NORTON ROSE FULBRIGHT

Regulation around the world

Uncovering regulatory issues locally, to help financial services firms globally

Crypto-assets

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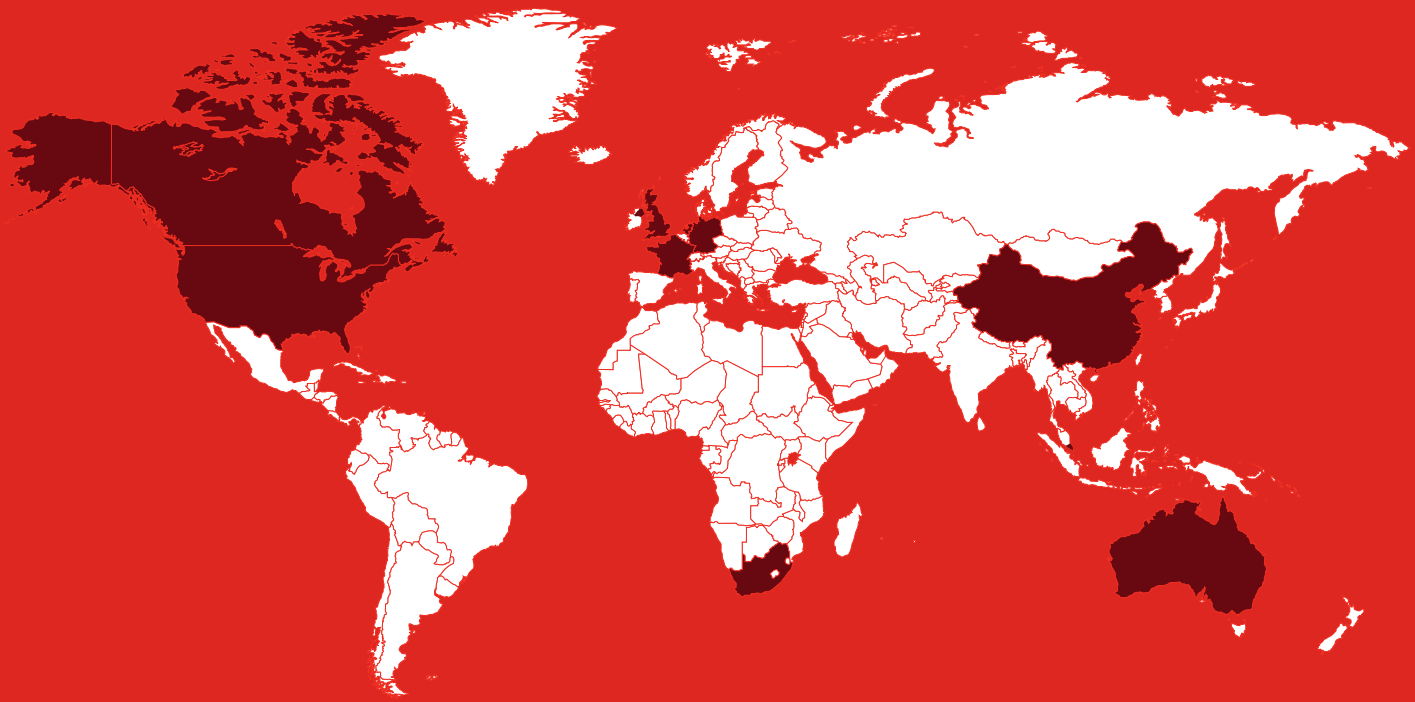
Crypto-assets

Although crypto-assets do not currently pose a material risk to global financial stability they do raise several broader policy issues, such as the need for consumer and investor protection; strong market integrity protocols and anti-money laundering and combating the financing of terrorism (AML/CTF) regulation and supervision. Integral to the crypto-asset ecosystem are crypto exchanges that allow customers to trade cryptocurrencies or digital currencies for other assets including conventional fiat money or different digital currencies.

At the national level, regulatory authorities have chosen different approaches and taken various types of actions to address relevant issues. In some cases, differences in regulation between jurisdictions reflect different national market developments and differences in underlying legal and regulatory frameworks for the respective financial systems.

