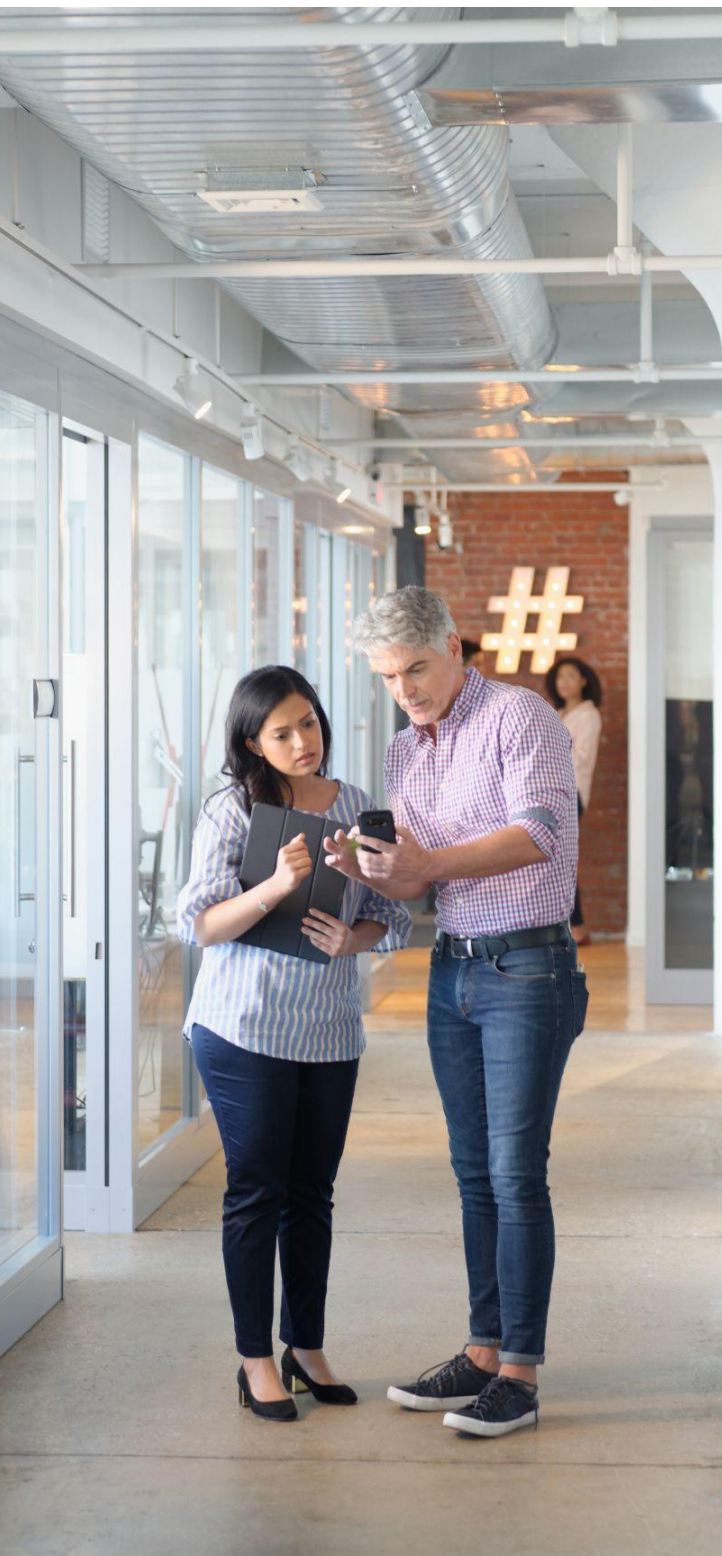


PwC Global Crypto Regulation Report 2023

13 December 2022



Contents



Where is crypto regulation heading?	4
Views from global standard-setters	9
EU single market for digital assets	13
Summaries from selected jurisdictions	18
PwC services and capabilities	66

Global crypto regulation report

Purpose and objectives

This PwC Global Crypto Regulation 2023 report provides an overview of the crypto regulation landscape, with a focus on financial services. It offers insights into how the regulatory frameworks are developing across the world and seeks to identify how this may impact relevant industry participants and virtual service providers within the financial services sector.

Where is crypto regulation heading?

This section provides a snapshot on global crypto regulation, our views on how market trends are shaping global frameworks and considerations for traditional financial services institutions and crypto native firms entering the space.

Views from global standard-setters

This section focuses on how some of the key regulatory standard-setting institutions are shaping international crypto regulation discussions.

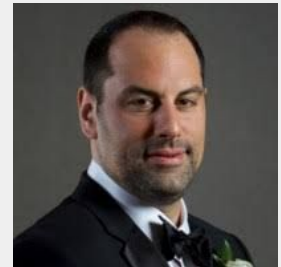
EU and local regulation

These sections focus on the significant advancements in digital asset regulation at the European Union and jurisdictional level. Noticeably, while much progress has been made over the last few years, there still remain differences between scope and implementation timelines.

How can PwC help?

PwC offers a wide range of expertise, including strategy, financial crime, legal, regulatory, accounting, tax, governance, risk assurance, audit, cybersecurity as well as transaction advisory for working with all areas of crypto and digital assets. Our global network is constantly evolving its thinking in how this technology can be applied, through research, client engagements and the development of thought leadership.

For further digital assets research, please also see our other global reports, including PwC's annual Crypto Tax, CBDC Index & Stablecoin Overview as well as Crypto Hedge Fund reports. The reports can be accessed through PwC Crypto Center (<https://www.pwc.com/gx/en/about/new-ventures/cryptocenter.html>).



Trust in the space is broken right now.

While regulation alone will not solve that, clarity across terminology and application of regulation, along with enhancements to risk management capabilities and procedures, is a good starting point.

Matt Blumenfeld

Web3 & Digital Asset Lead
PwC US



Where is crypto regulation heading?

Regulators sharpen their knives

Global digital asset regulation in development

The regulatory focus on digital assets has increased dramatically over the last few years and will continue to do so.

The growth in retail and institutional adoption resulted in a rapid rise in market capitalisation and extreme volatility. More recently, we have witnessed a loss of consumer trust, following a number of high-profile crypto firm failures, fraud, scams and mismanagement of customer funds.

This has brought immediate sharp focus to regulators. The risk to market integrity demonstrates the need for a rapid and comprehensive global regulatory policy approach and supervisory framework, to ensure enhanced consumer protection.

The global asset class, which has seemingly grown up overnight, is more and more interconnected with the traditional financial ecosystem, with an increasing impact on financial stability. The risks are heightened by the pace of innovation and lack of focus on risk management.

The global standard-setters are accelerating the push for international cooperation. Many local authorities have publicly announced their plans to become global centres for digital assets, technology and innovation.

The European Union is at advanced stages of finalising the new Markets in Crypto-Assets Regulation. In the United Arab Emirates, Dubai authorities are setting up the world's first authority solely focussing on virtual assets. Switzerland has integrated one of the most mature regulatory frameworks for digital assets, allowing market participants to gain certainty on the legal and regulatory treatment of their projects and intended activities.

Overall, a significant number of countries are researching, defining, consulting, negotiating and legislating in order to bring digital assets, typically, under the existing financial services frameworks.

Yet, the speed of action, approaches adopted, services and products covered and even the definitions and terminology used* remain heavily fragmented.

The industry has long raised concerns over the lack of transparency and urgency in the regulatory decision-making.

And it may seem that regulators are playing catch up having to grapple with the speed of change, while trying to ensure staff have the right skill sets and resources to support the policy-making process.

However, while regulatory timelines are not in all cases set, the direction of travel is clear. Firms involved in digital assets must be prepared for higher standards than those in place today.

The bar is rising to bring digital asset firms in line with traditional financial services obligations. And for consumers, firms, and other stakeholders, it seems that this change could not happen soon enough.



Cryptocurrencies may have been originally created to operate free from control, but the lack of a robust global regulatory framework for digital assets is harmful for the sector, innovation and consumer protection.

Laura Talvitie

Senior Manager, Digital Assets Regulation
PwC UK

*Some authorities have adopted a catch-all regulatory definition to include all digital assets as a new form of financial instrument. Others have implemented more detailed regulatory definitions, in accordance with the digital asset's economic function. The terminology adopted includes, but is not limited to: digital asset, crypto asset, virtual asset, digital settlement asset, virtual currency and cryptocurrency. In this report, the terminology and spelling used follows the one adopted by the authorities in the relevant jurisdiction.

What firms need to do

Digital assets ecosystem at a turning point - disrupt or be disrupted

The digital asset ecosystem has reached a turning point. While traditional financial institutions have experimented with distributed ledger technology (DLT) in some shape or form, crypto native firms are the ones defining and transforming the sector through innovation. As adoption of the technology grows, the two will meet somewhere in the middle.

What this crypto regulation report shows, is that many regulators across the globe have either enacted regulatory schemes for dealing in crypto assets or are on the brink of doing so. The commonly used justification for traditional financial institutions not embracing the potential which digital assets can bring to an organisation, its customers and the ecosystem as a whole will no longer hold true.

Despite the onset of the 'crypto winter' at the beginning of 2022, public interest in digital assets remains high. Whether it's a consistent base of investments into crypto currencies, the continued listing of new projects or the recovery of the security token and non-fungible token (NFT) markets, retail investors remain committed to digital assets. Institutional investors are also increasingly entering the space and the number of crypto based funds is steadily increasing.

If traditional financial institutions want to avoid falling behind, they need to increase their pace of adapting to this new asset class and its underlying technology.

Ensuring you are crypto compatible

With regulatory frameworks for digital asset products, services and service providers coming into effect, crypto native organisations are increasingly faced with adopting more 'traditional' approaches towards corporate governance, compliance and risk management frameworks.

At PwC, we have been working with a number of crypto firms to help them define and implement the right controls and procedures.

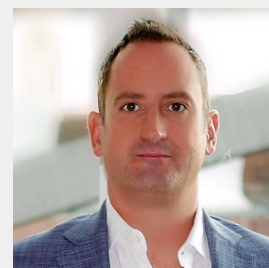
While more accustomed to being regulatory compliant in the business they do, the same applies for traditional financial institutions embarking on the digital asset transformation.

What is your crypto strategy?

Whatever your organisation's background is - whether crypto native or traditional centralised finance - with crypto regulation coming of age, you are faced with the same questions: which type of digital asset services do you want to offer? With the ecosystem quickly evolving, what is your right to play and can you differentiate?

Further, are you well enough equipped to succeed? The frequently quoted war for talent applies much stronger to the digital asset space, where crypto natives and traditional finance are not necessarily natural matches. Crypto fintechs need regulatory expertise and traditional finance needs crypto expertise - both are scarce.

Finally, all this needs to be factored into your risk strategy. Stakeholders and regulatory alike expect clear and conscious decisions on the risks an organisation is willing to take in the digital asset space. And, more importantly, how those risks will be managed and mitigated.



Regulation has leveled the playing field for crypto assets. Traditional finance needs to step up now or fear being disrupted by crypto natives.

Andreas Traum
Partner, Digital Assets
PwC Germany

Crypto regulation at a glance

Jurisdiction	Regulatory framework	AML / CTF*	Travel rule	Stablecoins (used for payments)
United States				
United Kingdom				
Australia				
Austria				
Bahamas				
Bahrain				
Canada				
Cayman Islands				
China (Mainland)				
Denmark				
Estonia				
France				
Germany				
Gibraltar				
Hong Kong				
Hungary				
India				
Italy				
Japan				

- Legislation / Regulation in place
 Pending final legislation
 Process initiated or plans communicated
 Regulatory process not initiated
 The country prohibits cryptocurrencies

*Anti-Money Laundering / Counter-Terrorist Financing. In this report, the term Combating the Financing of Terrorism (CFT) is also used.

The regulatory assessment is based on the analysis undertaken by individual PwC member firms.

Crypto regulation at a glance

Jurisdiction	Regulatory framework	AML / CTF*	Travel rule	Stablecoins (used for payments)
Jordan**				
Kuwait				
Luxembourg				
Malaysia				
Mauritius				
New Zealand				
Oman				
Panama				
Qatar				
Saudi Arabia				
Singapore				
South Africa				
Switzerland				
Taiwan				
Turkey***				
United Arab Emirates				

- Legislation / Regulation in place
 Pending final legislation
 Process initiated or plans communicated
 Regulatory process not initiated
 The country prohibits cryptocurrencies

*Anti-Money Laundering / Counter-Terrorist Financing. In this report, the term Combating the Financing of Terrorism (CFT) is also used.

**The Central Bank of Jordan prohibits banks, currency exchanges, financial companies, and payment service companies from dealing in digital currencies. While it has warned the public of the risks of private digital currencies and they are not legal tender, payments may still be accepted by small businesses and merchants.

***The Central Bank of Republic of Turkey prohibits the direct or indirect use of crypto-assets that are not qualified as fiat currency, fiduciary money, electronic money, payment instrument, securities or other capital market instruments in payments.

The regulatory assessment is based on the analysis undertaken by individual PwC member firms.



Views from global
standard-setters

FSB on global framework

Expectations from global standard-setters

Global regulatory standard-setters have become increasingly vocal on the threats the digital asset market could impose to global financial stability. The scale, structural vulnerabilities and increasing interconnectedness with the traditional financial system has become impossible to ignore.

The core message remains: effective regulatory and supervisory frameworks at national level should be based on the principle of 'same activity, same risk, same regulation'.

Although the recommendations and guidance may not carry a legal status, they provide important direction to national authorities.

Firms should consider the policy standards in the context of the likely implementation into their local regulation.

Global regulatory framework

In October 2022, the Financial Stability Board (FSB) published a proposed framework and recommendations for the international regulation of crypto assets and global stablecoin arrangements.

The FSB identifies a number of challenges around the national application of crypto asset regulation and supervision:

- existing regulatory powers and reach as well as gaps in the application, including cross-border cooperation
- risks related to wallets and custody services, trading, lending and borrowing activities
- extensive use of Distributed Ledger Technology (DLT)

The FSB expects national authorities to implement regulatory frameworks for digital assets comparable to those already in place for traditional finance.

For national authorities, this means having and using powers, tools and resources to regulate and supervise the growing crypto and stablecoin market. Authorities should cooperate and coordinate with each other, domestically and internationally, to encourage consistency and knowledge-sharing.

Crypto and stablecoin firms, including issuers, service providers, exchanges and wallets, should be subject to comprehensive regulatory requirements. These include having in place effective governance and risk management frameworks as well as robust frameworks for collecting, storing, safeguarding, and the timely and accurate reporting of data.

Global stablecoin arrangements should have high trust and transparency obligations, including redemption rights, stabilisation mechanisms and requirements around the composition and quality of reserve assets. Independent, transparent and regular audit arrangements should be in place to confirm the amount of global stablecoins in circulation as well as the value and composition of the assets backing them in reserve.

The combination of multiple functions within a single service provider may result in complex risk profiles and conflict of interest, such as those present in other financial conglomerates. The FSB expects jurisdictions to address these risks effectively. In some jurisdictions, this may mean disallowing the provision of certain combinations of services or functions within a single entity.

The FSB will finalise the proposed recommendations by July 2023. Further work may be required in 2023 on developments in the broader field of wider decentralised finance (DeFi) and the associated financial stability risks.

The FSB will review the implementation progress of its recommendations by the end of 2025 and take stock of the regulatory measures adopted by FSB member jurisdictions, including the achieved outcomes.

Further information: FSB: Regulation, supervision and oversight of Crypto-Asset activities and markets, 11 October 2022, FSB: Review of the FSB high-level recommendations of the regulation, supervision and oversight of 'Global Stablecoin' arrangements, 11 October 2022

BCBS on prudential standards

Global prudential standards

The Basel Committee on Banking Supervision (BCBS) published its second consultation on the prudential treatment of crypto asset exposures in June 2022, building on its first consultation in 2021. The final report is expected by early 2023.

The policy standard defines two groups:

- Group 1 assets, fully meeting a set of classification conditions (e.g. stablecoins).
- Group 2 assets (e.g. unbacked crypto currencies), not meeting any of the conditions and presenting greater prudential risks.

The BCBS stipulates four conditions to determine whether a bank's exposures would be allocated to group 1 or 2:

- the crypto asset is either a tokenised traditional asset or has an effective stabilisation mechanism that links its value to a traditional asset.
- all rights and obligations linked to the crypto asset are clearly defined and legally enforceable, including settlement finality.
- the crypto asset functions (including those of its operating network) operate to sufficiently mitigate material risks.
- entities which are involved in the organisation and processing of crypto assets should be regulated and supervised, or subject to appropriate risk management standards.

The proposed capital treatment of Group 1 assets would be based on the existing Basel credit and market risk framework, with the addition of capital add-ons for infrastructure risks and stablecoins which only narrowly passed the stabilisation risk test.

Group 2 assets which met specified hedge recognition criteria (assessing exposure type, liquidity and data availability) would be assessed through an adapted market risk framework. It incorporates netting and a 100% capital charge.

Group 2 assets which did not meet the hedge recognition criteria would be treated with a 1250% risk weight (which would imply full capitalisation of the exposure, based on an 8% minimum capital requirement).

In addition, a large exposure limit would be established for all Group 2 assets, provisionally set at 1% of Tier 1 capital.

For both Group 1 and Group 2 crypto assets, additional capital requirements would be set in relation to operational and liquidity risks. The BCBS has stated a clearer delineation between the application of the operational risk framework compared to credit and market risk and provided more detail on the application of the Liquidity Coverage Ratio and the Net Stable Funding Ratio to crypto asset exposures. Both Groups 1 and 2 would also be included in the leverage ratio and large exposure limits which apply to banks.

The BCBS expects the supervisory review process to be applied to banks' exposures to crypto assets, covering the adequacy of bank risk management practices and the responsibility of the supervisory review function. In the event that supervisors identify inadequate capital allocation or risk management practices, additional actions are considered (including additional capital charges, provisioning or supervisory limits).

The BCBS is expected to issue the final report by early 2023. The standard-setter emphasises that the continued growth of the crypto asset market could raise financial stability risks and it may further tighten the proposed policy standard ahead of finalisation.



Other global developments

Financial integrity

In October 2021, the Financial Action Task Force (FATF) issued updated guidance for a risk-based approach to virtual assets and virtual asset providers. It is intended to help regulators to develop regulatory and supervisory directives for virtual asset activities, and to help Virtual Asset Service Providers (VASPs) to understand and execute their AML / CFT obligations.

For regulators, the FATF recommends a risk-based approach, technological neutrality and future-proofing a level playing field, while recognising the internet-based, borderless nature of virtual assets.

For VASPs, the guidance clarifies the five listed activities which are covered under the FATF recommendations. All jurisdictions are obligated to impose specified AML / CFT requirements, including the travel rule, on financial institutions, designated non-financial businesses and professions as well as VASPs.

The travel rule requires financial institutions to share data on transactions beyond a threshold. The guidance recommends VASPs (exchanges, banks, Over-the-Counter desks, hosted wallets, and other financial institutions) to share certain personally identifying information about the recipient and sender for crypto transactions over USD / EUR 1,000 globally.

The rule is intended to block terrorist financing; deter payments to sanctioned individuals, entities and countries; enable law enforcement to subpoena transaction details; support reporting of suspicious activities; and prevent money laundering.

In July 2022, the FATF reported that jurisdictions have made only limited progress in introducing the travel rule and the vast majority have not passed legislation or started enforcement and supervisory measures.

The FATF also noted that the vast majority of jurisdictions have not fully implemented its Recommendation 15. The Recommendation sets the global AML / CFT Standards for virtual assets and VASPs. Countries are expected to ensure that VASPs are regulated for AML / CFT purposes, and licensed or registered as well as subject to effective systems for monitoring.

Systemically important stablecoins

In July 2022, the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions (CPMI-IOSCO) issued a final report providing clarity on the application of the Principles for Financial Market Infrastructures to stablecoin arrangements, which are considered systemically important financial market infrastructures. It is intended to assist national authorities in determining whether a stablecoin arrangement is systemically important.

Specifically, the report proposes guidance on aspects related to governance, framework for the comprehensive management of risks, settlement finality and money settlements.

The report excludes considerations for stablecoins denominated in or pegged to a basket of fiat currencies (multicurrency stablecoins) which will be considered in the future work as required.

Fintech standards

In July 2022, IOSCO's Fintech Task Force issued a Crypto-Asset Roadmap for 2022-2023. It sets out the plans and activities for two workstreams, 1) Crypto and digital assets and 2) DeFi.

The workstreams will focus on issues relating to market integrity, investor protection and financial stability, as well as on how to manage crypto and DeFi risks within regulatory frameworks.

Both groups will publish their final policy recommendations by the end of 2023.

Further information: FATF: Targeted update on implementation of the FATF standards on virtual assets and virtual asset providers, July 2022, FATF: Updated guidance for a risk-based approach virtual assets and virtual asset providers, IOSCO: IOSCO Crypto-Asset Roadmap for 2022-2023, 7 July 2022, IOSCO: IOSCO Decentralised Finance Report, March 2022, CPMI-IOSCO: Application of the Principles for Financial Market Infrastructures to stablecoin arrangements, July 2022



+83.44%

7.45

EU single market for digital assets

MiCA: introduction

Background

The Markets in Crypto-Assets Regulation (MiCA) is the first cross-jurisdictional regulatory and supervisory framework for crypto-assets. It was originally introduced in 2020 as a response to a global stablecoin initiative.

MiCA is expected to enter into force in 2024, subject to its ratification by the European Parliament (which is expected in early 2023).

It forms a part of the European Commission's goal to establish a regulatory framework for facilitating the adoption of distributed ledger technology (DLT) and crypto-assets in the financial services sector.

MiCA's key objectives include ensuring legal clarity, consumer and investor protection, market integrity and financial stability, while promoting innovation and addressing the challenges caused by fragmented national frameworks.

MiCA clarifications:

- Tokens defined as 'financial instruments' will be subject to the existing financial services rules (in particular, MiFIR / MiFID II).
- Tokens defined as 'crypto-assets' will be subject to the bespoke pan-EU regime established by MiCA.
- Introduces rules regarding regulated crypto-asset services, including authorisation, passporting and ongoing supervision requirements for crypto-asset issuers (CAIs) and crypto-asset service providers (CASPs).

Firms in scope

In general, any business activity related to crypto-assets in the EU is likely to fall under MiCA.

Non-EU crypto-asset firms carrying out activities for EU customers must also comply with the requirements.

MiCA exempts services provided by non-EU domiciled firms on the basis of 'reverse solicitation', i.e. when responding to an initiative from an EU customer under a set of strict terms, as defined in MiCA.

Products in scope

Majority of crypto-assets which are not already in scope of existing regulation will fall under MiCA:

- Asset-referenced tokens (ART)
- Electronic money tokens (EMT)
- Other crypto-assets (including utility tokens)

The European Securities and Markets Authority (ESMA) will issue guidelines on the criteria and conditions on designating digital assets either in-scope or out of scope of MiCA within 18 months of MiCA's entry into force.

Services in scope

The services governed by MiCA are largely similar to MiFID regulation and trigger a licensing requirement for CASPs. These include:

- custody and administration of crypto-assets on behalf of third parties;
- operation of a trading platform for crypto-assets;
- exchange of crypto-assets for funds (i.e. fiat and other currencies);
- exchange of crypto-assets for other crypto-assets;
- execution of orders for crypto-assets on behalf of third parties;
- placing of crypto-assets (any marketing on behalf of, or for the account of, the offeror);
- providing transfer services for crypto-assets on behalf of third parties;
- reception and transmission of orders for crypto-assets on behalf of third parties;
- providing advice on crypto-assets; and
- providing portfolio management on crypto-assets (i.e. where portfolios include one or more crypto-assets).

MiCA does not specify whether lending of crypto-assets is a regulated activity. This may be regulated at the national level or lending activities involving crypto-assets may be undertaken in the context of a lender performing other regulated activities, triggering MiCA's authorisation requirements.

If a digital asset is categorised as a financial instrument, lending of financial instruments is governed by the existing and extensive body of EU financial services legislative and regulatory instruments.

Further information: European parliament: Proposal for a regulation of the European parliament and of the council on markets in crypto-assets, 5 November 2022

Summary of product classification

MiCA (in-scope)		
Asset-referenced tokens (ART)	Electronic money tokens (EMT)	Other crypto-assets
<p>Tokens aiming to maintain a stable value by referencing one or several assets, including fiat currencies, crypto-assets or commodities.</p>	<p>DLT equivalents for coins and banknotes and used as payment tokens. EMTs must be backed by one fiat currency which is a legal tender.</p>	<p>Tokens with a digital representation of value or rights which may be transferred and stored electronically.</p> <p>Utility tokens which provide access to a good or service and only accepted by the issuer of that token.</p> <p>Payment tokens which are not EMTs or security tokens.</p>
<p>Significant tokens* and stablecoins</p>		
<p>Algorithmic crypto-assets and algorithmic stablecoins</p>		

MiCA-out of scope	
EU financial instruments (regulated elsewhere)	Other digital assets (including)
<p>Digital assets governed by the existing financial services rules, as amended, including security tokens and derivatives on crypto-assets.</p>	<ul style="list-style-type: none"> • Digital assets which cannot be transferred, are offered for free or are automatically created • Central bank digital currencies (CBDCs) • Non-fungible tokens (NFTs) • Decentralised finance (DeFi) protocols

*MiCA may designate ARTs and / or EMTs (in particular algorithmic crypto-assets and stablecoins) as 'significant'. Whether an ART or EMT is deemed as significant depends on the volume and frequency of transactions as well as systemic risk impact.

Additional requirements for CAIs include, subject to further conditions: higher regulatory capital requirements, requirements for specific liquidity and management policies and procedures as well as compliance with a specific interoperability criteria. The European Banking Authority will supervise compliance of CAIs in collaboration with the respective national competent authorities.

Key compliance obligations

Crypto-asset issuers (CAIs)

CAIs will have to meet the following obligations, before making an offer of crypto-assets (other than ARTs or EMTs) to the general public in the EU or in order to request admission of such crypto-assets to trade on a trading platform:

- whitepaper describing the technical information of the crypto-asset, published online;
- approved market communication;
- legal entity registration, financial condition (review) for past three years and details of natural or legal persons involved in the project;
- brief description of the project, characteristics of the token, key features on utility and information on 'tokenomics';
- business plan, including planned use of funds from issuance;
- disclosures on risks and reasons for seeking admission to trading platforms (if applicable); and
- any restrictions on transferability of the tokens issued.

The obligation to publish a whitepaper does not apply where the crypto-assets are offered for free, are created through mining, are unique and not fungible with other crypto-assets.

A whitepaper is also not required if the offering is made to fewer than 150 natural or legal persons per member state, the total consideration does not exceed EUR 1 million or if the offering is addressed exclusively to qualified investors.

Asset-referenced tokens (ARTs) and Electronic money tokens (EMTs)

ART and EMT offerings are subject to additional requirements. These include the public disclosure of various policies and procedures as well as further disclosures of safeguards of reserve funds and internal control systems. National competent authorities (NCAs) may also set additional requirements.

CAIs of EMTs are required to be authorised either as credit institutions (i.e. a bank) or electronic money institutions.

Yield and interest are prohibited under MiCA. Discounts, rewards or compensation for holding EMTs will be considered as offering interest.

Crypto-asset service providers (CASPs)

A legal entity wishing to apply to become a CASP must have a registered office in an EU Member State and have obtained an authorisation to provide one or more regulated crypto-asset services from an NCA.

An authorisation obtained in one member state allows the CASP to passport its regulated activities across other member states.

CASPs must also abide by the general conduct of business rules. These include that a CASP:

- acts fairly and in the interest of clients;
- has at least one Director who is a resident in the EU;
- has its place of effective management in the EU;
- ensures and satisfies the authorising and supervising NCA that its members of management and qualifying shareholders (i.e. those holding 10% or above) satisfy fit and proper standards;
- complies with prudential capital and governance, risk and compliance as well as internal organisational requirements;
- ensures that it maintains robust and secure standards of safekeeping of assets and funds;
- implements prompt and equitable complaint handling procedures;
- identifies, prevents and manages conflicts of interests promptly and fairly;
- monitors outsourcing risk and comply with on-going outsourcing requirements; and
- complies with other policies including orderly (solvent) wind-down and exits from certain markets.

CASPs offering custody and / or safekeeping of crypto-assets are required to establish a custody policy with segregated holdings, daily reporting of holdings and have liability for loss of client's crypto-assets in the event of malfunctions or cyber-attacks.

CASPs must place clients' funds received with a central bank or credit institution (other than in relation to e-money tokens) at the end of every business day.

Trading platforms are required to set operating rules, technical measures and procedures to ensure resilience of the trading system, with the final settlement taking place within 24 hours of a trade.

Capital requirements apply to CASPs, depends on the type of regulated activity.

Other regulatory requirements

Market abuse

MiCA establishes a bespoke market abuse regime for crypto-assets.

The regime sets rules to prevent market abuse, including through surveillance and enforcement mechanism. This amends and extends certain concepts which exist under EU financial services legislative and regulatory instruments, and in particular in the EU market abuse regulation.

MiCA's bespoke market abuse regime clarifies the definition of inside information as it applies to crypto-assets, the parameters of the market abuse regulations and the need for CAIs whose crypto-assets are permitted to trade on a crypto-asset trading platform to disclose inside information.

MiCA also outlaws market manipulation, illegal disclosure of insider knowledge and insider trading in MiCA in-scope crypto-assets.

Other regulatory requirements

The European Commission has published and moved to implement the following EU legislation, relevant to crypto-assets:

- A directive introducing targeted amendments to the existing extensive body of EU financial services legislative and regulatory instruments. These are to accommodate the MiCA regime and the Pilot DLT Market Infrastructure Regulation (PDMIR).
- The PDMIR, applicable from 23 March 2023, creating a sandbox regime for private sector participants developing infrastructure for the trading and settlement of crypto-assets.
- EU regulation on digital operational resilience for the financial sector (DORA), which received final agreement in November 2022 and is awaiting signature and official publication.

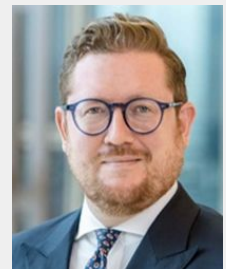
In addition, updates are expected on the harmonisation of the EU AML framework, including the introduction of a single pan-EU AML Authority.

Enforcement and supervision

NCA's act as the front-line supervisors and enforcement agents of CASPs and CAIs. NCA's will apply a modified set of supervisory tools, including on-site and off-site inspections, thematic reviews and regular supervisory dialogue to identify, monitor and request remedies to compliance shortcomings by CASPs and / or CAIs.

New enforcement powers include powers to:

- suspend CAIs / CASPs' offering of activity;
- suspend advertisements and marketing activity;
- publish public censures or notices that a CAI / CASP is failing compliance;
- require auditors or skilled persons to carry out targeted on-site and / or off-site inspections of the CAI / CASP, and / or;
- issue monetary fines, other non-monetary sanctions and administrative measures to CAIs / CASPs and / or the members of management (including bans).



MiCA represents a paradigm shift in how digital assets are regulated and supervised. Firms will need to take an early action to move to meet the new requirements.

Dr. Michael Huertas

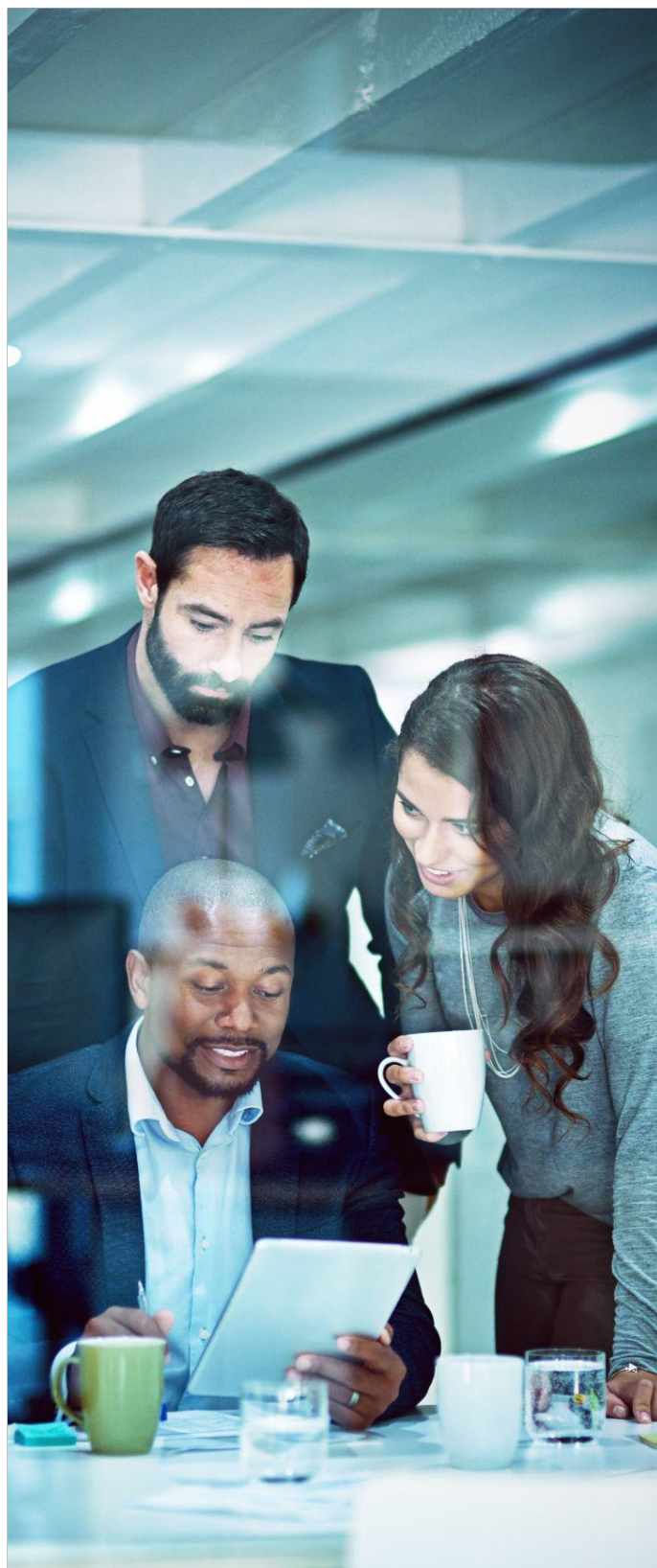
Partner, FS Legal Leader Europe
PwC Legal Business Solutions, Germany



Summaries from
selected jurisdictions

Selected jurisdictions

United States	20
United Kingdom	23
Australia	25
Austria	27
Bahamas	28
Canada	30
Denmark	31
Estonia	32
France	34
Germany	37
Gibraltar	41
Hong Kong	43
Hungary	45
India	46
Italy	48
Japan	49
Luxembourg	51
Mauritius	53
New Zealand	55
Singapore	57
South Africa	60
Switzerland	61
Taiwan	63
Turkey	64
United Arab Emirates	65



United States

Government outlook

The US has a 'dual banking system', meaning that digital asset service provision can be regulated at the state level or at the Federal level.

In both cases, the state and Federal regulatory and enforcement agencies have outpaced Congress and the White House in moving to regulate digital asset activity. This has been done through using existing legal authorities, regulating digital asset activity using the payments scheme and, in some cases, through the banking system, leveraging the non-depository trust vehicle to regulate digital asset activity.

As the digital asset market grew and US Dollar-backed stablecoins approached systematic importance (exceeding the \$50 billion threshold for systemic importance, as established in the wake of the late 2000's financial crisis), Congress and the White House have increasingly engaged and issued guidance on the topic.

While regulatory agencies continue to discuss regulatory authority, policy makers have been drafting digital asset legislation proposals. For instance, the bipartisan Responsible Financial Innovation Act (RFIA), would classify most digital assets as 'commodities' (giving primary oversight responsibility to the Commodity Futures Trading Commission (CFTC) and establish requirements for stablecoins.

In March 2022, the Administration released an Executive Order, outlining a whole-of-government approach to address risks stemming from the growth of digital assets and blockchain technology while supporting responsible innovation. Initial findings have been reported, but questions still remain as to which of the many regulators in the US hold the power and authority to govern digital assets.

The Financial Stability Oversight Council, FSOC (an inter-agency consultative body composed of state and Federal banking, commodity, securities and consumer protection authorities) released a capstone report to the White House Executive Order, Report on Digital Asset Financial Stability Risks and Regulation. The report concludes that there is no comprehensive regulatory framework in the US for digital assets, despite clear registration requirements and jurisdictional claims by prudential and functional regulators.

Regulators remain vocal on the risks towards financial stability and consumers. Some have started to carve out their jurisdiction through guidance and enforcement actions.

Crypto asset regulation

In the absence of a comprehensive framework, the regulation of digital assets is a function of their regulatory asset classification, which may in certain cases overlap. Specifically, crypto assets may qualify in a number of categories:

- Payments instrument or 'value that substitutes for currency,' placing the provision of their services within the money service business (MSB) regulatory framework.
- Commodity instrument, if it constitutes a service, right or interest in which contracts for future delivery are presently or in the future dealt in. Classification as a commodity places oversight over derivative instruments related to them under the commodity regulatory regime, which may include requirements for state registration.
- Security instrument, if it constitutes an investment of money in a common enterprise with a reasonable expectation of profits to be derived from the efforts of others. It may be subject to registration requirements and service provision may obligate the provider to register with securities regulators.

Registration / licencing

As early as in 2013, the Financial Crimes Enforcement Network (FinCEN) issued guidance on administering, exchanging or using virtual currencies. It concluded that providing digital asset services is a form of money transmission and therefore are subject to FinCEN registration requirements as well as compliance with MSB money laundering prevention regulations and the US sanctions regime.

As MSBs are regulated at the state level by state law, several states began to investigate the applicability of their specific laws and regulations to digital asset activity. Fragmented approaches remain, in similar way to general payments regimes. Certain states require no registration. For instance, California has a policy of permitting digital asset firms to operate without a license to foster the industry whereas Montana does not regulate payments at all.

Further information: The White House: Executive Order on Ensuring Responsible Development of Digital Assets, 9 March 2022, Congress: Responsible Financial Innovation Act (the bill), 7 June 2022, FSOC: Report on Digital Asset Financial Stability Risks and Regulation, 3 October 2022, FinCEN: Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, 18 March 2013.

United States (continued)

On the other end of the spectrum, certain states have added incremental requirements to their money transmission regimes for digital assets.

For instance, Texas requires an information security audit. New York has established a bespoke regulatory regime, the BitLicense, for companies engaging in digital asset activity. Certain states permit digital asset activity to be conducted through the non-depository trust bank framework. And certain states will require a state chartered trust bank to hold an MSB authorisation in addition to the trust charter issued by another state to operate.

The Federal banking regulator, the Office of the Comptroller of the Currency (OCC), has issued several legal opinions interpreting Federal banking law as permitting the provision of digital asset services.

As a consequence, such service provision is also generally permissible under state regulatory regimes, as states permit, with appropriate supervisory approvals, a state chartered institution to exercise powers afforded to a similarly chartered Federal institutions (so-called 'wildcard' or 'parity' statutes). For instance, Texas has taken the step of issuing stand alone guidance offering a similar interpretation of state banking law to permit digital asset custody services for state banks.

Financial crime

Digital asset firms are generally required to register with FinCEN and comply with AML and sanctions requirements.

Both FinCEN and the Office of Foreign Assets Control (OFAC), the primary US sanctions regulator, have released guidance and taken enforcement actions for violations of the requirements.

Guidance from both regulators as well as the New York State Department of Financial Services has placed emphasis on using blockchain analytics to augment know your customer (KYC), transaction monitoring and sanctions screening programs. New York has implemented a transaction monitoring and filtering regulation, requiring covered entities to affirmatively certify compliance with the regulation on an annual basis.

Sales and promotion

Federal and state regulators have monitored the digital asset markets and taken enforcement actions for fraudulent claims in the sales and promotion of digital assets.

Over the past several years, most of these enforcement actions have been focused on claims regarding the profitability of investments, misrepresenting the nature of the asset (e.g. claiming a stablecoin is fully backed by fiat currency), and failure to disclose conflicts of interest.

More recently, the focus has expanded to include misrepresentations that assets held on platform are covered by federal deposit insurance.

The Securities and Exchange Commission (SEC) has also more broadly focused on 'digital engagement practices', including the gamification of trading.

Prudential treatment

Prudential treatment of digital assets has been increasingly understood to be a blind spot. While there has been movement on international prudential treatment frameworks, the US has yet to put forward a US-specific framework.

The FSOC's response to the White House Executive Order identified that the payments regime in the US lacks a resolution framework outside of the existing MSB laws, which generally do not address the orderly resolution of large, interconnected entities outside of the bankruptcy process.

While US regulated MSBs and trust banks are subject to net worth requirements, only New York State specifically imposes digital asset specific capital requirements.

Stablecoins

Like digital assets more broadly, US dollar-backed stablecoins are generally treated and regulated as payments instruments, issued through state chartered or licensed entities. The reserves are held in insured depository institutions, which are subject to Federal oversight. In June 2022, the New York State Department of Financial Services issued guidance for stablecoin issuers.

Further information: OCC: #1170 Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers, 22 July 2020, OCC: #1172 OCC Chief Counsel's Interpretation on National Bank and Federal Savings Association Authority to Hold Stablecoin Reserves, 21 September 2020, OCC: #1174 OCC Chief Counsel's Interpretation on National Bank and Federal Savings Association Authority to Use Independent Node Verification Networks and Stablecoins for Payment Activities, 4 January 2021, Texas Department of Banking: Authority of Texas State-Chartered Banks to Provide Virtual Currency Custody Services to Customers, 10 June 2021, New York State Department of Financial Services: Guidance on Use of Blockchain Analytics, 28 April 2022 and Guidance on the Issuance of U.S. Dollar-Backed Stablecoins, 8 June 2022, SEC: RIN 3235-AN00, Request for Information and Comments, 27 August 2021

United States (continued)

In November 2021, the President's Working Group on Financial Markets (PWG) released a report calling for Congress to pass a law requiring that stablecoins register as insured depository institutions. This would subject them to the same regulatory regime as banks, including governance and risk management expectations, capital and liquidity requirements, and resolution planning and recovery requirements.