Our cross-border team of financial services and regulation lawyers uncover the varying regulatory issues in relation to crypto-assets across the following jurisdictions:



Jurisdictions

United Kingdom

The categorisation of crypto-assets is determined primarily by the Financial Conduct Authority's (FCA) Policy Statement 19/22: Guidance on crypto-assets which categorises crypto-assets into three distinct groups: security tokens (regulated), e-money tokens (regulated as they fall within the definition of e-money) and unregulated tokens (capturing utility and exchange tokens and including Bitcoin, Litecoin, XRT and Ethereum).

From a custody standpoint, FCA authorisation is required if security tokens are held. Custodian wallet providers will need to register with the FCA under the UK domestic money laundering regime.

A crypto-asset business will have to register with the FCA for AML/CTF purposes if the activity being carried out falls within the scope of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and is carried out in the course of business within the UK. Registration requirements are similar to that in other jurisdictions in that firms must provide a business plan, a description of the governance structure including information on key individuals in the business.

Quite a vibrant crypto lending ecosystem has arisen in the last few years. However, the position with respect to insolvency law in the context of collateral, particularly in cross border transactions, is still unclear.

There are different types of crypto exchanges in the market. Some have opted for a centralised structure whereas others have opted for a de-centralised structure. Some of the largest crypto exchanges have opted for a centralised structure, being run by a centralised operator which, for example, implements contractual standards that governs the nature of the trades and develops the code for the matching engine.

There is a popular phenomenon of a decentralised exchange, there is no centralised operator (no party regularly monitoring trades) and participants trade on a bilateral basis and the relevant matching engine and arbiter of the trades is done autonomously via smart contracts.

When compared to traditional exchanges, crypto exchanges offer accessibility to a wider group of participants and are more focussed on technological accessibility.

HM Treasury has recently set out its response to its earlier consultation bringing certain crypto-assets into the scope of the UK financial promotion regime. The FCA has also issued a consultation on strengthening the financial promotion rules for high risk investments which includes crypto-assets.

United States

Crypto-assets generally fall into one of three categories: securities, commodities or virtual currencies. For securities, registration of the token with the US Securities and Exchange Commission (SEC), and possibly one or more states, may be required unless an exemption from registration is available. In addition, persons who intermediate crypto-asset transactions or make markets in such assets are likely to have to register with the SEC as a broker-dealer while persons who perform custodial functions may have to register with the SEC as a clearing agency. For commodities, regulation by the Commodity Futures Trading Commission (CFTC) is applicable. This may also include registration requirements with respect to intermediaries and custodians. For virtual currencies, intermediaries and custodians who are not otherwise registered with a federal agency, e.g., the SEC, a banking agency or the CFTC, are likely to be subject to registration and regulation at both the state level, as a money transmitter, and federal level with the Financial Crimes Enforcement Network (FinCEN), which is a branch of the US Treasury Department, as a money service business.

Each of the foregoing regulatory schemes will subject intermediaries and custodians to AML/CTF requirements.

Registration with FinCEN as a money service business is a fairly straightforward process requiring filing of a fairly simple short form which is required to be kept current and in any event must be renewed every two years. This is not true, however, at the state level for firms that require registration as a money transmitter as that registration process is far from straightforward and varies from state to state. Firms that file with FinCen and the states will also have to develop comprehensive AML procedures.

The rules designed for protected or protective security interests in collateral do not really have a good fit for crypto-assets.

Suspicious activity reporting continues to be an important regulatory topic. Regulators also seem to be expanding the scope of activities that might be considered to be red flags meaning that firms need to conduct more reviews and monitoring.

In terms of the cross border regulation of crypto-asset platforms, US regulation would apply not only to platforms that operate from the US but also to offshore platforms that engage directly, i.e. on a non-intermediated basis, with US residents. Within that scope there may be some narrow exemptions.

Given SEC Chair Gensler's interest in regulating digital assets, it is likely that we may see more cases involving suspicious activity report failures and registration failures in the digital space.

Canada

The regulatory environment in Canada is similar to that of the US, in that crypto related services that do not otherwise fall within a traditional regulated service category may still be subject to AML/CTF requirements if the services fall within the definition of money services business.