Further reports and speeches by regulators have either echoed this recommendation, or more broadly called for Congress to pass a law bringing stablecoins into the bank regulatory fold.

A number of bills in Congress are taking a different approach. For instance, the RFA would set forth 1:1 reserve requirements as well as disclosure requirements. While it does not require that all stablecoins become depository institutions, it creates a special purpose charter for stablecoins with tailored requirements. Others have not required stablecoins to receive a charter, but instead set forth requirements around backing and disclosures.

Stablecoins remain subject to a web of federal and state regulations, including FinCEN AML and OFAC sanctions regimes as well as scrutiny from the SEC and CFTC over fraud and misconduct. Federal and state banking regulators can also use their authorities to examine banks holding fiat reserves for stablecoin issuers.

Central Bank Digital Currency (CBDC)

The US has not made a decision on introducing a CBDC. The Federal Reserve Bank continues to lead the work on CBDC research.

In January 2022, it released a discussion paper on the pros and cons of a US CBDC that noted it would only proceed if it is determined to be in the national interest and it would seek Congressional authorisation before doing so. In November, it announced a 12-week proof-of-concept project to explore the feasibility of a wholesale CBDC.

The March 2022 Executive Order puts the highest urgency into CBDC research. Subsequent reports suggest that the US will continue its careful research and wait-and-see approach before making any decisions.

Other digital assets

Regulators are at early stages of assessing their approach to other areas of digital assets, including NFTs and wider DeFi.

While NFTs may be classified as works of art, FinCEN's recent treatment of the digital asset class, in its study on works of art in money laundering, indicates that they are not outside the scope for regulatory scrutiny under existing frameworks.

Expected regulatory announcements

- Interagency guidance on liquidity risk management by the Fed, OCC and FDIC, expected in 2023.
- Interagency guidance on finder activities by the Fed, OCC and FDIC, expected in 2023.
- Stablecoin legislation, expected in due course.

Authors

Robert Donovan, Managing Director, PwC US
robert.donovan@pwc.com

Matthew Blumenfeld, Director, PwC US
matthew.blumenfeld@pwc.com

Further information: PWG: Report on Stablecoins, 1 November 2021, The Federal Reserve: Money and Payments: The U.S. Dollar in the Age of Digital Transformation, 14 January 2022, The Federal Reserve Bank: New York Innovation Center to Explore Feasibility of Theoretical Payments System Designed to Facilitate and Settle Digital Asset Transactions. 15 November 2022, FinCen: Study of the Facilitation of Money Laundering and Terror Finance Through the Trade in Works of Art, 4 February 2022

United Kingdom

Government outlook

In October 2022, the House of Commons voted to give HM Treasury (HMT) the power to make cryptoassets a regulated financial instrument. The vote clarifies that 'Digital Settlement Assets' can be brought within the scope of the existing provisions of the Financial Services and Markets Act 2000. If they are brought within scope, cryptoassets will be treated like other forms of financial assets, allowing HMT and the regulators to quickly respond to new developments.

The new legislation is included in the Financial Services and Markets Bill 2022 (FSMB), which also covers measures to bring stablecoins under the existing financial services legislation.

The FSMB continues its passage through the Houses, before the expected Royal Assent in the first half of 2023.

The Government intends to make the UK a global hub for cryptoasset technology and investment and consults on the proposed approach to wider cryptoassets.

Regulators remain vocal on the risks to financial stability and consumer protection.

Crypto asset regulation

Tokens currently regulated:

- Security tokens which amount to a 'Specified Investment' under the Regulated Activities Order (RAO), excluding electronic money.
- Electronic money tokens which meet the definition of electronic money under the Electronic Money Regulations (EMRs).

Tokens currently unregulated, but could be captured under the FSMB, subject to regulatory outcomes:

- Other tokens, including utility tokens, which can be redeemed for access to a specific product or service.
- Unbacked exchange tokens or cryptocurrencies, which are usually decentralised and designed to be used primarily as a medium of exchange.

Registration / licencing

Since 2020, firms undertaking certain cryptoasset activities (such as buying and selling cryptocurrencies) must comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs).

Firms are required to register with the Financial Conduct Authority (FCA) before conducting business or notify the regulator before a proposed acquisition of a registered cryptoasset firm.

Firms that undertake certain cryptoasset activities in relation to cryptoassets classified as financial instruments or electronic money must be authorised by the FCA.

Financial crime

In June 2022, HMT confirmed it would extend information sharing requirements for wire transfers (known as the Travel Rule) to include cryptoassets. From September 2023, firms will be required to collect beneficiary and originator information for transactions with an 'elevated risk of illicit finance', as defined in the legislation.

Regulators are at early stages of assessing their approach to market abuse relating to on-chain crypto assets.

Sales and promotion

HMT will bring cryptoasset financial promotions in line with other financial advertising, under the Financial Promotion Order. This will apply regardless of whether financial promotions are made to retail or wholesale clients.

As a result, the FCA will align its rules for qualifying cryptoassets with other high-risk investments, placing additional restrictions on firms communicating or approving relevant promotions.

The FCA prohibits the sale, marketing and distribution of crypto-derivatives (excluding security tokens) to retail consumers.

In March 2022, the Committee of Advertising Practice and Advertising Standards Authority (ASA) issued an enforcement notice on advertising of cryptoassets. The ASA will report non-compliance to the FCA, Trading Standards and any other relevant professional industry body.

Further information: UK Government: The Financial Services and Markets Bill, as at 28 October 2022, HMT: Government sets out plan to make UK a global crypto asset technology hub, 4 April 2022, Cryptoasset Taskforce: Final Report, October 2018, HMT: Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022, June 2022, HMT: Cryptoasset promotions: Consultation response, January 2022, FCA: PS22 / 10: Strengthening our financial promotion rules for high-risk investments and firms approving financial promotions, 01 August 2022, ASA: Enforcement Notice: Advertising of Cryptoassets: Cryptocurrencies, 22 March 2022

United Kingdom (continued)

Prudential treatment

The Prudential Regulation Authority (PRA) acknowledges that no single part of its framework fully captures cryptoasset risks. Until an overarching framework is agreed internationally, the PRA expects firms to consider a combination of existing measures to adequately address risks involved.

According to the PRA's guidance, firms should reflect the risks posed by cryptoasset activities in their risk management frameworks, overseen by the board and senior executive management. Firms should explore using stress tests to address the uncertainties in modelling the relationship between different cryptoasset exposures.

The PRA also maintains that a number of aspects of the Pillar 1 framework are relevant to cryptoasset exposures. In many cases, holdings will be classed as an intangible asset and deducted from CET1.

For the vast majority of cryptoasset positions, a capital requirement of 100% of the position will be appropriate. Most counterparty credit risk exposures should be mapped as 'other risks' under the SA-CCR framework.

Firms must also assess the risks posed by cryptoassets under the Pillar 2 framework. Depending on the nature of a firm's activities, this should cover market, credit, counterparty and operational risk as well as other risks not generally considered under the Pillar 2 framework.

Operational risk is particularly relevant to certain cryptoasset activities, with greater risks of fraud and cyber attack. Where firms outsource certain activities, they should consider their residual liability and ability to gain control of assets.

In 2022, the PRA requested regulated firms to provide information on their current and planned exposures to cryptoassets. FCA regulated firms should also assess risks posed by cryptoassets.

Stablecoins

The Government announced that it will bring stablecoins, where used as means of payment, into the UK regulatory perimeter and make stablecoins a recognised form of payment in the UK.

This will be largely done through extending the existing electronic money and payments legislation to include payments systems and service providers using stablecoins. The framework will only apply to fiat backed stablecoins.

The amendments will give the FCA powers to establish an authorisation and supervision regime for stablecoins.

The Bank of England (BoE) will supervise systemic stablecoins and payment systems. Stablecoins used in systemic payment chains will be required to meet the same standards as commercial bank money and will need to be backed with high-quality and liquid assets (including central bank reserves), as well as loss absorbing capital as necessary.

Central Bank Digital Currency (CBDC)

The BoE and HMT continue to lead the work on CBDC research, consulting on the case for a potential retail CBDC. No decision has been made to introduce a UK CBDC.

Expected regulatory announcements

- Consultation on proposed approach to wider cryptoassets (including extending the investor protection, market integrity, the promotion and trading of financial products to activities and entities involving cryptoassets) by HMT, expected in 2023.
- Final FMSB, establishing a regulatory environment for stablecoins used for payments and ensuring the Government has the necessary powers to bring a broader range of investment-related cryptoasset activities into UK regulation, expected in 2023.
- Final rules for cryptoasset financial promotions by the FCA, expected in 2023.
- Consultations on proposed regulatory framework for systemic stablecoins, systemic wallets as well as proposed authorisation and supervision regime by the BoE, expected in 2023.
- Final rules on managing the failure of systemic stablecoin firms by HMT, expected in 2023.

Authors

Andrzej Wieckowski, Director, PwC UK
andrzej.wieckowski@pwc.com

Laura Talvitie, Senior Manager, PwC UK
laura.talvitie@pwc.com

Further information: PRA: Existing or planned exposure to cryptoassets, 24 March 2022, HMT: UK regulatory approach to cryptoassets, stablecoins, and distributed ledger technology in financial markets, April 2022, BoE: Reflections on DeFi, digital currencies and regulation, 21 November 2022, BoE: UK central bank digital currency, accessed 12 December 2022

Australia

Government outlook

In December 2021, the Australian Government agreed to establish regulatory regimes for digital assets. These included a licencing and custody regime, decentralised autonomous organisations structures, reviewing the policy framework for digital assets taxation, token mapping and research on a potential CBDC viability.

In March 2022, as part of a Treasury consultation, the key digital asset regulatory objectives were set as:

- ensuring that regulation is fit for purpose, technology neutral and risk-focussed.
- creating a predictable, light touch, consistent and simple legal framework.
- avoiding undue restrictions.
- recognising the unique nature of crypto assets.
- harnessing the power of the private sector.

In May 2022, Australia elected a new Government, which has resulted in a slightly amended course to one agreed by the former government, impacting the previously set timing and path to establishing the proposed regulatory regimes.

The new Government will consult on token mapping, with a purpose of identifying notable gaps in the regulatory framework, progress work on a licensing framework, review innovative organisational structures, look at custody obligations for third party custodians of crypto assets and provide additional consumer safeguards.

Crypto assets regulation

There is no bespoke regulatory framework for digital assets, unless the assets are caught through existing rules which apply to financial products and general consumer law.

Australian Securities and Investments Commission (ASIC) identifies crypto assets as one of its core strategic projects and will continue to support the development of an effective regulatory framework, with a focus on consumer protection and market integrity.

Financial crime

Digital currency exchange providers are required to register with the Australian Transaction Reports and Analysis Centre (AUSTRAC) and implement KYC policies, report suspicious transactions and comply with the existing AML legislation. A bespoke licensing and custody regime for digital asset firms is in development.

Home Affairs and AUSTRAC continue to work with the industry on implementation of the FATF Standards, including the Travel Rule.

Sales and promotion

No specific guidance is in place for the sale and promotion of digital assets.

ASIC provides guidance on how existing financial services laws apply to social media influencers who discuss financial products and services online as well as information for Australian Financial Services (AFS) licensees who use an influencer.

AFS licensees planning to offer digital asset must also comply with product design and distribution obligations, which requires the firm to consider any sales and promotion activity in line with its target market determination.

In October 2022, ASIC placed an interim stop order on a group of crypto funds highlighting it was to protect retail investors from potentially investing in funds that may not be suitable for their financial objectives, situation or needs.

Prudential treatment

In April 2021, the Australian Prudential Regulation Authority (APRA) issued a letter to regulated entities outlining its risk management expectations and a policy roadmap for crypto assets. These include a strong focus on operational and technology risk management as well as on comprehensive due diligence, risk assessment and risk controls ahead of engaging in crypto activities.

The APRA plans to consult on prudential treatment of crypto assets in 2023, implemented in 2025.

Further information: Australian Government: Transforming Australia's Payment System, December 2021, ASIC: Corporate Plan 2022-26, August 2022, AUSTRAC: Digital currency exchange providers, accessed 12 October 2022, ASIC: Information Sheet 269, March 2022, APRA: Crypto-assets: Risk management expectations and policy roadmap, 21 April 2022

Australia (continued)

Stablecoins

In September 2022, a draft bill titled, Digital Assets (Market Regulation) Bill was published for parliamentary debate and public consultation on digital assets, including stablecoins.

It proposes stablecoin issuers to hold Australian or foreign currency in reserve in an Australian bank and regularly report on the assets held in reserve to the APRA.

In its December 2022 report, the Reserve Bank of Australia published stablecoin market, risks and regulation. It confirms that the development of a regulatory framework for payment stablecoins is a near-term priority for the Council of Financial Regulators.

Central Bank Digital Currency (CBDC)

In September 2022, the Reserve Bank of Australia (RBA) issued a white paper on a potential Australia CBDC.

The RBA will launch a pilot project with selected uses cases in early 2023. The report on findings is expected in mid 2023.

The consultative Digital Assets (market regulation) Bill proposed to establish disclosure requirements for facilitators of the e-Yuan (Mainland China CBDC) in Australia.

Author

Sagan Rajbhandary

Director, PwC Australia

sagan.a.rajbhandary@hk.pwc.com

Expected regulatory announcements

- Consultation on token mapping by the Treasury.
- Consultation on new corporate structures, including decentralised autonomous organisations by the Treasury.
- Legislation on Crypto Asset Secondary Service Providers (CASSPrs) – Licensing and Custody Requirements.
- Consultation on the prudential treatment of crypto assets by the APRA.
- Next steps on the consultative Digital Assets (Market Regulation) Bill. Including proposed requirements on stablecoins, licencing requirements and e-Yuan by the Parliament.
- Next steps on the Board of Taxation consultation on the review of tax treatment of Digital assets and transactions in Australia.
- Findings from the CBDC pilot project by the RBA.



Firms waiting for regulatory clarity are likely to be left behind by those forging ahead and pro-actively providing stakeholders with assurance over their governance, risk management and transparency, using both traditional methods as well as real time on-chain evidence.

Sagan Rajbhandary
Director, Crypto Assets
PwC Australia

Further information: Senator Bragg: Digital Assets (Market Regulation) Bill, 19 September 2022, Reserve Bank of Australia: Stablecoins: Market Developments, Risks and Regulation, 8 December 2022

Austria

Government outlook

Austrian law does not provide for a dedicated crypto asset regulation. The Financial Market Authority (FMA), Austria's financial regulator, has positioned itself as neutral when it comes to business models related to crypto assets and new technologies. It follows the EU approach of technology neutrality.

In general, crypto assets and related business models are not prohibited. The FMA does not regard every crypto asset as a currency or security. However, it points out that a final regulatory assessment is subject to the concrete business model. Depending on the features of a crypto asset (e.g. Payment Token, Security Token, Utility Token) the existing regulatory regime may apply (e.g. PSD II, E-Money Act, MiFID II).

Crypto asset regulation

While crypto assets are not specifically regulated by Austrian law, the FMA points out that crypto assets can be categorised, for example, as financial instruments or electronic money, and relevant business models may constitute a regulated activity, including a banking activity or payment service.

Registration and financial crime

Since January 2020, all crypto asset service providers (as defined in the law) must comply with the Austrian AML Act. In particular, they must register with the FMA and are subject to the due diligence and reporting obligations set out in the Austrian AML Act.

In October 2022, the European Commission published its supranational risk assessment report on money laundering and terrorist financing affecting the internal market and relating to cross-border activities. The report emphasises the risks associated with crypto assets as well as calls for ensuring a high level of consumer and investor protection, market integrity and measures to prevent market manipulation and money laundering and terrorist financing activities.

Sales and promotion

No specific guidance is in place for the sale and promotion of crypto assets. Changes are likely to occur, with the adoption of MiCA at the EU-level.

Prudential treatment

There are no specific prudential requirements in place for crypto assets. These are likely to be defined in the future, in accordance with the Basel Committee on Banking Supervision's expectations.

Stablecoins

No specific framework is adopted for stablecoins and the existing regulatory regime applies (especially the Austrian E-Money Act). Changes will occur, with the adoption of MiCA at the EU-level.

Other digital assets

Regulators are at early stages of assessing their approach towards wider digital assets. The work will be directed by the adoption of MiCA and the DLT Pilot Regime at the EU-level.

Central Bank Digital Currency (CBDC)

The Austrian National Bank (OeNB), together with a number of other financial institutions, continues to actively monitor and participate in the digital Euro project.

Expected regulatory announcements

Implementation of MiCA and the proposed new AML/CTF legislative package with other EU Member States, upon the entry into force.

Authors

Irene Eckart, Director, PwC Legal Business Solutions, Austria

irene.eckart@pwc.com

Carina Wolf, Senior Manager, PwC Legal Business Solutions, Austria

carina.wolf@pwc.com

Further information: Financial Market Authority Austria: FinTech Navigator, accessed on 20 October 2022, European Commission: Report on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities, 27 October 2022

The Bahamas

Government outlook

The Digital Asset and Registered Exchanges Act, 2020 (DARE) was enacted in The Bahamas in December 2020. DARE creates a legal framework to regulate the issuance, sale and transfer of digital assets, such as crypto assets, in or from within The Bahamas.

The Digital Assets and Registered Exchanges (Anti-Money Laundering and Countering Financing of Terrorism and Countering Financing of Proliferation) Rules, 2022 (Rules) was subsequently enacted in March 2022, to provide AML rules for digital assets businesses.

In April 2022, the Government issued a Policy White Paper on Future Digital Assets to clarify and expand on the scope of the legislative framework for digital assets operations in or from within the jurisdiction. The paper identifies nine key objectives, including:

- To explore new opportunities in a rapidly and continuously evolving digital asset landscape, including developments in DeFi, NFTs, stablecoins and asset-referenced tokens.
- To improve the attractiveness of The Bahamas as a well-regulated jurisdiction where well-run digital asset businesses, of any size, can operate, grow, and prosper.
- To encourage innovation in the FinTech space and identify emerging technologies that would help maintain The Bahamas' competitive advantages.
- To explore linkages between The Bahamas' existing financial services toolkit (i.e. corporate and fiduciary services) to facilitate continued innovation in the international financial services sector.
- Where necessary, to clarify and expand the scope of the legislative framework, generally, and DARE, in particular, to continue to safely regulate digital assets and digital asset businesses.

DARE and the Rules were drafted to ensure harmonisation of existing domestic laws and enhance the legislative and regulatory framework needed for the administration of digital assets business activity in the jurisdiction.

The Securities Commission of The Bahamas (Commission) regulates, monitors, and supervises the issuance of digital assets and persons conducting digital asset businesses in the jurisdiction. It is tasked with developing rules and codes of practice for the conduct of digital assets businesses and initial token offerings. In addition, the Commission is empowered under DARE to suspend or revoke registration, inspect and investigate and impose administrative sanctions for non-compliance.

The Digital Assets Policy Committee was established to ensure the implementation of the Government's policy objectives as well as an effective intra-governmental collaboration.

Crypto asset regulation

Digital asset businesses regulated under DARE includes (i) business of a digital token exchange, (ii) providing services related to a digital token exchange, (iii) operating as a payment service provider, including providing DLT platform that facilitates the exchange between digital assets and fiat currencies, the exchange between one or more forms of digital assets, assets and the transfer of digital asset, (iv) participation in and provision of financial services related to an issuer's offer or sale of a digital asset, and (v) any other activity provided under regulations.

DARE defines a digital asset as a digital representation of value through a DLT platform where value is embedded, or in which there is a contractual right of use and includes without limitation digital tokens (e.g. virtual currency token, asset token, utility token, non-fungible token and any other digital representation of value designated by the Commission to be a digital token under DARE).

Further information: Securities Commission of The Bahamas: DARE Act and Rules, Government of The Bahamas White Paper Policy: The Future of Digital Assets in The Bahamas, 20 April 2022

The Bahamas (continued)

Registration / licencing

Any person desirous of engaging in digital assets business (which include crypto assets) in or from within The Bahamas must register with the Commission under DARE.

DARE applies to any legal entity carrying on business in The Bahamas, regardless of its physical location. For the purposes of DARE, legal entity is defined to include an incorporated, established or a registered Bahamas Company.

Application forms must be completed for the legal entity, founder, beneficial owner, security holder, director and/or officer and Chief Executive Officer and Compliance Officer respectively. The applications should be accompanied with all relevant supporting documentation which includes the legal entity's constitutive documents and evidence of good standing and full identification of key investors, and designation of key senior personnel.

An existing registrant of the Commission intending to provide digital asset business services will be required to submit a simplified application form for approval before commencing operations of the new activity.

Financial crime

DARE has brought digital assets business under the national AML/CFT risk coordination framework, and includes provisions related to the Financial Action Task Force's (FATF) Recommendation 15 (AML/CFT).

Digital assets businesses are therefore required to implement systems which can prevent, detect and disclose money laundering, terrorist financing and suspicious transactions pursuant to the Proceeds of Crime Act, 2018 (POCA), Anti-Terrorism Act, 2018 (ATA) and Financial Transactions Reporting Act and Regulations (FTRA).

This includes 1) implementing a risk rating framework to assess its customers and business; 2) maintaining internal control procedures including suspicious transaction reporting; 3) maintaining customer identity verification, including third party verification and eligible introducers; and record keeping; and 4) relying on third party verification procedures implemented by another regulated virtual asset service provider or financial institution in an approved jurisdiction.

Sales and promotion

DARE prohibits any person from carrying on or being involved in a digital assets business or offering services as a digital token exchange without being registered by the Commission. Registrants engaging in the sale, exchange or transfer of digital assets must ensure that it conducts AML/CFT risk assessment for compliance with POCA, ATA and FTRA, as well as the Rules.

Stablecoins

In September 2022, the Commission announced proposed amendments to DARE and the Rules to address, among other things, the requirement for a supervisory framework for derivatives of crypto assets as well as enhanced disclosure requirement for stablecoins.

Central Bank Digital Currency (CBDC)

In 2020, the Central Bank of The Bahamas issued the digital Bahamian Dollar Currency, known as the Sand Dollar. The Sand Dollar is one of the first live CBDCs in the world.

Authors

Prince A. Rahming, Partner, PwC Bahamas
prince.a.rahming@pwc.com

Rochelle M. Sealy, Senior Manager, PwC Bahamas
rochelle.sealy@pwc.com

Further information: Proceeds of Crime Act, 2018 (POCA); Anti-Terrorism Act, 2018 (ATA); Financial Transactions Reporting Act and Regulations 2018 (as amended in 2022 and 2021 respectively) (FTRA); The Central Bank of The Bahamas.

Canada

Government outlook

The Canadian regulatory landscape is open to innovation, as long as the right safeguards are in place.

Central to this approach is the Canadian Securities Administrators' (CSA) Regulatory Sandbox. It was designed to support fintech businesses seeking to offer innovative products, services and applications in Canada. It allows firms to register and / or obtain exemptive relief from securities laws requirements, under a fast and flexible process. The purpose is to allow firms to test their products, services and applications throughout the Canadian market on a time limited basis.

At least ten crypto asset trading platforms have received exemptive relief to offer crypto products to investors through the Sandbox, with more expected. Canada has issued at least around 40 crypto exchange traded funds (ETF). Authorities favour approach where the crypto industry is regulated in a similar way than other asset classes, enabling the right safeguards and custody solutions to be in place to protect investors and consumers.

Crypto asset regulation

In November 2022, the Federal Government announced a legislative review, focused on the digital money and financial sector stability and security. With this, the Government launched a consultation on digital currencies, including stablecoins and central bank digital currency (CBDC).

The CSA and the Investment Industry Regulatory Organization of Canada (IIROC) oversees the securities legislation and how it applies to crypto asset trading platforms, including the registration through the Regulatory Sandbox. In August 2022, the CSA provided guidance relating to crypto asset trading platforms which operate in Canada, but are not registered with their principal regulator. In order to continue operations, the crypto trading platform must sign a pre-registration to their principal regulator that addresses investor protection concerns.

The recent announcements are expected to narrow the gap between regulated and unregulated platforms, operating in Canada.

Prudential treatment

In August 2022, the Office of the Superintendent of Financial Institutions (OSFI) announced its interim approach for crypto assets held by federally regulated financial institutions. OSFI expects crypto assets to be managed prudently, setting limits on their use by banks and insurers. The guidance closely follows the Basel Committee on Banking Supervision's guidance on crypto asset exposures.

Financial crime

Money Service Businesses participating in virtual currency transactions are required to report suspicious money transactions to Financial Transactions and Reports Analysis Centre of Canada. Firms must complete KYC verification, when exchanging or transferring money. The rules extend to requirements to maintain and submit transaction records for virtual currency transactions over \$10,000 CAD in a single or multiple transactions over a 24 hour period.

Sales and promotion

In September 2021, the CSA and IIROC issued joint guidance relating to the advertising, marketing and social media use for crypto trading platforms, raising concerns over false or misleading advertising as well as compliance and supervisory challenges.

Stablecoins and Central Bank Digital Currency

In November 2022, the Federal Government launched a consultation on digital currencies, including stablecoins and CBDC. The Bank of Canada continues to actively research, prepare and consult on the case of a potential CBDC. The formal position remains that there is no need to issue a CBDC at the moment.

Author

Ryan Leopold, Partner, PwC Canada

ryan.e.leopold@pwc.com

Further information: Government of Canada: Fall Economic Statement 2022, 3 November 2022, CSA: CSA Regulatory Sandbox, accessed 24 October 2022, OSC: Joint Canadian Securities Administrators / Investment Industry Regulatory Organization of Canada Staff Notice 21-329 Guidance for Crypto-Asset Trading Platforms, 29 March 2021, OSC: Canadian securities regulators expect commitments from crypto trading platforms pursuing registration, 15 August 2022, OSC: Buyer Aware: applying essential protections to the crypto world, 6 October 2022, OSFI: Interim approach to crypto assets, 18 August 2022, Government of Canada: Reporting large virtual currency transactions to FINTRAC, 1 June 2021, OSC: Canadian securities regulators outline expectations for advertising and marketing by crypto trading platforms, 23 September 2021, Bank of Canada: Central bank digital currency (CBDC), accessed on 24 October 2022

Denmark

Government outlook

The Danish Financial Supervisory Authority (DFSA) has a cautious view on crypto assets and investment, reminding consumers that their investments may not be protected.

The ownership or trading of crypto assets is not prohibited. The Danish Financial Business Act does not regard crypto assets as a currency or security and only financial instruments and services are covered by the regulation. As a result, very little regulation for digital assets is currently in place.

Changes will occur, with the adoption of MiCA at the EU-level.

Crypto asset regulation

While crypto assets are not regulated by the DFSA, regulators have not excluded the possibility of isolated instances where the nature of certain assets, based on a specific assessment, can be regarded as financial instruments.

Registration / licencing

Exchange and transfer providers, eWallet providers and issuers of virtual currencies must be registered with the DFSA for AML purposes. Firms must comply with the provisions set out in the Danish AML Act.

Financial crime

Virtual wallets and providers of exchange between one or more types of virtual currencies are covered by the Danish AML Act. Therefore, businesses providing this kind of services must comply with the provisions set out in the regulation, including KYC checks and suspicious reporting.

In October 2022, the European Commission published its supranational risk assessment report on money laundering and terrorist financing affecting the internal market and relating to cross-border activities. The report emphasises the risks associated with crypto assets and calls for ensuring a high level of consumer and investor protection and market integrity as well as measures to prevent market manipulation, money laundering and terrorist financing.

Sales and promotion

No specific guidance is in place for the sale and promotion of crypto assets. Changes are likely to occur, with the adoption of MiCA at the EU-level.

Prudential treatment

There are no specific prudential requirements in place for crypto assets. These are likely to be defined in the future, in accordance with the Basel Committee on Banking Supervision's expectations.

Stablecoins

No regulatory framework is adopted for stablecoins. These will be defined with the adoption of MiCA at the EU-level.

Central Bank Digital Currency (CBDC)

The National Bank of Denmark has not made a decision to issue a CBDC. It continues to monitor closely especially wholesale CBDC developments and actively participates in international CBDC working groups. Denmark is not part of the Eurozone.

Expected regulatory announcements

Implementation of MiCA and the proposed new AML / CTF legislative package with other EU Member States upon their entry into force.

Authors

Janus Mens, Partner, PwC Denmark

janus.mens@pwc.com

Sine Bak Josefsen, Senior Manager, PwC Denmark

sine.bak.josefsen@pwc.com

Further information: Danmarks Nationalbank: Analyse – Nye former for digitale penge, June 2022, European Commission: Report on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities, 27 October 2022

Estonia

Government outlook

The Estonian Government encourages innovation in the financial services sector. The strategy plan of the Estonian Financial Supervision and Resolution Authority (EFSRA) for 2022-2025 includes plans to introduce a possibility to obtain authorisation with secondary conditions to encourage development of technologically innovative business models, including the sector of crypto assets.

EFSRA is responsible for the financial services market regulation and supervision. The Financial Intelligence Unit (FIU) supervises the activities of Virtual Asset Service Providers (VASPs), requiring an activity licence. While crypto assets are treated in a technology-neutral manner under the securities laws, virtual assets (and activities of VASPs) are considered under a special regime in accordance with the Money Laundering and Terrorist Financing Prevention Act (AML Act).

The attitude of the Government and regulators has grown increasingly cautious towards crypto asset activities within financial services. This is due to possible money laundering in the sector and an EU-wide approach to further regulate the activities of relevant companies.

Crypto asset regulation

Crypto assets are treated as property under Estonia's Law of Obligations Act.

The purchase and sales of virtual currencies may be subject to AML regulation. Authorisation by the FIU is required to operate in the area of providing a virtual currency service.

Treatment of Initial Coin Offerings (ICO) is subject to requirements based on the legal nature of the token offered as part of the ICO. Where the token is deemed to qualify as a security, the provisions of the Estonian Securities Market Act and the relevant EU legislation apply.

Token issuers may be subject to the requirements of the Credit Institutions Act and the relevant activity licence. The issuer may also need to obtain an activity licence from the EFSRA, under the Credit Institutions Act.

Depending on the structure and purpose of the ICO, it may also be subject to the requirements set out in the Investment Funds Act.

Changes to the ICO regime are expected with the adoption of MiCA at the EU-level.

Registration / licencing

Provision of financial services, deposit and lending services, and / or electronic money services with crypto assets is subject to the requirement to receive the relevant activity licence from the EFSRA.

VASPs are under an obligation to hold an activity licence issued by the FIU under the AML Act and therefore to receive authorisation from the FIU to provide virtual currency wallet services, virtual currency exchange services, virtual currency transfer services and virtual currency issuance services.

Financial crime

VASPs are required to hold an activity licence issued by the FIU and comply with the provisions set out in the AML Act akin to financial institutions. Since March 2022, VASPs are also subject to further prudential requirements, a mandatory obligation for auditing of annual accounts and heightened requirements in respect of the company's seat, place of business, members of the management board and compliance officer.

In October 2022, the European Commission published its supranational risk assessment report on money laundering and terrorist financing affecting the internal market and relating to cross-border activities. The report emphasises the risks associated with crypto assets and calls for ensuring a high level of consumer and investor protection and market integrity as well as measures to prevent market manipulation, money laundering and terrorist financing.

Sales and promotion

General rules apply for the sale and promotion of financial services making use of crypto assets, based on Estonia's Advertising Act and depending on the services provided.

Further information: Financial Supervision and Resolution Authority: Innovation Hub, November 2022, European Commission: Report on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities, 27 October 2022

Estonia (continued)

Prudential treatment

There are no specific prudential requirements in place for crypto assets. These are likely to be defined in the future, in accordance with the Basel Committee on Banking Supervision's expectations.

The share capital of a VASP must be:

- at least 100,000 euros to provide virtual currency wallet services, virtual currency exchange services or virtual currency issuance services.
- at least 250,000 euros to provide virtual currency transfer services.

Specific requirements for own funds are stipulated in the AML Act, based on the services which the VASP provides. If the VASP provides virtual currency wallet services or virtual currency issuance services, the own funds of the VASP must not be less than 25 per cent of the fixed overhead costs of the previous financial year.

If the VASP only provides virtual currency exchange service or virtual currency transfer service, its own funds must at least be equal to the sum of the part-volumes of the volume of transactions carried out in the framework of providing the service, as prescribed in the AML Act.

Stablecoins

No regulatory framework has been adopted to specifically target stablecoins. These will be defined with the adoption of MiCA at the EU-level.

Where stablecoins are considered to be electronic money under the Payment Institutions and E-money Institutions Act or securities under the Securities Market Act, an issuer may be required to hold a licence.

Central Bank Digital Currency (CBDC)

The Bank of Estonia, together with a number of other financial institutions, continues to actively research and participate in the digital Euro project.

Other digital assets

Depending on the token, NFTs could be subject to the Law of Obligations Act or qualify as securities under the securities laws.

Expected regulatory announcements

Implementation of MiCA and the proposed new AML / CTF legislative package with other EU Member States upon their entry into force. Adoption of a new legislation on crowdfunding and other investment instruments and virtual currencies.

Authors

Priit Lätt, Director, PwC Estonia

priit.latt@pwc.com

Kirill Ležeiko, Senior Manager, PwC Estonia

kirill.lezeiko@pwc.com

Further information: Regulation (EU) 2017 / 1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003 / 71 / EC, Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets and amending Directive (EU) 2019 / 1937, Financial Supervision and Resolution Authority: Technical Regulatory Authority: Nõuded finantsteenuse reklaamile, 10 June 2017, Regulation (EU) no. 575 / 2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648 / 2012

France

Government outlook

France has put in place a regulatory framework specific to digital assets, with the Blockchain Order and the Pacte Law. Changes will occur in the future, with the adoption of MiCA.

Crypto asset regulation

Regulated assets

The French Monetary and Financial Code (CMF) identifies three categories of digital assets:

- Utility tokens, any intangible asset representing, in digital form, one or more rights that can be issued, registered, retained or transferred by means of a shared electronic recording device which allows the owner of the asset to be identified, directly or indirectly. This definition does not include tokens which have the characteristics of financial instruments and saving notes.
- Payment tokens or cryptocurrencies, any digital representation of value which is not issued or guaranteed by a central bank or public authority, is not necessarily attached to legal tender and does not have the legal status of money, but is accepted by natural or legal persons as a medium of exchange and can be transferred, stored or exchanged electronically (this includes cryptocurrencies such as bitcoin and ether).
- Security tokens, since the 'Blockchain Order', French law has authorised the registration of financial securities, not admitted to the operations of a central depository, in an electronically shared registration device such as the blockchain. Subject to certain conditions, some security tokens are accordingly recognised in France as financial instruments, the issuance of which is governed by financial securities law and prospectus regulations.

Unregulated assets:

- NFTs which are similar to utility tokens, are excluded from the scope of any regulation. The French definition of a token and digital assets does not include a criteria on fungibility.

An NFT can be qualified as a utility token in the CMF. The French financial markets authority (AMF) excludes NFTs from the regulation on utility tokens, due to their non-fungible nature which makes it impossible to trade them on a secondary market.

Regulated activities

On the primary market, French law regulates :

- the registration of financial securities not admitted to the operations of a central depository, in an electronically shared registration device such as the blockchain. Such registration has the same legal effects as a registration of financial securities in an account held by a custody account keeper, particularly in terms of proof of ownership of the securities.
- the issuance of utility tokens and Initial Coin Offering (ICO) is subject to an optional visa (approval) from the AMF.

On the secondary market, the *Loi Pacte* provides a framework for the provision of 'digital asset services' by Digital Asset Service Providers (DASPs).

Digital asset services include:

- the safekeeping of digital assets on behalf of third parties and access to digital assets,
- the purchase or sale of digital assets in legal tender,
- the exchange of digital assets for other digital assets,
- the exploitation of a trading platform for digital assets,
- and the following services :
 - reception and transmission of orders on digital assets on behalf of third parties.
 - portfolio management of digital assets on behalf of third parties.
 - advice to the subscriber of digital assets.
 - underwriting of digital assets.

Further information: Order n°2017-1674 of 8 December 2017 on the use of a shared electronic recording device for the representation and transmission of financial securities (the 'Blockchain Order'), Law n°2019-486 of 22 May 2019 on the growth and transformation of firms ('Pacte law' – 'Loi Pacte')

France (continued)

Registration & Authorisation

1) In France, DASPs offering custody (1), purchase or sale (2), exchange of digital assets services (3) and/or exploiting a digital asset trading platform (4) must be registered with the French AMF.

The extension of the registration requirement to service 3) and 4) was introduced by the Order n° 2020-1544 of 9 December 2020.

Before registering, the AMF will verify in particular that:

- The persons who effectively manage the DASP have the necessary good repute and competence to carry out their functions,
- Individual shareholders (holding more than 25% of the provider's capital or voting rights) guarantee the prudent and proper management of the provider, are of good repute and have the necessary skills,
- DASPs providing services 1) and 2) have set up an organization, procedures and an internal control system to ensure compliance with AML/CFT provisions (the compliance of DASPs providing services 3) and 4) in terms of internal control and AML/CFT is the result of a posteriori controls by the AMF)

The AMF must obtain the approval of the ACPR before proceeding with registration.

2) DASPs may also (optionally) request for a specific licence from the AMF – which licence entails additional organizational and conduct of business requirements for this category of DASPs, which are not applicable to registered DASPs only.

Financial crime

AML/CFT rules

Through the "Loi PACTE", France has transposed the 5th EU AML/CFT Directive and extended AML/CFT obligations to registered and licensed digital asset service providers, as well as to issuers of tokens whose ICO has been approved by the AMF.

However, since 2020, only DASPs providing custody and purchase-sale services of digital assets in legal tender, are subject to an *a priori* control, at the time of their application for registration, regarding their ability to comply with their AML/CFT obligations.

The elements relating to risk classification, identification, verification of identity and knowledge of the client, enhanced examinations, suspicious transaction reports and asset freezing are verified. This *a priori* verification does not cover the internal control system, the methods of training of the employees, document retention or outsourcing, as well as additional vigilance measures.

Other DASPs, offering exchange services or operating a trading platform for digital assets, are subject to an *a posteriori* control of the respect of their obligations in terms of AML/CFT.

Travel rule

France also implemented travel rule requirements as derived from the FATF Recommendation n°16 which aimed at ensuring the traceability of crypto-asset transfers at all times.

Indeed, under French law, digital asset service providers (both registered and licensed) as well as token issuers must identify:

- usual customers and, where applicable, beneficial owners before entering into a business relationship.
- occasional customers and, if applicable, the beneficial owners before any transaction, even if there is no suspicion regarding the transaction. In this case, DASPs identify and verify the identity of their occasional customer and, where applicable, the beneficial owner, under the same conditions as those required for the customer and the beneficial owner in a business relationship. Since the entry into force of the Decree n°2021-387 of 2 April 2021, this obligation applies to all transactions on digital assets, the requirement to exceed a threshold of €1000 having been repealed.

Further information: Order n°2017-1674 of 8 December 2017 on the use of a shared electronic recording device for the representation and transmission of financial securities (the 'Blockchain Order'), Law n°2019-486 of 22 May 2019 on the growth and transformation of firms ('Pacte law' – 'Loi Pacte')

France (continued)

Financial promotion

The distribution to individuals or legal entities of simple advertising information, excluding any contractual or pre-contractual document, regardless of the medium, is not subject to the rules on banking and financial promotion.

However, unsolicited contact with a natural or legal person in order to obtain their agreement to provide a service, or participate in a transaction, relating to a digital asset (e.g. ICO) is subject to banking and financial promotion rules.

In this context, only token offerings that have been approved by the AMF may give rise to financial promotion / customer solicitation.

Also, only the following entities can promote digital asset services to customers:

- Issuers of tokens which have obtained the AMF's approval or licensed DASPs (only – i.e. merely registered DASPs are not eligible).
- Regulated financial services providers: credit institutions or finance companies, electronic money institutions, payment institutions, investment firms and insurance companies, occupational pension funds, venture capital companies, investment management companies, financial investment advisors, intermediaries in banking and payment services, tied agents, providers of participative financing services.

Prudential requirements

Licensed DASPs (only) must at all times have capital in an amount that corresponds at least to the highest of the following capital calculation methods: 1) overheads-based, 2) based on minimum capital or 3) based on the DASP's activity level.

The minimum capital requirement for a DASP is:

- €50,000 for the provision of legal tender digital asset purchase-sale services and digital asset exchange services.
- €150,000 for the provision of other digital asset services.

Licensed DASPs must justify an amount of equity permanently higher than 4.5% of the assets they hold for their own account.

Stablecoins

French law does not recognise the category of stablecoins. An information report on the implementation of the conclusions of the information mission dedicated to crypto-assets was submitted by the French committee on finance, general economy and budgetary control, to the French National Assembly in December 2021. The report identifies stablecoins as one of the new regulatory challenges in the face of rapid changes in the digital assets sector.

Central Bank Digital Currency (CBDC)

Several international initiatives are underway under the supervision of the Banque de France for a potential digital Euro.

Expected regulatory announcements

Implementation of MiCA with other EU Member States upon its entry into force, with some EU driven provisions being more stringent than the current French law provisions (e.g. in respect of DASPs).