AML/CTF registration of a money services business is fairly straight forward and involves completing an online pre-registration form with the Financial Transactions and Reports Analysis Centre (FINTRAC). The applicant may then apply for registration using FINTRAC's online portal. There is a fair amount of detailed information that is required to be produced, including information about the business's owners and senior management. Additionally, foreign money services businesses are required to provide police record checks for each owner.

Suspicious activity reports are required to be filed with FINTRAC. Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and associated Regulations, firms are required to assess the effectiveness of their compliance programmes as part of their two year effectiveness review.

Europe

The EU is currently in the process of negotiating a new regulation on crypto-assets.

The proposed Regulation on Markets in Crypto Assets (MiCA) is going through the trilogue process. This regulation will form part of the EU's Digital Finance Strategy and is likely to significantly impact the operation of the crypto market in the EU.

MiCA does not apply to the blockchain or distributed ledger technologies underlying cryptocurrencies. It does not apply to digital currencies issued by states and regulated by central banks either. All other cryptocurrencies that do not qualify as financial instruments, including utility tokens and payment tokens, will fall within the scope of the regulation. MiCA imposes different obligations these.

Certain crypto-asset services such as custody and administration of crypto-assets and the operation of a trading platform for crypto-assets will be regulated under MiCA. Those providing regulated crypto-asset services will be able to use a pan-European passport to offer their services throughout the EU. However, such firms will be subject to what's being coined a "mini-MiFID" regime.

Issuers of crypto-assets will also be subject to certain requirements under MiCA.

Firms that wish to issue asset referenced tokens or e-money tokens in the EU will need to be established in the EU and obtain authorisation. This is so the regulators have appropriate oversight and control over these more significant activities.

Netherlands

There is no classification of crypto-assets, unless they qualify as a financial instrument, security or e-money under the Dutch Act on the Financial Supervision. Following the transposition of the Fifth Anti-Money Laundering Directive (5MLD), providers of exchange services between virtual currencies and fiat currencies and custodian wallet providers need to register with the Dutch Central Bank.

The Netherlands is currently not opting to implement national measures but are advocating for European wide rules and regulations as this creates clarity for market participants and a level playing field.

A custodian wallet provider is considered to provide wallet services, only if it is in the position to independently access the client's cryptocurrency. This is assumed to be the case if the custodian wallet provider is able to administer the client's private cryptographic key in such a manner that it can hold, store and transfer the client's cryptocurrencies.

Limited guidance is available on which services in relation to crypto-assets could constitute exchange services.

In the crypto space the term 'bilateral' is used more loosely than in the traditional sense, some crypto exchanges operate on a bilateral basis (or partly on a bilateral basis) meaning that there is only one counterparty.

When comparing traditional exchanges with crypto exchanges, there are some interesting differences regarding rules on transparency and market abuse, but also on legal documentation reflecting the breadth of services that a crypto exchange provides.

Germany

There is no statutory definition of different types of crypto-assets. Due to a very broad definition of the term 'crypto-assets' in the German Banking Act (Kreditwesengesetz – KWG), the vast majority of crypto-assets currently qualify as an own category of financial instrument thereunder. However, this extension of the term financial instrument under the KWG does not equally extend to conduct rules under MiFiD II.

Germany has gold-plated the requirements under the 5MLD. The 'Act on the Implementation of the Amendment Directive to the Fourth EU Money Laundering Directive' (Gesetz zur Umsetzung der Änderungsrichtlinie zur Vierten EU-Geldwäscherichtlinie) amended the KWG by adding the new category of 'crypto-assets' to the definition of financial instruments and implementing new licence requirements for crypto custody business.

The German Federal Parliament has passed the Law on the Introduction of Electronic Securities (elektronisches Wertpapiergesetz, hereinafter referred to as eWpG) which opens the German Financial Market for electronic securities (e-securities). The emission of an e-security replaces the emission of a certified security with the same legal consequences, rights and obligations.

On October 1, 2021, the Crypto Asset Transfer Ordinance (Kryptowertetransferverordnung, KryptoWTransferV) entered into force in Germany. The goal of the ordinance is to prevent money laundering and terrorism financing by imposing enhanced customer due diligence requirements on crypto-asset transfers conducted by credit and financial institutions.