Authors

Nicolas Mordaunt-Crook, Partner, PwC Legal Business Solutions, France

nicolas.mordaunt-crook@avocats.pwc.com

Maximilien Jatteau, Senior Manager, PwC Legal Business Solutions, France

maximilien.jatteau@avocats.pwc.com

Further information: Law n°2019-486 of 22 May 2019 on the growth and transformation of firms ('Pacte law' - 'Loi Pacte'), AMF: Instruction DOC-2019-23, Rules applicable to digital asset service providers, last update 23 April 2021, General speech of François Villeroy de Galhau, Governor of the Banque de France, during the Paris Europlace International Financial Forum 2022, 12 July 2022

Germany

Government outlook

Germany's Federal Financial Supervisory Authority (BaFin), the national competent authority (NCA) responsible for financial services regulation and supervision, has since 2013 been working with the German legislator to ensure the country is attractive for market participants engaging in crypto assets, blockchain, distributed ledger technology and DeFi (collectively digital finance), provided certain safeguards are met.

The German legislator, together with the BaFin, has made targeted amendments to the general regulatory and supervisory framework to accommodate digital finance in a technology neutral manner.

This includes amending existing regulated activity permissions and introducing new licensing requirements. The issuance, trading, custody, reporting and client facing disclosure are applied to digital finance activity.

Various types of tokens and business models are subject to differing degrees of application of capital markets, banking, financial services, AML and financial crime prevention measures and other laws. The German Act on Electronic Securities (eWpG) has equally clarified the use of digital registers (including blockchain based systems) for dematerialised securities including tokens. BaFin has issued guidance which further clarifies both EU and German regulations and supervisory expectations.

Changes will occur in the future, with the adoption of MiCA.

Crypto asset regulation

The German Banking Act (KWG) and the German Securities Institution Act (WpIG) are the core pillars of Germany's general regulatory structure for banking, financial and investment services and authorisation requirements depending on the assets and regulated business activity conducted.

Crypto assets which meet the definition in the acts,* are regulated instruments and treated as financial instruments under the legislative and regulatory regime.

Crypto assets include virtual currencies, but not government issued virtual currencies, electronic money or certain monetary values regulated by the German Payment Services Supervision Act (ZAG).

The KWG definition does not include utility tokens. This caveat has not been conclusively clarified by the German legislator or BaFin. No clarifications has been provided on how NFTs should be treated for purposes of the KWG / WpIG.

Persons who undertake commercial activity related to tokens classified by BaFin as financial instruments, require a regulatory authorisation unless an exemption applies. The scope varies, depending on the actual service and the regulatory classification of the crypto assets. Where services are offered by a person outside of Germany to persons in Germany, a licensing requirement may apply.

The issuance of crypto assets and offer to prospective investors in Germany may also include an obligation to issue a prospectus pursuant to the EU Prospectus Regulation and to observe certain client-facing risk disclosures (notably for retail clients) as well as apply MiFIR and MiFID II as well as Market Abuse Regulation rules (as implemented into German law).

BaFin is at early stages of assessing how to amend existing legislation to cover market abuse in relation to off-chain assets.

The eWpG allows for the issuing of bearer bonds (Inhaberschuldverschreibungen) to be conducted without a physical securities certificate and for issuance on a blockchain and as 'digitally native securities'. The eWpG may be amended in future to allow for issuance of electronic equity securities.

The eWpG has introduced a new KWG (but not mirrored in the WpIG) regulated financial service of 'crypto securities register management' (Kryptowertpapierregisterführung).

Further information: BaFin: Guidance Notice – Supervisory classification of tokens or cryptocurrencies underlying 'initial coin offerings' (ICOs) as financial instruments in the field of securities supervision, 20 February 2018, BaFin: Guidance Notice – Second advisory letter on prospectus and authorisation requirements in connection with the issuance of crypto tokens, 16 August 2019, BaFin: Crypto custody business, 01 April 2020, BaFin: Guidance Notice – Guidelines concerning the statutory definition of crypto custody business (section 1 (1a) sentence 2 no. 6 of the German Banking Act (Kreditwesengesetz – KWG), 02 March 2020, BaFin: Guidelines on applications for authorisation for crypto custody business, 30 March 2020.

*Digital representations of a value that are not issued or guaranteed by any central bank or public body and do not have the legal status of currency or money, but are accepted by natural or legal persons as a means of exchange or payment or for investment purposes by virtue of an agreement or actual practice and can be transmitted, stored and traded electronically.

Germany (continued)

The German legislator introduced a new regulation on crypto asset fund units (KryptoFAV) allowing fund managers to issue electronic fund certificates (elektronische Anteilschiene) which are registered in a crypto securities register under the eWpG as opposed to physical certificates.

These changes follow through from Germany's Fund Location Act (Fondstandortgesetz), which allows institutional investors to invest in cryptotassets.

The custody and safekeeping of crypto assets is a regulated activity, requiring an authorisation pursuant to the KWG. This includes when the activity is conducted from outside of Germany for persons located or ordinarily resident in Germany.

The regulated activity of cryptocustody is defined in the KWG as the 'custody, management, and securing of crypto assets or private cryptographic keys used to hold, store, and transfer crypto assets for others'. Whether the service provider's activity is regulated often depends on whether the service provider retains the client's private cryptographic key in its systems and so has access to the decentrally stored crypto assets.

BaFin and the German legislator have not (fully) clarified the regulatory requirements and a need for authorisation for a number of DeFi business models and services. Given the definition of crypto assets as financial instruments under the KWG / WpIG, certain forms of staking and crypto asset lending may qualify in Germany as regulated lending.

The BaFin adopts a case-by-case analysis and a technology-neutral approach to assessing what needs to be regulated and supervised and how to ensure a level-playing field between crypto assets and traditional financial assets, applying a function over form methodology as to whether activity triggers an authorisation requirement and of what nature.

BaFin has wide sanctioning and enforcement powers which may be applied to firms (including those failing to maintain the correct required authorisations) but also the power to initiate criminal proceedings against responsible persons including founders, key function holders and representatives who may incur personal civil liability.



Further information: BaFin: Now also in electronic form: securities – A new law is updating Germany's securities legislation – and its securities supervision, 15 July 2021, BaFin: A future without supervision? The challenges of decentralised finance for financial supervision, 16 May 2022, BaFin: Decentralised finance (DeFi) and DAOs, 01 September 2022

Germany (continued)



Financial crime

The German Money Laundering Act (GwG) governs AML obligations of BaFin regulated firms and a range of other persons qualifying as 'obliged entities'. The GwG transposes the EU's 5th Anti-Money Laundering Directive (AMLD V) which extended the scope of its financial crime prevention rules to crypto asset exchanges and wallet providers.

Persons that qualify under KWG or WpIG as crypto asset service providers are financial services providers and obliged entities for purposes of the GwG. This may include a wider range of persons other than those addressed by AMLD V.

As part of their duties under the GwG, obliged entities must implement an effective risk management to prevent money laundering and terrorist financing. This includes an AML / CTF risk assessment and internal safeguards including, but not limited to, nomination of an AML Officer and a deputy, implementation of policies and procedures, due diligence on customers or contractual partners at onboarding as well as event-driven and periodic reviews, ongoing transaction monitoring and sanctions screening, a New Product Process, and reporting of suspicious activities to the Financial Intelligence Unit (FIU).

Service providers who arrange crypto asset transfers on behalf of consumers are subject to Germany's implementation of the 'travel rule' in the German Ordinance on Enhanced Due Diligence Requirements for Crypto Asset Transfers (KryptoWTransferV).

The service provider acting on behalf of the transferor must transmit the customer's name, address, and account number (e.g., the public key) as well as the beneficiary's name and account number simultaneously and securely to the receiving service provider acting on behalf of the beneficiary. The service provider working on behalf of the beneficiary must ensure that the details of both the transferor and the beneficiary / transferee are received and stored. Further data gathering requirements for transactions from or to digital wallets not handled by a financial service provider ('self-hosted wallets') are included in the ordinance.

Further information: BaFin: Anti-money laundering guidelines for institutions conducting crypto custody business that are newly obliged entities under the German Money Laundering Act (Geldwäschegesetz – GwG), 14 May 2020, BaFin: Interpretation and Application Guidance in relation to the German Money Laundering Act, 28 October 2021

Germany (continued)

Sales and promotion

The regulatory marketing requirements, which apply to crypto assets, are determined by whether the crypto assets are classified as financial instruments, securities, investments, or investment units.

Marketing activity does not have to take place in Germany. A connection to Germany is established if the offering or marketing activity is directed at entities or individuals in Germany, while employing distance communication methods including without a network of intermediaries or a physical presence in Germany.

Marketing efforts in the process of or in preparation for a crypto asset offering can be classified as regulated activity. This would necessitate prior approval from BaFin and / or could be subject to a prospectus obligation. The deciding question is frequently whether a token's structure in the given case represents a security under the EU's and the German Securities Prospectus Act (WpPG).

German MiFID standards, as applied by the German Securities Trading Act (Wertpapierhandelsgesetz – WpHG), differentiate between services supplied to retail and professional clients. To ensure that the client only purchases investments which are in line with the client's individual financial situation, experience, knowledge, and investment objective, financial service providers must apply stricter rules regarding the required suitability and appropriateness test to retail clients than to professional clients. These principles are relevant to investments in crypto assets. MiCA will reform some of these requirements following its entry into force.

In July 2019, BaFin applied its product intervention measures on contracts for differences (CFDs) which are promoted, distributed or sold to retail investors. The precise limitation regulations are determined by the underlying assets. Especially due to the extreme volatility of crypto assets, CFDs with underlying crypto assets have a stricter leverage limit than other traditional assets such as fiat currencies, gold, or major indices.

Retail clients in Germany are only permitted to trade CFDs with underlying crypto assets at up to 1:2 leverage. As an initial margin protection, a mandatory initial margin of 50% of the notional value was implemented to achieve the leverage limit.

Prudential treatment

There are no specific prudential requirements in place for crypto assets. These are likely to be defined in the future, in accordance with the Basel Committee on Banking Supervision's expectations and the adoption at the EU-level.

Stablecoins and other digital assets

Stablecoins are typically considered crypto assets and thus financial instruments for purposes of the KWG and the WpIG.

Central Bank Digital Currency (CBDC)

The German Federal Central Bank (Bundesbank), together with a number of other financial institutions, continues to actively monitor and participate in the Digital Euro project.

Expected regulatory announcements

Germany will apply implementation of the following EU legislative instruments: MiCA, Digital Operational Resilience Regulation, AML Regulation, replacing the EU's AML directives, Revised Wire Transfer Regulation and changes to the German Crypto Value Transfer Ordinance.

Further changes affecting crypto asset service providers are expected with the anticipated revisions to the EU's second payment services directive and the EU's second E-Money Directive.

Authors

Konstantinos Dagianis, Partner, PwC Germany
konstantinos.dagianis@pwc.com

Andreas Traum, Partner, PwC Germany
andreas.traum@pwc.com

Dr. Michael Huertas, Partner, FS Legal Leader
Europe PwC Legal Business Solutions Germany
michael.huertas@pwc.com

Julian Mockenhaupt, Senior Manager, PwC
Germany
julian.mockenhaupt@pw.com

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Government outlook

In 2017, HM Government of Gibraltar issued the Financial Services (Distributed Ledger Technology Providers) Regulations 2017 ('DLT Regulations') which became effective in January 2018.

The issuance of crypto regulations as early as this demonstrated the Government's attitude towards the crypto industry, with the aim of attracting the right entities to the jurisdiction and conducting crypto business under regulatory supervision.

The jurisdiction continues to grow and develop its regulatory approach, with the addition of a market integrity principle into the DLT Regulations in April 2022.

The Government has not only focused on its regulatory approach. In December 2021 it announced that it is partnering with two blockchain and crypto companies to integrate blockchain technology into government systems in order to streamline government processes.

Both the Government and the Gibraltar Financial Services Commission ('GFSC') continue to have a positive outlook on the crypto industry, while establishing a strong regulatory framework to mitigate the industry specific risks.

Crypto asset regulation

The DLT Regulations have since been superseded by the Financial Services (Distributed Ledger Technology Providers) Regulations 2020. Any entity which, as a business, stores or transmits value belonging to others using distributed ledger technology is required to be regulated in Gibraltar by the GFSC.

The foundations of the regulations are taken from traditional financial services regulations and are based on ten key principles: honesty and integrity, customer care, financial capital requirements, risk management, protection of client assets, corporate governance, systems and securities access, financial crime, resilience and market integrity.

There are at least 15 regulated DLT Providers operating in Gibraltar. Applicants are required to submit policies and reports to the GFSC, to demonstrate how they comply with the ten regulatory principles, before a series of interviews and on-site reviews. All DLT Providers are also regularly supervised by the GFSC, including regular meetings, reports, financial submissions and on-site reviews.

Prudential treatment

The GFSC has issued detailed guidance notes for each regulatory principle which requires DLT Providers to comply with a range of prudential requirements.

These include, but are not limited to, requirements for storing customer crypto assets, ensuring that they are segregated from company assets and safeguarded, as well as requiring DLT Providers to conduct daily reconciliations.

In terms of financial capital requirements, DLT Providers are required to hold sufficient regulatory capital to ensure that the business can be run in a sound and safe manner. Keeping with the principle approach, there is no one size fits all regulatory capital requirement calculation, instead the regulatory capital is calculated based on the size, complexity and risks of a DLT Provider's business.

Each DLT Provider is expected to hold sufficient regulatory capital to ensure an orderly, solvent wind-down of its business, while at the same time holding risk-based capital in order to be able to absorb the crystallisation of material risks and still have sufficient capital remaining to trigger an orderly wind-down if necessary.

DLT Providers are required to submit monthly regulatory returns, providing a range of financial information, but also demonstrating that they have sufficient regulatory capital.

Registration / licencing

Providers of cryptocurrency services in Gibraltar may potentially fall outside the scope of the DLT Regulations if they are not storing or transmitting value belonging to others, but may still be caught by the Proceeds of Crime Act ('POCA') Registration Regulations as a Virtual Asset Service Provider ('VASP').

The POCA Registration Regulations is legislation made under POCA in Gibraltar. It transposes the EU AML Directive into Gibraltar Law and defines a 'virtual asset' as 'a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes, but does not include: a) digital representations of fiat currencies or b) financial instruments.

Further information: HMGoG: Gibraltar Introduces New Virtual Asset Legislation, Defining Standards for Market Integrity, 27 April 2022, HMGoG: HM Government of Gibraltar to Integrate Blockchain Technology into Government Systems, 7 December 2021, HMGoG: Financial Services (Distributed Ledger Technology Providers) Regulations 2020, GFSC: Distributed Ledger Technology Providers, GFSC: Regulated Entities Register – DLT Providers, GFSC: Guidance Note 5 – Protection of Clients Assets and Money, GFSC: Guidance Note 3 – Financial and Non-Financial Resources, GFIU: Proceeds of Crime Legislative Amendments, March 2021

Gibraltar (continued)

The POCA Registration Regulations impose an obligation on specified businesses to be registered with the GFSC for the purposes of AML, CTF and counter proliferation finance supervision and to comply with POCA.

The list of specified businesses includes, amongst others: a) undertakings that receive, whether on their own account or on behalf of another person, proceeds in any form from the sale of tokenised digital assets involving the use of DLT or a similar means of recording a digital representation of an asset and b) persons that, by way of business, exchange, or arrange or make arrangements with a view to the exchange of i) virtual assets for money ii) money for virtual assets or iii) one virtual asset for another. DLT Providers that are already regulated by the GFSC do not need to also apply for registration.

Financial crime

Gibraltar updated its POCA 2015 to bring certain virtual asset activities within its scope as relevant financial businesses. These entities are registered with the GFSC as VASPs and are required to comply with all AML / CFT requirements.

All DLT Providers are supervised by the GFSC as financial services businesses, including AML / CTF supervision.

The Gibraltar Financial Intelligence Unit (GFIU) is the body responsible for financial crime and includes the DLT sector within its reporting. DLT Providers are required to submit Suspicious Activity Reports to the GFIU.

Sales and promotion

There is no specific legislation relating to the sales and promotion of digital assets. If a digital asset is deemed to be a financial instrument, the same rules would apply as if the offering was a security. This may require a prospectus as set out in the Gibraltar Prospectus Regulation, which is modelled on the EU Framework, along with other client facing disclosures. Digital offerings that do not fall within the Prospectus Regulation would still be required to register as a VASP or apply for a DLT Provider permission.

There is no prohibition on the provision of digital asset services by regulated entities as long as those entities have the required permissions.

Stablecoins

Gibraltar's regulatory approach requires consideration of whether the issuance of a stablecoin could fall within traditional financial services regulatory regimes. If they do not, an issuer of a stablecoin could either be considered a DLT Provider or a VASP.

The GFSC has not communicated plans for a separate regulatory approach to stablecoins or their issuers.

Central Bank Digital Currency (CBDC)

Gibraltar is a British Overseas Territory and therefore falls under the monetary policy of the Bank of England. The Government of Gibraltar has not communicated any plans to release a Gibraltar based digital currency.

Other digital assets

The GFSC is working with industry to maintain and develop its regulatory approach, considering the ever-evolving crypto landscape. This includes considering the scope of the DLT Regulations and its application to entities involved in DeFi.

Expected regulatory announcements

Guidance notes to clarify the scope of the DLT Regulations and VASP activities are expected to be issued by the GFSC in 2023.

Authors

Luke Walsh, Director, PwC Gibraltar

luke.walsh@pwc.com

Jessica Pizarro, Senior Manager, PwC Gibraltar

jessica.pizarro@pwc.com

Hong Kong

Government outlook

Hong Kong aims to become a global hub for Virtual Assets (VA) through implementing a harmonised regulatory framework, covering the entire ecosystem.

The Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) continue to expand the reach of regulations over activities related to VAs.

In October 2022, the Financial Services and the Treasury Bureau (FSTB) issued a policy statement, recognising the potential of VA, in particular around Distributed Ledger Technology (DLT), Web3.0 and the Metaverse. The policy statement sets out the Government's vision, approach and proposed future steps to facilitate a 'sustainable and responsible' development of the VA sector.

While the Government remains cautious towards a 'broad brush' approach to retail investor access, the policy statement may indicate a turnaround in VA retail access. Among other things, the policy statement foreshadows the possibility of VA exchange operators (licensed in Hong Kong under a proposed VA Service Provider Regime) ability to serve retail customers on a limited number of VAs (subject to SFC's consultation and regulatory response). The access is likely to be limited to certain VAs only, meeting specific liquidity and market capitalisation thresholds.

The policy statement alludes to the possibility of the SFC authorising a VA exchange traded funds (ETF) for retail investors. In October 2022, the SFC confirmed:

- the SFC is prepared to accept applications for authorisation of VA Future ETFs,
- VA Futures ETFs must comply with additional authorisation requirements which include:
 - the management company must have i) a good track record of regulatory compliance and ii) at least three years' proven track record in managing ETFs.
 - VA Futures must be traded on conventional regulated exchanges. However, only Bitcoin futures and Ether futures, traded on Chicago Mercantile Exchange, will initially be accepted.
 - the management company must adopt an active investment strategy.
 - the net derivative exposure of a VA Futures ETF cannot exceed 100% of the ETF's total net asset value.

Crypto asset regulation

VAs deemed as 'securities' under the Securities and Futures Ordinance (SFO) (e.g. giving their holder rights akin to that of a creditor or shareholder), are defined as security tokens. These activities are regulated and can only be carried out with the relevant licence(s) issued by the SFC.

In January 2022, the SFC and HKMA expanded their jurisdictions over certain types of regulated activities involving VAs. These include distribution activities, dealing services and advisory services. Service providers are required to comply with additional requirements, such as ensuring suitability, providing risk-related disclosures and conducting proper due diligence.

Registration / licencing

In June 2022, the SFC announced a mandatory licensing regime for Virtual Asset Service Providers (VASPs) which hold client assets and provide virtual asset sale or purchase services by electronic means. The regime comes into force in 2023, with the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022 (Amendment Bill).

Financial crime

All SFC-licensed entities conducting regulated activities are subject to the AML / CTF obligations of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO). From June 2022, this includes Type 9 (Asset Management) licensed VASPs.

Sales and promotion

In January 2022, the SFC and the HKMA confirmed that VAs are likely to be considered 'complex products' under the SFO. The SFC regulated entities must comply with the SFC's guidelines when distributing VA products (such as providing specific risk-related disclosures, conducting proper due diligence and ensuring their clients have sufficient net worth).

Intermediary firms must ensure that professional investors have sufficient knowledge about VA investments and consider the best interest of the client as well as comply with related client training requirements.

Further information: SFC and HKMA: Joint Circular on Intermediaries' Virtual Asset-related Activities, 28 January 2022, FSTB: Policy Statement on Development of Virtual Assets in Hong Kong, 31 October 2022, SFC: Circular on Virtual Asset Futures Exchange Traded Funds, 31 October 2022, Hong Kong Government: Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022, 24 June 2022

Hong Kong (continued)

Overseas non-derivative ETFs, or other ETFs which invest directly in VAs, can only be offered to 'professional investors', subject to suitability requirements. A limited number of overseas derivative products which are traded on SFC-specified exchanges and have been approved for retail distribution by their relevant home regulators, may be distributed to retail investors without the need for complying with the suitability requirements.

Where financial accommodation, such as the provision of loans or credit is provided in relation to VAs, intermediaries must ensure that the client has the financial capacity to meet obligations arising from leveraged or margin trading.

Prudential treatment

There are no specific prudential requirements in place for VAs.

The HKMA has expressed the need to monitor the growing interconnectedness between largely unregulated VAs and the regulated financial services sector. Including the potential risks which a severe price correction could pose to the wider financial system.

Stablecoins

Stablecoins are generally considered a subset of VAs and are not legal tender.

In January 2022, the HKMA voiced the need for stablecoins to be appropriately regulated before they are marketed to retail consumers, as their 'pegging' characteristics could create a perception of having a higher potential to be incorporated into the traditional financial system.

The HKMA's initial regulatory focus will be on stablecoins used for payment purposes, particularly asset-linked stablecoins (e.g. to a single fiat currency).

As a result, certain stablecoin-related activities carried out by an entity incorporated in Hong Kong (e.g. facilitating the redemption of stablecoins and executing transactions in stablecoins) are likely to be considered regulated activities and may require a licence granted by the HKMA.

Central Bank Digital Currency (CBDC)

Hong Kong continues to lead global research and testing of a potential wholesale CBDC. In September 2022, the HKMA announced it will start paving the way for a possible implementation of the e-HKD through a 3-rail approach. This was reaffirmed in the policy statement in October 2022.

Other digital assets

The SFC has suggested that certain NFTs may fall within the definition of VAs, depending on their nature and function.

Expected regulatory announcements

A consultation on how retail investors may be given a suitable degree of access to virtual assets under the new licensing regime by the SFC, expected in due course.

Authors

Adrian Clevenot, Associate Director,
PwC Hong Kong

adrian.a.clevenot@hk.pwc.com

Oscar Fung, Senior Manager, PwC Hong Kong

Oscar.sk.fung@hk.pwc.com

Gaven Cheong, Partner and Head of Investment
Funds, Tiang & Partners*

gaven.cheong@tiangandpartners.com

Esther Lee, Registered Foreign Lawyer,
Tiang & Partners*

esther.yt.lee@tiangandpartners.com

Further information: HKMA: 'Discussion Paper on Crypto-assets and Stablecoins', 12 January 2022, HKMA: HKMA's policy stance on e-HKD, 20 September 2022. *Tiang & Partners is an independent Hong Kong law firm with a close relationship with PwC

Hungary

Government outlook

In 2022, the Ministry of Innovation and Technology and the National Data Economy Knowledge Centre established the Blockchain Coalition. The goal is to contribute to the identification of opportunities for domestic economic utilisation and the development of an appropriate legal framework. Hungary's aim is to create a legislative package which facilitates the preparation of MiCA and addresses the different aspects of blockchain technology.

The National Bank of Hungary (NBH) exercises supervision over entities and persons subject to financial sectoral laws. The NBH also operates a dedicated, private blockchain-based, NFT issuance platform.

The Hungarian Financial Intelligence Unit (FIU) acts as the supervisory body for crypto exchange service providers and custodian wallet providers in relation to the AML / CTF and sanctions-related issues. The FIU issued templates on drawing up internal rules and regulations of service providers falling under its supervision, to support them with the performance of the tasks falling within the scope of the obligations laid down in the AML / CTF Act and Act on Sanctions.

Crypto asset regulation

There are no rules and definitions covering the different types of virtual assets and relating transactions. The legislation does not prohibit the creation, ownership or use of virtual / cryptocurrencies.

Typically, existing regulations only apply to cryptocurrency-related activities if the activities involve regulated traditional financial service providers, or are otherwise considered as regulated activities. Changes will occur in the future at the latest with the adoption of MiCA at the EU-level.

Registration / licencing

No registration and authorisation procedures are in place for crypto asset providers. Crypto exchange service providers and custodian wallet providers must appoint at least one contact person to act on their behalf towards the FIU and must prepare internal regulation on AML / CTF and sanctions, approved by the FIU. Changes will occur in the future at the latest with the adoption of MiCA at the EU-level.

If data gathered by a crypto service provider, subject to the AML / CTF Act, relates to the suspicion of financial or other criminal activity, it must be reported.

In October 2022, the European Commission published its supranational risk assessment report on money laundering and terrorist financing affecting the internal market and relating to cross-border activities. The report emphasises the risks associated with crypto assets and calls for ensuring a high level of consumer and investor protection and market integrity as well as measures to prevent market manipulation, money laundering and terrorist financing.

Sales and promotion

No specific regulations is in place for crypto assets. Existing general requirements may apply.

Prudential treatment

There are no specific prudential requirements in place for crypto assets. These are likely to be defined in the future, in accordance with the Basel Committee on Banking Supervision's expectations.

Stablecoins

No regulatory framework is adopted for stablecoins. These will be defined at the latest with the adoption of MiCA at the EU-level.

Central Bank Digital Currency (CBDC)

NBH continues to research and test CBDC projects, with a potential launch in coming years. Hungary is not part of the Eurozone.

Expected regulatory announcements

According to the draft law submitted on Nov 15 2022, if adopted by Parliament, the issuance, record-keeping, transfer and storage of financial instruments will be possible using distributed ledger technology, in addition to the existing solutions.

Author

Livia Eichardt, Director, PwC Hungary

livia.eichardt@pwc.com

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India

Government outlook

India considers itself as an innovation hub for a digital asset ecosystem. It promotes FinTech startups and has established a conducive environment for digital adoption of financial services. While the Government has been accommodative and welcoming to the application of blockchain and Distributed Ledger Technology (DLT) for governance, it has exercised caution towards virtual assets like cryptocurrencies.

In 2018, the Central Bank, the Reserve Bank of India (RBI) prohibited its financial services regulated entities from facilitating sale and purchase of cryptocurrencies. This made crypto exchanges obsolete within India for Rupee based transactions. In 2020, the Supreme Court of India ruled that the prohibition was unconstitutional.

The RBI expects regulated entities to undertake mandatory Customer Due Diligence (CDD), AML, KYC and CFT activities under the Prevention of Money Laundering Act, 2002 (PMLA) and Foreign Exchange Management Act (FEMA).

The RBI remains cautious towards the involvement of banks and financial institutions in virtual asset transactions, directing the regulated entities' willingness to accept crypto clients.

Crypto asset regulation

India does not have an overarching regulatory framework specifically for virtual currencies. Cryptocurrencies cannot be used as a legal tender or a medium of exchange.

In 2021, the Government listed the 'Cryptocurrency and Regulation of Official Digital Currency Bill' to be introduced in the Parliament. The purpose was to create a framework for creation of Central Bank Digital Currency and prohibit all private cryptocurrencies in India. Certain exceptions were allowed to promote the underlying technology of cryptocurrencies and use cases. The Bill has not been tabled.

The Government has expressed a view that any step towards either regulating or banning virtual currencies must be in conjunction with international cooperation as the ripple effects of any legal direction towards virtual currencies will transcend international boundaries.

Registration / licencing

There is no specific framework to register or license crypto platforms.

Financial crime

The RBI considers virtual currencies to carry a higher AML / CFT risk due to the inherent properties of being decentralised, anonymous and volatile. Regulated entities must continue to carry out customer due diligence processes in line with regulations governing standards for KYC, AML, CFT and obligations of regulated entities under PMLA, in addition to ensuring compliance with relevant provisions under FEMA for overseas remittances.

Virtual Asset Service Providers / Virtual Asset Exchange Providers (VASPs) are not regulated by RBI or the securities regulator, Securities and Exchange Board of India (SEBI) and are perceived to carry a risk of cybersecurity crime.

Since June 2022, the Computer Emergency Response Team (CERT) has been appointed as the nodal cybersecurity agency. The Government mandates that VASPs and entities like VASPs must maintain KYC data and records of financial transactions for at least a period of five years.

The KYC obligations must be in accordance with RBI, SEBI and Department of Telecom (DoT) standards to ensure cyber security in the area of payments and financial markets for citizens, while protecting their data, fundamental rights and economic freedom in view of the growth of virtual assets.

Sales and promotion

No specific regulations is in place for virtual assets.

In April 2022, the Advertising Standards Council of India (ASCI), published guidelines for advertising and promotion of virtual digital assets and services (VDA Ad Guidelines). The guidelines are binding in the following contexts: 1) to members of ASCI for ads across any medium, and 2) to ads on cable television (for members or non-members).

The guidelines prohibit the use of the words 'currency, securities, custodian, and depositories' in advertisements, as consumers often associate such terms with regulated products. It also sets a disclaimer requirements for VDA advertisements.

Further information: RBI: Cryptocurrencies – An assessment, 14 February 2022, RBI: Customer Due Diligence for transactions in Virtual Currencies (VC), 31 May 2022, Government of India: Directions under sub-section (6) of section 70B of the Information Technology Act, 2000 relating to information security practices, procedure, prevention, response and reporting of cyber incidents for Safe & Trusted Internet, 28 April 2022

India (continued)

Prudential treatment

There are no specific prudential requirements in place for virtual currencies. A recent amendment to the Companies Act mandates all Indian companies to declare details about crypto or virtual currencies, as part of their annual financial statement reporting.

These include: profit or loss on transactions involving VC, amount of VC held as on the reporting date and deposits or advances from any person for the purpose of trading or investing in VC.

Stablecoins

The Government and the RBI carry the same level of apprehension for stablecoins, as for other cryptocurrencies. As many stablecoins are based on foreign currencies, the RBI remains concerned that some could become a threat to the sovereignty of India's monetary policy framework.

Central Bank Digital Currency (CBDC)

In the Union Budget of FY23, the Government announced that the RBI will begin a phased CBDC roll out in 2022. The subsequent Concept Note on CBDC outlines the design choices and technology behind the project. According to the RBI, a digital rupee could enhance the digital adoption of financial services, target delivery of government projects and improve cross-border payments.

In November 2022, the RBI initiated a pilot for a wholesale CBDC, with an intention to test the infrastructural and banking capabilities. The pilot involves banks to undertake trading in Government securities via an account based wholesale CBDC.

In December 2022, the RBI also launched a retail CBDC pilot with a selected group of banks, merchants and customers.

Authors

Amit Jain, Partner, PwC India

amit.g.jain@pwc.com

Nidhi Jain, Director, PwC India

nidhi.biyani.jain@pwc.com



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Government outlook

The Government has not set a specific regulatory framework or taxonomy for digital assets. Changes are will occur with the adoption of MiCA at the EU-level.

Crypto asset regulation

In June 2022, the Bank of Italy issued non-binding guidelines for market participants operating in the digital asset market.

The Commissione Nazionale per le Società e la Borsa (CONSOB), the public authority responsible for regulating the Italian financial markets, supervises digital asset services which could trigger reserved activities or public offerings of financial products / instruments.

Registration and financial crime

Virtual assets service providers (VASPs) are required to be enrolled in the Register held by the Organismo Agenti e Mediatori (OAM).

VASPs are subject to AML provision, pursuant to Legislative Decree no. 231 / 2007, and are subject to the duties provided by that framework in terms, including customer due diligence and suspicious transactions.

In October 2022, the European Commission published its supranational risk assessment report on money laundering and terrorist financing affecting the internal market and relating to cross-border activities. The report emphasises the risks associated with crypto assets and calls for ensuring a high level of consumer and investor protection and market integrity as well as measures to prevent market manipulation, money laundering and terrorist financing.

Sales and promotion

Currently no specific guidance in place for the sale and promotion of crypto assets.

If a virtual asset sale or offer is marketed as a true investment proposal, a sale or offer may fall within the scope of the Italian rules on financial products (prodotti finanziari).

Prudential treatment

There are no specific prudential requirements in place for crypto assets. These are likely to be defined in the future, in accordance with the Basel Committee on Banking Supervision's expectations.

Stablecoins

No regulatory framework is adopted for stablecoins. These will be defined with the adoption of MiCA at the EU-level.

Central Bank Digital Currency (CBDC)

The Bank of Italy, together with a number of other financial institutions, continues to actively monitor and participate in the Digital Euro project.

Other digital assets

Regulators are at early stages of assessing their approach towards wider digital assets. The work will be directed by the adoption of MiCA and the Distributed Ledger Technology (DLT) Pilot Regime at the EU-level.

Expected regulatory announcements

Implementation of MiCA and the proposed new AML / CTF legislative package with other EU Member States upon their entry into force.

Authors

Daniela Genua, Director

daniela.genua@pwc.com

Francesco Della Scala, Director

della.scala.francesco@pwc.com

Pasquale Iannelli, Senior Manager

pasquale.iannelli@pwc.com

Further information: Ministry of Economy: Gazzetta Ufficiale della Repubblica Italiana, Anno 163° (on the registration of VASPs operating in Italy), Numero 40, February 2022, Italian Government: Legislative Decree n. 231 of November 2007 and subsequent amendments (on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing), ESMA: Report on the DLT Pilot Regime, 27 September 2022, European Commission: Report on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities, 27 October 2022

Japan

Government outlook

The Government has indicated web3.0 as one of the key pillars for the growth of the Japanese economy.

In 2021, the Government established the Digital Agency, which is actively researching digital asset use cases. The Ministry of Economy, Trade and Industry has also established a web3.0 advancement initiative aimed at moving the digital asset economy forward.

Financial regulation

Depending on their specific structure, digital assets may be subject to financial regulations:

- Crypto Assets (Payment Services Act (PSA))
 - Can be used for settlement with, and be purchased from and sold to, unspecified persons.
 - Electronically recorded and transferable.
 - Not legal currency or assets denominated in legal currency.
- Stablecoins (PSA)
 - Can be used for settlement with, and be purchased from and sold to, unspecified persons.
 - Electronically recorded and transferable.
 - Denominated in legal currency (cf. stablecoins denominated in crypto assets or algorithmic stablecoins may be treated as Crypto Assets from the Japanese regulatory purpose).
- Security Tokens (Financial Instruments and Exchange Act (FIEA))
 - Securities under the FIEA (share certificates, bonds, interests in funds, beneficiary interests in trusts).
 - Electronically recorded and transferable.
- Other
 - Prepaid payment instruments.
 - Those used for exchange transactions
 - Not regulated by financial regulations (e.g. NFTs which are not categorized as the above).

Registration / licencing

Crypto asset exchange service providers must be registered with the Financial Services Agency in Japan (FSA). Security token brokers must be registered as a Financial Instruments Business Operator under the FIEA, as the security token would constitute Electronically Recorded Transferable Rights and fall within the definition of 'securities' under the FIEA.

Financial crime

Digital assets are regulated by the PSA, or as financial instruments under the FIEA. Guidance related to Financial crime is issued by the FSA and the Japan Virtual Currency Exchange Association (JVCEA) which is a self-regulatory organization, and firms should follow the guidance. The JVCEA requests its member firms to provide additional information for transactions, such as the address of the recipient and the purpose of the transaction (i.e. the travel rule) 2022. Further, legislation requesting firms to follow the travel rule was enacted in parliament in November 2023 and the legislation will be effective the following year.

Sales and promotion

As defined in the PSA.

Prudential treatment

There are no specific prudential requirements in place for digital assets.

Crypto asset exchange service providers can only hold up to 5% of customer funds in a hot wallet. The remaining funds must be held by highly secure methods such as cold wallets.

Service providers must also hold the same type and quantity of crypto assets (so called performance-guarantee crypto assets) for customer funds, managed by methods other than highly secure methods and separate from its own crypto assets.

Stablecoins

In June 2022, the Diet passed a bill, defining the status of stablecoins denominated in legal currency and separating them from other digital assets. Issuers are limited to banks, money transmitters and trust companies. Intermediaries must also register with regulatory authorities and follow strict AML / KYC guidelines.

Japan (continued)

Central Bank Digital Currency (CBDC)

Japan has no immediate plans to release a CBDC but continues to actively research and test CBDC projects with other authorities and central banks.

Other digital assets

Research is underway for other digital assets including and not limited to DeFi, NFTs and decentralised autonomous organisations.

Expected regulatory announcements

Dedicated legislation regarding AML / CFT and Travel Rule, expected in early 2023.

Authors

Tomoyuki Ashizawa, Partner, PwC Japan
tomoyuki.ashizawa@pwc.com

Chikako Suzuki, Partner, PwC Japan
chikako.suzuki@pwc.com

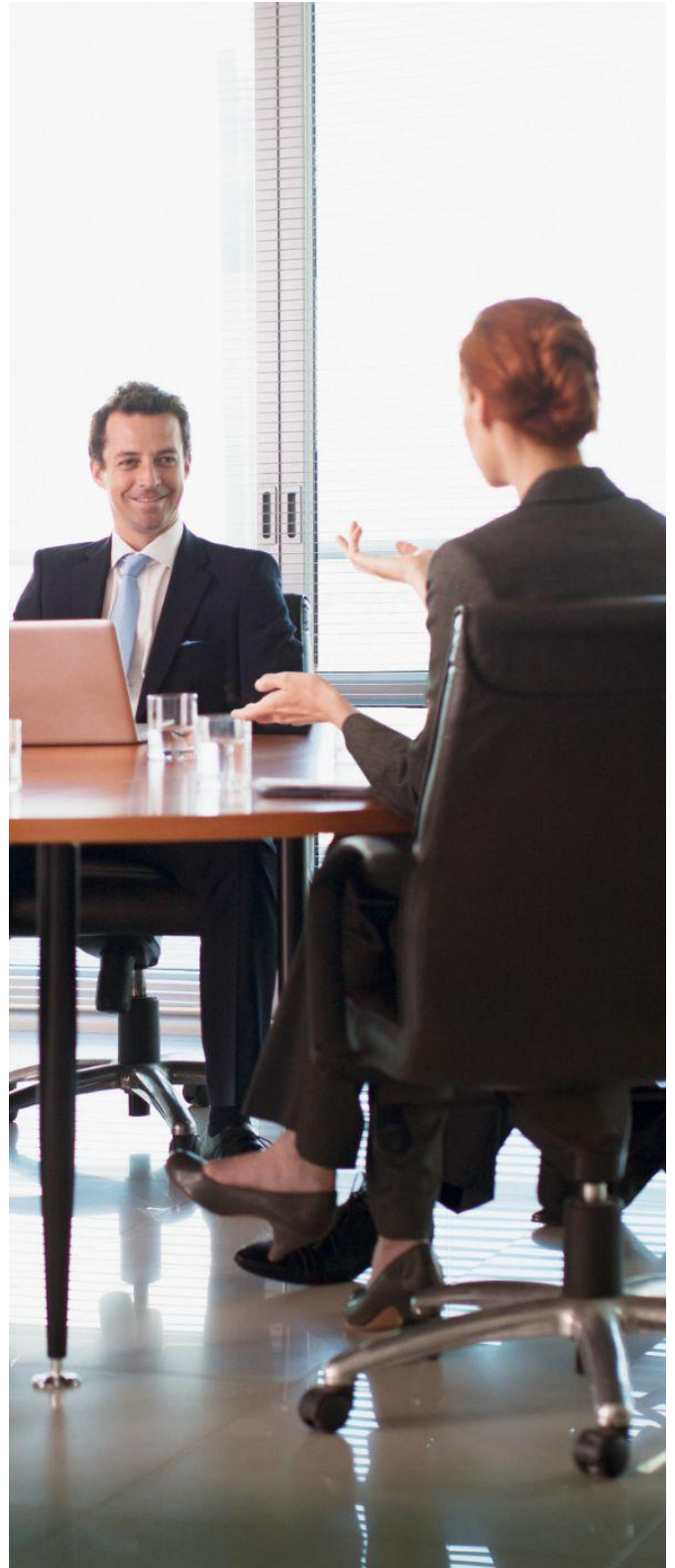
Hideki Takeuchi, Partner, PwC Japan
hideki.h.takeuchi@pwc.com

Hiroyuki Nishida, Partner, PwC Japan
hiroyuki.nishida@pwc.com

Hibi Makoto, Director, PwC Japan
makoto.hibi@pwc.com

Tomohiro Maruyama, Senior Manager, PwC Japan
tomohiro.m.maruyama@pwc.com

Hidenori Shibata, Senior Manager, PwC Japan
hidenori.shibata@pwc.com



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Luxembourg

Government outlook

Financial innovation is a central consideration for the Government, with DLT and virtual assets playing an important role in the discussions. In 2018, the Government was supporting a comprehensive initiative around DLT and blockchain in the form of an educational white paper addressed to the market.

This has been further reinforced via the Commission de Surveillance du Secteur Financier (CSSF) in its communication, issued in February 2021, where the CSSF embraced the challenges raised by financial innovation such as virtual assets and launched the Innovation Hub, with a focus on virtual assets and DLT.

More recently in 2022, the CSSF issued a whitepaper focused on the technological risks and recommendations for the use of DLT and blockchain in the financial sector.

Overarching principles of the CSSF towards financial innovation and its integration in financial services are: proactive open regulatory approach, prudent risk-based regulatory approach and technological neutral approach.

In the absence of a bespoke regime for virtual assets, the authorities aim to ensure that no excessive regulatory barriers hinder new opportunities, while making consumer protection, market integrity and AML considerations critical priorities.

Technological neutrality, combined with a substance over form approach, is adopted to ensure a flexible but sound approach towards virtual assets.