France

The French "PACTE" law provides for a legal framework governing certain crypto-asset services such as custody and administration of crypto-assets and the operation of a trading platform, which entail either a mandatory or optional registration or authorisation with the French authorities depending on the type of service and modalities of marketing and offer. There are remaining characterization issues with other regulatory regimes (e.g. e-money and payments) which require scrutiny. Interaction of the French legal framework with MiCA is uncertain at the moment.

Issuers of certain tokens (e.g. Initial Coin Offerings (ICOs)) are subject to mandatory or optional prior approval from the French authorities, depending on their features. Various types of assets may be tokenized under this new regime (financial and not financial, e.g. IP rights, digital money, cloud services access, etc.). French law provides for a distinction to such end between ICOs, which are subject to the French "PACTE" Law specific regime and securities token issuing (STOs) mainly subject to MiFID II requirements (as implemented into French law) and other regulation on offer and trading on securities.

The French Financial Market Authority (AMF) has released a position on derivatives on crypto-assets, which the market is developing in France and more broadly in Europe. According to the AMF, in light of the broad definition of underlying in services, derivatives could either be subject to Class 9 of Section C of Annex I of MiFID II (Financial contracts for differences) or Class 10 of such annex (which extends potentially to any type of derivative contract having the characteristics of other derivative financial instruments). A cautious approach is necessary to ensure that on top of MiFID II licensing requirements, no additional authorization is required as regards trading or providing a service on the underlying crypto-asset (which may be subject, as outlined above, to its own licensing registration or authorisation requirements).

Turkey

Interest in crypto-assets has been steadily growing over the past ten years. In 2020, Turkey ranked 14th among cryptocurrency investors around the world according to a report from the Information and Communication Technologies Authority. The heightened interest in crypto-assets and crypto trading in Turkey has caught the attention of global crypto exchange platforms. In 2021, numerous global crypto-asset exchange platforms opened local operations.

In 2019, the Parliament passed the 11th Development Plan, which outlines, among other things, the implementation of a blockchain-based digital central bank currency and the establishment of the Association of Payment Services and Electronic Money Institutions. In April 2021, the Regulation on the Disuse of Crypto-assets in Payments, Turkey's first legislation relating to crypto-assets, entered into force.

The Regulation defines crypto-assets as "intangible assets virtually created by use of distributed ledger technology or a similar technology and distributed over digital networks but not classified as fiat money, registered money, electronic money, payment instrument, security or other capital market instrument." The Regulation does not prohibit crypto-assets out right, nor does it prohibit the purchase, sale, offering, transfer or custody of crypto-assets and the platforms providing such services (i.e. crypto-asset exchanges).

The Regulation does, however, prohibit:

- the use of crypto-assets directly or indirectly in payments;
- the development of business models by banks, payment institutions and electronic money institutions that directly or indirectly use crypto-assets; and
- payment institutions and electronic money institutions from acting in intermediary activities for platforms providing for the purchase, sale, custody, transfer or offering of crypto-assets.

Additionally, following amendments made to the Anti-Money Laundering Regulation in May 1, 2021, crypto-asset service providers and saving finance companies are deemed to be obligors within the scope of the legislation on the prevention of laundering crime proceeds and financing of terrorism. These service providers are now liable for the fulfilment of the obligations stipulated under the Anti-Money Laundering Regulation and other relevant legislation. Obligations include conducting know-your-customer procedures, notifying suspicious transactions, periodic reporting, and retention and submission of information to the Financial Crimes Investigation Board of Turkey.

It was recently announced by the Presidency that a draft bill regarding the detailed regulation of crypto-assets and platforms has been submitted to the Parliament for review and development. It is expected that a major piece of legislation on crypto-assets will be introduced in Turkey in the very near future.

UAE

To understand crypto-assets regulation in the United Arab Emirates (UAE), it is important to first untangle the complex web of financial services regulation in the UAE.

The UAE is a sovereign Federal State comprising seven Emirates. Each Emirate retains jurisdiction over certain matters. However, with the exception of "financial free zones" (FFZs) the regulation of financial services is reserved to the federal authorities. The two federal financial services regulatory bodies are the UAE Central Bank (CB), which regulates banking and insurance activities, and the Emirates Securities and Commodities Authority (ESCA), which regulates securities and exchanges.