The CSSF remains vocal on the inherent risks attached to virtual assets and the need for consumers to engage proper due diligence when envisaging any direct or indirect (i.e. through investment funds) exposure.

Virtual assets regulation

The authorities define virtual asset as a digital representation of value, including a virtual currency, which can be digitally traded, or transferred, and can be used for payment or investment purposes. The definition excludes those virtual assets which fulfil the conditions of electronic money or financial instruments, as defined in the legislation.

No bespoke regulatory regime is in place for virtual assets. Core principles to financial innovation are effective and important clarifications have been provided to market participants. Additional clarifications on specific areas might be issued until the entry into force of MiCA across the EU.

The legal framework for those virtual assets which fulfil the conditions of financial instruments, has developed significantly since 2019 with the amendments of several existent laws:

- The law of 1 March 2019 (Bill n°7363) amends the law of 1 August 2001 on the circulation of securities and recognises distributed ledger technology (DLT) as an authorised medium to hold securities account and register securities transfer. The new legal framework places traditional transactions on the same level as those carried out using blockchain or other DLTs.
- The law of 22 January 2021 (Bill n°7637) amends the Luxembourg law of 5 April 1993 on the financial sector and the law of 6 April 2013 on dematerialised securities and recognise the use of blockchain or other DLT to record the issuance of dematerialised securities (by serving as the primary register of such issuance).

Further amendments are made to implement the Pilot Regime Regulation 2022 / 858 into national laws.

Registration / licencing

Since March 2020, all Virtual Asset Service Providers (VASPs) active in Luxembourg need to register with the CSSF and be compliant with AML / CTF obligations.

The services covered are:

- exchange between virtual assets and fiat currencies, including the exchange between virtual currencies and fiat currencies,
- exchange between one or more forms of virtual assets,
- transfer of virtual assets,
- safekeeping and / or administration of virtual assets or instruments enabling control over virtual assets, including custodian wallet services,
- participation in and provision of financial services related to an issuer's offer and / or sale of virtual assets.

Further information: ILNAS and Luxembourg government: Blockchain and distributed ledgers white paper, June 2018, CSSF: Financial innovation: a challenge and an ambition for the CSSF, February 2021, CSSF: Financial innovation: A challenge and an ambition for the CSSF, June 2022, CSSF: Distributed ledger technologies and blockchain: Technological risks and recommendations for the financial sector, January 2022, CSSF: CSSF guidance on virtual assets, November 2021, CSSF: FAQ Virtual assets – Undertakings for collective investment, January 2022, CSSF: FAQ Virtual assets - Credit institutions, January 2022

Luxembourg (continued)

Financial crime

VASPs are subject to the AML / CFT Law and must fully comply with the duties provided in this framework (e.g. customer due diligence and suspicious transactions reporting).

Sales and promotion

There is no specific regulation addressing specifically the sale and promotion of virtual assets. The CSSF remains vocal on consumer protection and restricts investment in virtual assets for those undertaking for collective investments (UCI) targeting professional investors only. Ad hoc frameworks are expected to be introduced at the latest once MiCA enters into force.

Virtual assets which fulfil the conditions of financial instruments are subject to the relevant framework.

Prudential treatment

There are no specific prudential requirements in place for virtual assets. These are likely to be defined in the future, in accordance with the Basel Committee on Banking Supervision's expectations.

Until an international framework is agreed, firms are expected to take adequate measures to address the risks posed by virtual assets.

Stablecoins

There is no dedicated regulatory framework in place for stablecoins. Virtual assets which fulfil the conditions of electronic money are excluded from the definition of virtual assets and are subject to existing regulatory framework.

Regulatory developments in this area are expected following the introduction of the MiCA regulation and the notions of asset reference tokens (ARTs) and electronic money tokens (EMTs).

Central Bank Digital Currency (CBDC)

Developments in this area are driven by the digital euro initiative launched by the European Central Bank.

Other digital assets

The CSSF is at early stage of assessing its approach to other areas of digital assets, including NFTs and wider DeFi.

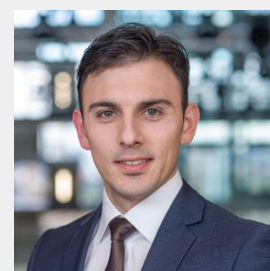
Author

Thomas Campione, Director, PwC Luxembourg

thomas.campione@pwc.com

Expected regulatory announcements

- Implementation of the Pilot Regime Regulation into national Laws, expected by early 2023.
- Implementation of MiCA and the proposed new AML / CTF legislative package with other EU Member States upon their entry into force.



The provisions of MiCA (Markets in crypto-assets) regulation may not be perfect, but have been designed to significantly increase crypto-assets market integrity and improve customer protection in the EU.

These elements are critical for maintaining and strengthening trust in the ecosystem as well as driving further adoption.

A step towards quality, and a natural selection process of crypto-assets service providers, are both expected and desirable features for the industry, as it continues to move away from its nascent stage.

Thomas Campione, CFA

Director, Blockchain and Crypto-assets
Leader
PwC Luxembourg

Further information: CSSF: CSSF guidance on virtual assets, November 2021, CSSF: FAQ Virtual assets – Undertakings for collective investment, January 2022

Mauritius

Government outlook

Mauritius is one of the first countries in the Eastern and Southern African region to adopt a comprehensive legislation on virtual assets and initial token offerings. In February 2022, Mauritius enacted the Virtual Asset and Initial Token Offerings Act 2021 (VAITOS Act) which established the Virtual Assets regime under the supervision of the Financial Services Commission (FSC). The regime demonstrates the government's commitment to developing the sector.

Crypto asset regulation

The VAITOS Act provides for a comprehensive legislation to regulate Virtual Asset Service Providers (VASPs) and issuers of Initial Token Offering (ITO) carrying out business in or from Mauritius. It establishes a regulatory framework for VASPs and ITOs resting on the VAITOS Act, alongside the Financial Services Act 2007, the Financial Intelligence and Anti-Money Laundering Act 2002 and the United Nations (Financial Prohibitions, Arms Embargo (UNSA) and Travel Ban) Sanction Act 2019.

The FSC is designated as the regulator and supervisor with the power to grant licences, monitor and oversee the business activities of VASPs and issuers of ITO.

There are five applicable VASP licences under the VAITOS Act, namely:

- Class 'M' (Virtual Asset Broker Dealer).
- Class 'O' (Virtual Asset Wallet Services).
- Class 'R' (Virtual Asset Custodian).
- Class 'I' (Virtual Asset Advisory Services).
- Class 'S' (Virtual Asset Marketplace).

Registration / licencing

VASPs need to hold one of the relevant licences under the VAITOS Act, to conduct business activities in or from Mauritius. Issuers of ITO need to be registered with the FSC. A failure to hold a relevant licence and / or be registered with the FSC may render the corporation liable to fines and imprisonment upon conviction.

In considering an application, the FSC takes into account the applicant's business plan and internal risk control mechanisms as well as the applicant's ability to adhere to the FATF inspired standards set by the FSC.

Financial crime

The VAITOS Act establishes Travel Rules which were supplemented by rules issued by the FSC in August 2022. The Travel Rules impose obligations on VASPs, intermediary VASPs and financial institutions in relation to cross-border wire transfers or batch file transfers of virtual assets on behalf of customers.

The VAITOS Act compels VASPs and issuer of ITO to adopt a risk-based approach to AML / CTF obligations, whenever considering to establish or continue business relationships with other VASPs, issuers, customers or outsourced / third parties in general.

VASPs and issuers of ITO are expected to always be vigilant in ensuring that their business activities are not subject to any misuse by participants transacting with virtual assets and to report any suspicious transactions to the Financial Intelligence Unit.

VASPs and issuers of ITO must establish effective and up-to-date systems to screen clients and transactions, as appropriate to the nature, size and risk of the business in accordance with UNSA, the UN Sanctions List and list of designated parties issued by the National Sanctions Secretariat.

Sales and promotion

The FSC issued the VAITOS (Publication of Advertisements) Rules 2022, amongst other rules, which came into force in July 2022. These rules apply to any VASP and to any issuer of ITO, under the VAITOS Act, wishing to advertise and market relevant products / services in or from Mauritius.

Advertisements for relevant products / services offered by a VASP and / or issuer of ITO must be fair, clear and unambiguous. Advertisements targeting the general public must be filed with the FSC, who has the prerogative to amend or prohibit its publication if it is deemed to be contrary to the aforementioned rules.

Mauritius (continued)

Capital and other prudential requirements

The VAITOS (Capital and other Financial Requirements) Rules 2022 apply to all VASPs carrying out business activities in or from Mauritius.

Capital requirement

A VASP must have (as a minimum) unimpaired capital and liquidity resources, which are greater than its own funds' requirement or the prudential requirement.

Own funds requirement

A VASP must maintain its own funding requirements in accordance with the aforementioned rules (for example, a VASP conducting Virtual Asset Market Place business activities must hold at least MUR 6,500,000 (USD 142,700) at all times.

Prudential requirement

A VASP must, at all times, have in place prudential safeguard capital, in an amount higher than one quarter of the fixed overheads of the VASP over the preceding year, and the financial resources requirements as determined by the VAITOS (Risk Management) Rules 2022.

Issuers of Virtual Tokens

The FSC requires the applicant to submit (among other information), a white paper providing a full and accurate disclosure of the proposed Virtual Token (broadly defined as cryptographically secured digital representation of a set of rights, including smart contracts issued by an issuer of ITO) offering. Submission requirements also include a legal opinion from a Mauritius-law practitioner to confirm that the relevant Virtual Token is in compliance with the VAITOS Act and rules.

Stablecoins

Stablecoins will generally fall within the category of a Virtual Token (as defined under the VAITOS Act) and are regulated by the Virtual Assets regime. A person wishing to issue stablecoin in or from Mauritius must be registered with the FSC to conduct its proposed activities.

Central Bank Digital Currency (CBDC)

The Bank of Mauritius is working towards the introduction of a retail CBDC, the Digital Rupee, under a 2-tier hybrid model. It has collaborated with the International Monetary Fund on a CBDC feasibility study, including implications on the existing monetary policy, legislation, regulation as well as design and technology requirements.

The Bank of Mauritius continues to engage with industry stakeholders and plans to pilot the digital rupee by early 2023.



The VAITOS Act establishes a full-fledged regime for VASPs and issuers of ITO to carry out business in or from Mauritius in line with international norms.

Razi Daureeawo

Partner,
PwC Legal (Mauritius) Ltd

Author

Razi Daureeawo, Partner, PwC Legal (Mauritius) Ltd

r.daureeawo@pwclegal.mu

New Zealand

Government outlook

The New Zealand Government has not implemented specific legislation to regulate virtual assets or service providers. While the Government accepts the use of virtual assets, it has adopted a measured approach, i.e. first understanding how existing general regulations apply, before establishing new regimes.

In 2021, the Government launched an inquiry into the current and future nature, impact, and risks of cryptocurrencies with a purpose to gain a stronger understanding of: the nature, benefits and risks of trading, the tax implications, how cryptocurrencies are used by criminal organisations and whether New Zealand has the existing means to regulate cryptocurrencies.

In 2021, the Ministry of Justice initiated a review of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the AML / CFT Act) to consider how it has operated since 2013 and how the AML / CFT Act could be amended to ensure all types of Virtual Asset Service Providers (VASPs) are captured by the Act.

The final report is expected to answer questions specifically targeted at VASPs, including whether VASPs should be required to hold specific licences under the AML / CFT Act and whether specific thresholds for occasional transactions for VASPs should apply.

Crypto asset regulation

As the Government has not implemented specific legislation to regulate virtual assets or service providers, the existing general laws apply.

The two key ones are the Financial Markets Conduct Act 2013 (the FMC Act) and the AML / CFT Act.

The FMC Act governs the creation, promotion and ongoing responsibilities of persons who offer, deal and trade financial products and services. For the FMC Act rules (such as the disclosure requirements) to apply to a virtual assets, it must be a 'financial product' (e.g. a debt security, an equity security, a managed investment product or a derivative). Due to the narrow definition of a 'financial product', many virtual assets may not meet the definition and may not be subject to the FMC Act.

The AML / CFT Act does not explicitly apply to virtual assets. The Reserve Bank of New Zealand (RBNZ), Department of Internal Affairs (DIA) and Financial Markets Authority (FMA) have each advised that VASPs providing certain financial services will likely be a 'financial institution' for the purposes of the AML / CFT Act and required to comply with its obligations. The RBNZ, FMA and DIA have also identified VASPs as being in the high-risk category for meeting AML / CFT Act obligations, due to the anonymous and global nature of virtual assets.

Registration / licencing

According to the FMA guidance, in most cases, exchanges, wallets and Initial Coin Offerings (ICO) relating to virtual asset services will be captured by the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the FSP Act).

Under the FSP Act, a financial service provider must be registered to provide the relevant financial service on the Financial Service Providers Register. In certain circumstances, the financial service provider must also join an approved dispute resolution scheme.

Where a public blockchain is not managed by a particular entity, but rather a blockchain community, it can be difficult to identify the person(s) or organisation(s) who are required to register.

Financial crime

New Zealand has not implemented the FATF recommendations in relation to VASPs.

As part of the AML / CFT Act review, the Ministry of Justice is considering whether the current AML / CFT obligations are appropriate for all VASPs, including whether specific thresholds should be set for occasional transactions.

No specific threshold is set for occasional transactions of virtual assets. This means that the default threshold of \$10,000 NZD for cash transactions and \$1,000 NZD for wire transfers applies and is not in line with FATF's recommended threshold. There is also no obligation to conduct customer due diligence for occasional transactions involving virtual asset to virtual asset transfers.

New Zealand (continued)

Sales and promotion

Virtual assets which are 'financial products' for the purposes of the FMC Act will be subject to the disclosure requirements under that Act.

In addition, the sales and promotion rules under the Fair Trading Act 1993 will apply to the provision of virtual assets. Broadly, these requirements require communications or content to not be misleading, deceptive or contain unsubstantiated representations.

Stablecoins

No regulatory framework is adopted for stablecoins. General financial services regulation may apply, depending on the design of the stablecoin (e.g. whether the coin is a 'financial product' for the purposes of the FMC Act). According to the FMA, this must be determined on a case-by-case basis and will depend on the structure and arrangement of the stablecoin.

Central Bank Digital Currency (CBDC)

The RBNZ has commenced a multi-stage, multi-year proof-of-concept design project for a potential CBDC.

Author

Jonathan Pitts, Director, PwC New Zealand

jonathan.a.pitts@pwc.com



Further information: The Reserve Bank of New Zealand: The Future of Money - Central Bank Digital Currency, September 2021

Singapore

Government outlook

Singapore seeks to establish itself as a country with an innovative and responsible digital asset ecosystem.

The Monetary Authority of Singapore (MAS) aims to anchor high quality firms, with strong risk management and value propositions, to mitigate the risks of consumer harm and educate consumers on the risks of cryptocurrencies and the related services. It also strongly discourages speculation in cryptocurrencies and seeks to restrict them through its regulatory approach.

In October 2022, MAS released a consultation paper, proposing several regulatory measures for Digital Payment Token Service Providers (DPTSPs) in the key areas of consumer access, business conduct and technology. The paper outlines several good industry practices to address market integrity risks.

The proposed measures include:

- requiring DPTSPs to conduct risk awareness assessments for retail customers;
- restricting DPTSPs from offering incentives to retail customers;
- restricting retail customers from borrowing to finance DPT transactions;
- requiring that DPTSPs ensure that customers' assets are segregated from their own assets, and held for the benefit of customers, and implement risk management controls;
- imposing measures for DPTSPs to identify and mitigate conflicts of interests;
- requiring DPT trading platform operators to disclose their policies and procedures on the process for selecting listing and reviewing DPTs;
- requiring DPTSPs to have in place adequate policies and procedures to handle customer complaints;
- requiring DPTSPs to establish a high level of availability and recoverability of the critical IT systems used to support the business and services; and
- DPT trading platforms to implement effective systems, procedures and arrangements to promote market integrity.

Crypto asset regulation

The regulatory approach set by MAS towards digital assets is generally to look beyond common labels or definitions, and instead examine the features and characteristics of each digital asset to determine the applicable regulatory requirements.

Regulations seek to mitigate the specific risks posed by specific activities, while allowing latitude for innovation in the digital assets sphere.

Digital assets which fall within the definition of a capital markets product under the Securities and Futures Act (SFA), are regulated in a manner similar to other capital markets products. Firms dealing in digital assets constituting capital markets products will require a capital markets services licence (CMSL) for the relevant regulated activities under the SFA.

Any offer of digital assets to the public which constitutes securities, securities-based derivative contracts or units in a collective investment scheme, will be subject to the prospectus requirements under the SFA, unless an applicable exemption applies.

Digital assets used as a means of payment or discharge of a debt may be regulated as a DPT or e-money under the Payment Services Act (PSA). Service providers will have to apply for the applicable licence under the PSA.

MAS has proposed that stablecoins meeting certain criteria, will be regulated as a separate class of DPTs, subject to different regulatory requirements, under the PSA.

The Financial Markets and Services Bill (FSM Bill), passed in April 2022, expands the scope of regulated digital token services to align it with the FATF Standards. The FSM Bill imposes licensing requirements on Virtual Asset Service Providers (VASP) which are Singapore corporations or carry on business from a place in Singapore, even if they provide digital token services wholly outside of Singapore (currently unregulated).

This would result in most VASPs based in Singapore, which are presently not covered by the PSA, falling within the FSM Bill's licensing regime.

Further information: MAS: Yes to Digital Asset Innovation, No to Cryptocurrency Speculation, 29 August 2022, MAS: Reply to Parliamentary Question on licences awarded to DPT service providers and plans to promote Singapore as cryptocurrency hub, 1 August 2022, MAS: Guide to Digital Token Offerings, 26 May 2020, at [4.1] and [4.2], MAS: Explanatory Brief for Financial Services and Markets Bill 2022, 14 February 2022, MAS: Consultation Paper on Proposed Regulatory Measures for Digital Payment Token Services, 26 October 2022

Singapore (continued)

Registration / licensing

MAS has been selective in licensing digital asset firms as DPTSPs. The licensing process for firms dealing in digital assets constituting capital markets products, is generally similar to other applications for CMSL.

Given the large number of licence applications, MAS tends to prioritise those demonstrating strong risk management capabilities and the ability to contribute to the growth of Singapore's FinTech and digital asset ecosystem.

Financial crime

MAS considers all transactions relating to digital token services to carry higher inherent AML / CTF risks due to their anonymity and speed. This is the key risk which MAS' regulations seek to address. Entities which are regulated under the PSA and the SFA, are already subject to AML / CTF regulations.

The new FSM Bill will regulate all VASPs incorporated in Singapore, even if they only provide virtual asset services outside of Singapore. Such VASPs (which were previously not regulated) will be regulated under the FSM Bill for money-laundering and terrorist financing risks, to be in line with the FATF standards.

Regardless of regulatory status, all persons must comply with the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act and the Terrorism (Suppression of Financing) Act. Amongst others, they are required to report suspicious transactions with the Suspicious Transaction Reporting Office, Commercial Affairs Department of the Singapore Police Force.

Sales and promotion

Generally, no person (other than the relevant licensee or exempt payment service provider) may a) offer to provide, or issue any advertisement containing any offer to provide, to the Singapore public, any type of payment service or b) make an offer or invitation, or issue any advertisement containing any offer or invitation, to the Singapore public, to enter into any agreement relating to the provision by any person of any type of payment service.

Marketing and sale of investments in digital assets could fall within licensable activities under the PSA or SFA.

Certain advertising restrictions also apply for licensees. For instance, DPTSPs should not engage in the promotion of DPT services to the general public or in public areas in Singapore. This includes advertisements on public transport, public transport venues, public websites, social media platforms and broadcast as well as print media or through the engagement of third parties, including social media influencers. The provision of DPT services in public areas through the use of automated teller machines is also not allowed.

Decentralised Finance (DeFi)

In May 2022, MAS announced the commencement of Project Guardian to test the feasibility of applications in asset tokenisation and DeFi, while managing risks to financial stability and integrity. The first industry pilot will explore the institutional trading of tokenised bonds and deposits, through smart contracts on a blockchain to autonomously perform trading activities to improve efficiency and liquidity in wholesale funding markets.

DeFi digital assets may be regulated under the SFA or PSA licensing regime, depending on the features and characteristics of the digital asset and the types of activities conducted with respect to the digital assets.

Stablecoins

MAS sees potential in stablecoins performing the role of a credible digital medium of exchange, provided that they are well-regulated and backed by arrangements which give a high degree of assurance of value stability.

Generally, stablecoins are treated as DPTs and regulated under the PSA today. MAS has stated that, as Singapore looks to develop a digital asset ecosystem, there is a need to put in place a regulatory regime which supports the development of credible and reliable stablecoins that facilitate digital transactions. The current regulatory treatment under the PSA is not adequate to achieve this objective, as it does not regulate to ensure that stablecoins maintain a high degree of value stability and any associated stabilisation mechanisms.

Further information: MAS: MAS Partners the Industry to Pilot Use Cases in Digital Assets, 31 May 2022, MAS: Frequently Asked Questions on the Payment Services Act (PS Act), 7 March 2022, at [23.6]

Singapore (continued)

In October 2022, MAS published a consultation paper proposing to set out a specific regulatory regime for issuers and intermediaries of single-currency pegged stablecoins, issued in Singapore and meeting certain criteria.

The consultation demonstrates an appreciation for a more flexible risk-based regulatory approach which differentiates, among other things, the various types of stablecoins, the risks posed by stablecoins where circulation exceeds a value of S\$5 million and the risks posed by different types of issuing entities.

Central Bank Digital Currency (CBDC)

MAS believes that there is a strong case for wholesale CBDCs, especially for cross-border payments and settlements.

Its Project Dunbar explored how a common multi-CBDC platform could enable cheaper, faster and safer cross-border payments. It proved that financial institutions could use CBDCs issued by participating central banks to transact directly with each other, on a shared platform. This has the potential to reduce reliance on intermediaries as well as the costs and time it takes to process cross-border transactions.

In November 2022, MAS launched Ubin+ which built on the foundation started with Project Ubin (2016-2020) and learnings from Project Dunbar.

Ubin+ is an expanded collaboration with international partners on cross-border foreign exchange (FX) settlement using CBDC, and will strengthen Singapore's capabilities to use digital currency-based infrastructure for cross-border transactions.

While MAS does not see a compelling case for retail CBDCs in Singapore at the moment, it is building the technology infrastructure that would permit issuance of retail CBDCs in the future.

In particular, MAS has embarked on Project Orchid, which aims to prepare for the possibility of retail CBDCs, by establishing the technology infrastructure and capabilities required to build the system.

Authors

Wong Wanyi, Partner, PwC Singapore

wanyi.wong@pwc.com

Khoo Yuh Huey, Director, PwC Singapore

yuh.huey.khoo@mail.engandcollc.com

Chan Wei Jie, Senior Manager, PwC Singapore

wei.jie.chan@pwc.com

South Africa

Government outlook

In the wake of increased crypto adoption, the South African regulatory authorities have taken proactive steps in the past few years to address the regulatory requirements around crypto assets.

Crypto asset regulation

In 2019, the Government established the Crypto-Asset Regulatory Working Group to investigate all aspects of crypto assets and related blockchain concepts, with a view to develop a cohesive governmental response.

The group made a number of key recommendations: implementation of AML and KYC frameworks, adopting a framework for monitoring crypto asset cross-border financial flows as well as aligning and applying relevant financial sector laws to crypto assets. These recommendations have led to a number of regulatory changes in the course of 2022.

In August 2022, the Prudential Authority (PA) issued a guidance note for banks on AML / CFT controls in relation to crypto assets and crypto asset service providers (CASP). The note highlights the requirement for a risk-based approach to managing risks, instead of adopting a blanket de-risking policy.

In October 2022, the Financial Services Conduct Authority (FSCA) declared crypto assets a “financial product”, under the Financial Advisory and Intermediary Services Act of 2002. This will require those who offer advisory or intermediary services in relation to crypto assets to apply for a license under the Act by the end of November 2023.

In November 2022, the definition of an ‘Accountable Institution’ in the Financial Intelligence Centre Act of 2001 was amended to include persons who carry on the business of exchanging crypto assets or crypto assets to a fiat currency or vice versa, conducting a transaction that transfers a crypto asset from one crypto asset address or account to another, offers safekeeping or administration of a crypto assets or participated in or provides financial services related to an issuer’s offer or the sale of a crypto asset. This regulation will require such persons to comply with additional governance, risk and compliance requirements under the Act, including specific obligations in relation to AML, CFT and sanctions controls. These requirements come into effect on 19 December 2022.

Central Bank Digital Currency (CBDC)

The South African Reserve Bank (SARB) continues to progress research on a potential CBDC. The SARB participates in Project Dunbar, with a number of other Central Banks, testing a wholesale cross-border CBDC. The SARB has also undertaken projects to investigate other types of tokenised money.

Expected regulatory announcements

- Further regulatory requirements relative to the broad regulatory framework for crypto assets in South Africa, through enactment of numerous related legislative changes to manage different aspects of crypto assets (e.g. travel rule guidance).
- The inclusion of crypto assets as 'capital' in the Exchange Control Regulations, meaning that there is mandatory reporting of cross-border transactions and setup for cross border settlement transactions.

Authors

Kerin Wood, Partner, PwC South Africa

kerin.wood@pwc.com

Costa Natsas, Partner, PwC South Africa

costa.natsas@pwc.com

Cindy Anderson, Senior Manager, PwC South Africa

cindy.anderson@pwc.com

Further information: Prudential Authority: G10-2022 – Supervisory guidelines for matters related to the prevention of unlawful activities and paper on crypto assets, 15 August 2022, FSCA: Declaration of Crypto Assets as a Financial Product, 22 October 2022, Government Gazette No 47596 - Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001): Amendment of Schedules 1, 2 and 3 to Financial Intelligence Centre Act, 2001

Switzerland

Government outlook

The Government and Financial Market Supervisory Authority (FINMA) are positive towards blockchain and digital assets. In 2020, Switzerland adapted its legal framework, incorporating the new reality of digital assets in its regulatory framework. FINMA applies the 'same risk, same rules' approach as well as existing financial market regulation to digital asset related activities.

FINMA can also grant negative rulings which allow for the regulatory treatment to be determined upfront to enhance legal certainty as well as supporting advanced and mature regulatory environment.

Crypto assets regulation

In September 2020, the Parliament adopted the Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology (DLT Bill) which has led to amendments in various federal laws, such as the Swiss Code of Obligations (SCO) and financial markets regulations.

The important traits of the DLT Bill can be divided into three main topics:

- In civil law, the Swiss legal order allows for the issuance and transfer of rights (in particular debt and equity) on the blockchain, with full legal recognition.
- In debt enforcement proceedings, it allows for digital assets to be segregated from the bankruptcy estate.
- In financial markets regulation, special licensing regimes have been created in order to allow market participants to provide financial services in digital assets (including a DLT Trading Facility license for exchanges and a FinTech Licence for banks).

Even though FINMA has issued guidelines, given the great diversity in cases and projects, it tends to favour a case-by-case approach and may confirm or deny certain treatment, based on negative ruling decisions (so called 'no-action letters').

FINMA was one of the first authorities to issue guidance on digital assets. Its approach is based on the economic function of the token, considering the attributes of the digital assets as well as the related ownership rights.

FINMA makes a distinction between payment, security and utility tokens, to determine the application of the different financial market laws:

- Payment tokens or 'cryptocurrencies' are considered means of payment for acquiring goods or services or as a mean of money or value transfer. A qualification as payment token may notably trigger the application of the AMLA regime.
- Security tokens, which represent assets such as participations in companies, or earning streams, or an entitlement to dividends or interest payments. In term of their economic function, the tokens are analogous to equities, bonds or derivatives. A qualification as security token may notably trigger the duty to issue a prospectus and depending on the activity related to such security token a FINMA security license.
- Utility tokens, which provide digital assets to an application or service by mean of a blockchain-based infrastructure. A qualification as pure utility token usually do not trigger any specific regulatory requirements.

In addition to these three types of tokens, hybrid forms are also possible. In these cases, token classifications are not mutually exclusive. In particular, according to FINMA, a token may qualify as a payment token even though it has other additional functions, such as a those of an utility token or a security token.

Registration / licencing

There are no specific registration requirements for Virtual Asset Service Providers (VASPs). VASPs may need to obtain a license from FINMA or be registered as a financial intermediary subject to AMLA depending on the type of services they offer.

Financial crime

The law provides for AML regulations in the Anti-Money Laundering Act (AML Act) and the Ordinance (AMLO), including the duty to identify the contracting party, the beneficial owner, the source of funds as well as travel rules. These regulations apply to the issuer of digital assets if such digital assets qualify as a mean of payment.

Further information: FINMA: Guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs), 16 February 2018, Federal Council: Legal framework for distributed ledger technology and blockchain in Switzerland, 14 December 2018, FINMA: Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology (DLT bill)

Switzerland (continued)

AML regulation will also apply to financial intermediaries. FINMA has interpreted the definition of a 'financial intermediary' extensively over the past years, in particular around DeFi projects.

In the event of submission to the AML Act, firms must adapt the organisation and seek a registration with a Self-Regulatory Organisation (SRO).

Sales and promotion

No specific regulation applies to the issuance, distribution or marketing of digital assets. However, sales activities in relation to digital tokens may trigger:

- a prospectus requirement for security tokens and further regulations in connection with financial services under FinSA, and / or
- AML requirements for payment tokens, including KYC obligations and registration with an SRO.

In the case of distribution by a non-regulated entity of security tokens issued by a third party, registration in a special register of client advisors may be required.

Prudential treatment

There are no specific prudential requirements in place for virtual assets. These are likely to be defined in the future, in accordance with the Basel Committee on Banking Supervision's expectations.

Until an international framework is agreed, firms are expected to take adequate measures to address the risks posed by digital assets.

Stablecoins

In 2018, FINMA issued guidelines for stablecoins, which are treated with the same approach used for fungible tokens with a focus on the economic function. The treatment may differ, depending on the type of underlying assets and the rights attributed to the token holder. Different prudential requirements may apply depending on the token qualification.

Central Bank Digital Currency (CBDC)

In 2022, the Swiss National Bank (SNB) successfully used digital currencies to settle transactions involving commercial banks in the context of the Helvetia Project. The experiment has focused on the settlement of interbank transactions, monetary transactions and cross-border transactions.

Other digital assets

Due to their non-fungible nature, NFTs do not generally qualify as securities. Wider DeFi topics remain apprehended with caution, due to AML risks and difficulties to identify counterparts.

Trading and exchange activities

A new license was introduced in 2021, allowing for operating a crypto exchange for security tokens (DLT trading facility). It further acknowledges the distinct features of distributed technologies by allowing so-called 'post-trading services' within the same entity, meaning that trading, clearing and settlement functions are operated by a single institution.

Brokerage activities with security tokens are subject to a securities firm license.

Wallet / custody services

Operating wallets will generally be seen by the authorities as a financial intermediary activity, and therefore subject to AML. Experience over the recent years show that FINMA tend to apply an extensive definition, in order to encompass also non-custodial wallets. This can be ruled on a case-by-case basis.

Management

Asset management activities are regulated independently and there are no specific rules applicable to the management of digital assets. A license will be required if digital assets which qualify as financial instruments are managed on a professional basis. A collective asset manager license is required if fund structures are used.

Authors

Adrian Keller, Partner, PwC Switzerland

adrian.keller@pwc.ch

Michèle Hess, Partner, PwC Switzerland

michele.hess@pwc.ch

Adrien Tharin, Director, PwC Switzerland

adrien.tharin@pwc.ch

Silvan Thoma, Director, PwC Switzerland

silvan.thoma@pwc.ch

Cecilia Peregrina, Senior Manager, PwC Switzerland

cecilia.peregrina@pwc.ch

Further information: Federal Council: Legal framework for distributed ledger technology and blockchain in Switzerland, 14 December 2018, FINMA: Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology (DLT bill) FINMA : Supplement to the FINMA guidelines for enquiries regarding the regulatory framework for initial coin offerings (ICOs), 11 September 2019 FINMA : press release : FINMA issues first-ever approval for a stock exchange and a central securities depository for the trading of tokens, 10 September 2021 Project Helvetia Phase II Settling tokenised assets in wholesale CBDC, January 2022

Taiwan

Government outlook

The Taiwanese Government has indicated web3.0 as a key growth area for the economy. In 2021, the Government established Ministry of Digital Affairs to promote the digital economy policy and regulation.

Crypto asset regulation

Security firms can issue security tokens under the Taipei Exchange Rules. Certain restrictions apply, including: only professional investors are allowed to subscribe to security token offerings, an issuer may offer security tokens on a single trading platform only and the cumulative amount of offerings cannot exceed NT\$30 million. The types of security tokens offered on a trading platform are limited to non-equity dividend tokens and debt tokens only.

Financial crime

There are no specific registration requirements in place for virtual assets.

In 2021, the Government set the AML / CFT expectations for the virtual asset sector. Virtual Asset Service Providers (VASP) (e.g. exchanges, wallet service providers and ATMs) need to have appropriate policies and procedures in place. These include KYC, enhanced and customer due diligence, transaction monitoring and the travel rule. VASPs are required to submit a declaration with Financial Service Commission to declare VASPs comply with relevant AML / CFT regulation.

Other regulatory requirements

No specific requirements are in place for prudential treatment, stablecoins or for the sale and promotion of crypto assets.

Central Bank Digital Currency (CBDC)

Taiwan has no immediate plans to release a CBDC but continues to actively research, tests and pilot both wholesale and retail CBDC projects.

Authors

Sam Wu, Partner, PwC Taiwan

sam.wu@pwc.com

Yu-Chen Hu, Partner, PwC Taiwan

yu-chen.hu@pwc.com



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Turkey

Government outlook

Regulators have adopted a cautious approach towards crypto assets, due to the associated risks of money laundering, financial crime and lack of consumer protection. Turkey does not allow direct or indirect use of certain crypto assets in payments.

Due to the increasing consumer interest towards crypto assets, authorities may put forward relevant regulations in due course.

Crypto asset regulation

Regulation on the Disuse of Crypto Assets in Payments (Regulation) published by the Central Bank of the Republic of Turkey (CBRT) entered into force on 30 April 2021. The regulation defines crypto assets subject to the regulation as intangible assets that are not qualified as fiat currency, fiduciary money, electronic money, payment instrument, securities or other capital market instruments and that are created virtually using distributed ledger technology or a similar technology and distributed over digital networks. The Regulation prohibits the direct or indirect use of such crypto assets in payments.

The Regulation on Payment Services and Electronic Money Issuance and Payment Service Providers specifies that the intangible assets pegged to a fiat currency may be considered as electronic money. Those assets can be used in payment transactions, and issuers of the assets may be required to obtain electronic money institution license.

The CBRT has not clarified whether stablecoins pegged to a fiat currency would qualify as electronic money, within the context of this regulation.

In September 2018, the Capital Markets Board of Turkey (CMB), the regulator of securities and capital markets, noted that, if crypto assets have the qualification of capital market instruments, these instruments will be subject to capital market regulations. However, the CMB has not provided further guidance on which crypto assets would be qualified as securities.

In 2017, the CMB stated that 'virtual currencies' cannot be underlying assets for derivative instruments, and therefore spot or derivative transactions based on virtual currencies must not be carried out.

Registration / licencing

No registration requirement is in place for companies operating in the crypto asset sector.

Financial crime

With the amendments to the regulation on measures to prevent laundering proceeds of crime and financing of terrorism, crypto asset service providers have been obliged to fulfill the obligations specified under the AML Legislation (e.g. KYC and reporting of suspicious transactions).

Sales and promotion

No specific regulation is in place for the sale and promotion of crypto assets.

Prudential treatment

No specific regulation is in place for prudential treatment of crypto assets.

Stablecoins

No specific regulation is in place for stablecoins. The CBRT clarification is pending on whether stablecoins pegged to a fiat currency could be considered as electronic money.

Central Bank Digital Currency (CBDC)

The CBRT continues to develop a 'Digital Turkish Lira'. No formal confirmation is in place on when the potential CBDC could be available for consumer use.

Expected regulatory announcements

The Government and regulators have established joint working groups to investigate potential future regulatory changes. Capital Markets Law numbered 6362 could be amended to include crypto asset regulations (e.g. licensing requirement for crypto asset service providers and the requirement for the Turkish residents to carry out their crypto asset transactions with authorised institutions).

Author

Ozgur Altındaş, Director, PwC Turkey

ozgur.altindas@pwc.com

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United Arab Emirates

Government outlook

The United Arab Emirates (UAE) aims to establish itself as a leading global virtual asset hub.

Dubai has taken a major step forward in setting up the world's first Authority which solely focuses on virtual assets, the Virtual Assets Regulatory Authority (VARA). Abu Dhabi Global Market (ADGM) first established Virtual Assets regulation in 2018.

Crypto assets regulation

The UAE follows a federal civil law system. Each of its seven member states have instituted their own regulations in areas where there is no federal law. The financial and capital markets are, by and large, governed by the Central Bank of the UAE (CBUAE) and the Securities and Commodities Authority (SCA). The UAE federal criminal laws, such as the federal AML laws, apply to both mainland and offshore.

The CBUAE is establishing its position in communicating permissible virtual asset activities to local banks. These include opening accounts for Virtual Asset Service Providers (VASPs).

SCA's Decision on Crypto Assets Activities Regulation (CAAR), regulates the offering, issuing, listing and trading of crypto assets in onshore UAE. This includes the initial coin offering, exchanges, marketplaces, crowdfunding platforms, custodian services and related financial services based upon or leveraging crypto assets.

The Virtual Assets Law on the Regulation of Virtual Assets in the Emirate of Dubai, entered into force in March 2022. It is applicable to virtual asset services in Dubai, except in the offshore financial jurisdictions Dubai International Financial Centre (DIFC).

VARA is in the process of defining a comprehensive and flexible regulatory framework which includes:

- regulation and rulebooks to cover for all virtual assets activities,
- licensing framework for all VASP categories (e.g. large firms, startups, locally and globally), and
- supervisory framework to identify, assess and mitigate ongoing risks.

An MVP phase is already in place, with related rules and conditions, and this is evolving into a final regulatory framework.

In March 2022, the Dubai Financial Services Authority (DFSA), the regulator for the DIFC, published a consultation on regulatory regime for financial services activities in respect of crypto tokens.

The ADGM Financial Services Regulatory Authority (FSRA) regulates platforms which enable the trading of Virtual Assets as Multilateral Trading Facilities. In 2018, the FSRA issued a regulatory framework, incorporated within the Financial Services and Markets Regulations (FSMRs) for crypto asset businesses. The framework was last updated in February 2020, along with detailed guidance notes.

Financial crime

The UAE law provides for AML regulations aligned with the FATF and Middle East and North Africa FATF.

Sales and promotion

VARA has published guidelines on marketing, advertising and promoting virtual assets.

Prudential treatment

VARA defines prudential requirements depending on the risk level of the activity carried out. ADGM sets capital requirements as a % of annual OPEX.

Stablecoins and other digital assets

Authorities are assessing their approach to other areas of digital assets, including stablecoins and wider DeFi.

Central Bank Digital Currency (CBDC)

The CBUAE continues to explore and test the possibility of issuing a wholesale CBDC through international projects. In 2021, the Central Banking Committee awarded the Central Banks the Global Impact Award for the innovative CBDC.

Author

Serena Sebastiani, Director, PwC UAE and Middle East

sebastiani.serena@pwc.com

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PwC services and capabilities

PwC services and capabilities

For regulators

- Definition of the licensing, registration and supervisory framework.
- Preparation of the crypto firm onboarding plan and ongoing PMO support to facilitate interactions.
- Support to define the license and / or registration conditions from a strategic, operational, risk, and legal perspective.
- Service provider review (incl. conditions eligibility and risk assessment, including checks and on-chain analysis).
- Framework buildout, 'strategic' framework for licensing and supervision.
- Managed services, ongoing licensing and supervisory support.

For banks

- Digital asset market entry strategy (incl. bank's goals and market role, competitors, regulatory landscape, business model).
- Risk and regulatory requirements (incl. digital asset risk analysis, risk framework, compliance and reporting, risk capabilities).
- Operational and organisational requirements (incl. delivery model, operational and org. changes, capability and resource needs).
- Technical requirements (incl. IT capabilities, infrastructure, integration).
- Delivery (incl. marketing strategy, impl. plan, outsourcing agreements, operations ramp-up, managed services, service provider onboarding, transaction monitoring, and compliance).

For service providers

- End-to-end support to establish business by obtaining the relevant regulatory licenses and / or registrations.
- Value proposition and high-level target operating model (incl. market analysis, business model, strategy, capabilities, financial projections).
- Full regulatory and legal support, including analysis of business plans, intended activities and / or products, filings at financial authorities and implementation of business strategy.
- Post-submission support (review feedback from the regulator and support with compliance actions).
- Growth opportunities (incl. growth and scalability in the local market).





Dr. Michael Huertas

Partner

FS Legal Leader Europe

PwC Legal Business Solutions

Germany



Andreas Traum

Partner

Digital Assets

PwC Germany



Matt Blumenfeld

Director

Web3 & Digital Asset Lead

PwC US



Laura Talvitie

Senior Manager

Digital Assets Regulation

PwC UK

We would like to thank all the contributors to this publication, in particular:

Agnes Pang, Andrea Révész, Anne-Sophie Victoria Høgskilde, Elena Pampus, Eugene Poo, Farelle Tjap Oum, Fatih Ozcan, Gurmaj Dhillon, Ivana Ristevska, Joyce Chew Xin Ying, Karen Austin, Kimberley Evans-Cleare, Kris Danudejsakul, Liew Chi Min, Marc Park, Mattia Leonardi, Michael Stieger, Nicolai Toft Pedersen, Oyku Okyay, Rayyan Sorefan, Toshiaki Mori

Thank you

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