The UAE Constitution permits the Emirates to establish FFZs within which the federal civil and commercial laws are dis-applied. This allows each Emirate to create a FFZ where Emirate-level regulations, and regulators, apply. The two FFZs which exists today are the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM), in Dubai and Abu Dhabi respectively. The DIFC and ADGM have their own civil and commercial laws, and are both common-law jurisdictions with independent financial services regulators and their own commercial courts. The DIFC financial services regulator is the Dubai Financial Services Authority (DFSA) and the ADGM regulator is the Financial Services Regulatory Authority (FSRA). Both the DFSA and the FSRA have regulatory regimes modelled on the UK FSMA regime, and broadly meet IOSCO and Basel standards.

Therefore, the UAE has four financial services regulators which regulate crypto-assets:

- ESCA, which regulates securities and markets outside the FFZs;
- The CB, which regulates banking and insurance outside the FFZs;
- The DFSA, which regulates all financial services in the DIFC; and
- The FSRA, which regulates all financial services in the ADGM.

In 2020, ESCA issued Decision No. (23/R. M) of 2020 Concerning Crypto Assets Activities Regulation, which came into effect on November 1, 2020. The ESCA Crypto Asset Regulations govern virtually all dealings relating to crypto-assets including offering, issuing, promoting, listing and operating exchanges for the trading of crypto-assets (including cryptocurrencies), and related activities. On March 8, 2022 SCA announced it would soon be issuing a regulatory and supervisory framework related to virtual assets issued for investment purposes.

The CB has subsequently issued the Retail Payment Services and Card Schemes Regulation (the RPSCSR). The RPSCSR does not apply to, *inter alia*, transactions involving commodity or security tokens or transactions involving virtual asset transactions, but does apply to a Payment Token Service. A Payment Token is defined as a type of crypto-asset that is backed by one or more fiat currencies, can be digitally traded and functions as (i) a medium of exchange; and/or (ii) a unit of account; and/or (iii) a store of value, but does not have legal tender status in any jurisdiction. A Payment Token is neither issued nor guaranteed by any jurisdiction, and fulfils the above functions only by agreement within the community of users of the Payment Token. A Payment Token does not represent any equity or debt claim. In 2021, the CB announced that it would be issuing a central bank digital currency (CBDC).

In the ADGM, the FSRA has led the way in the Middle East in regulating crypto-assets. Crypto-assets are regulated by the FSRA under the Financial Services and Markets Regulations 2015 (FSMR). Under the FSMR, a "Virtual Asset" "means a digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status in any jurisdiction." ADGM has also issued guidance on the Regulation of Virtual Asset Activities in ADGM setting out its policy on the regulation of activities involving crypto-assets. The FSRA has the most developed crypto-asset regime in the UAE and has to date licensed seven companies to operate crypto exchanges (including DEX, Matrix Exchange, and MidChains) and a number of crypto intermediaries.

On October 25, 2021 The Dubai Financial Services Authority (DFSA) launched a regulatory framework for Investment Tokens. The regime does not apply to crypto-assets. The trading Investment Tokens regulatory framework applies to the promotion, issuance, and trading of Investment Tokens in or from the DIFC. Persons wishing to undertake financial services activities relating to Investment Tokens, such as dealing in, advising on, or arranging transactions relating to, Investment Tokens, or managing discretionary portfolios or collective investment funds investing in Investment Tokens, are required to be licensed by the DFSA. On March 8, 2022, the DFSA began a public consultation on its proposed regulation of crypto tokens, including cryptocurrencies. The consultation period ends on May 6, 2022. We do not expect the proposals to be implemented for at least six to nine months.

On March 9, 2022, Dubai issued law No 4 2022 on "Regulating Virtual Assets in The Emirate of Dubai". The law established the Dubai Virtual Asset Regulatory Authority (VARA). The authority has a separate legal personality and financial autonomy and will be linked to the Dubai World Trade Centre Authority (DWTCA). The VARA, under the new law, will regulate the sector throughout the Emirate, including special development zones and free zones, excluding the DIFC. It is not clear at this stage how the VARA will act as the Dubai regulator of virtual assets given that, outside the FFZs, this is a matter reserved for the federal regulators, the CB and ESCA, or indeed whether the new Dubai regulations apply in addition to, or separately from, the ESCA Crypto Asset Regulations.

South Africa

There are currently no laws or regulations that specifically govern crypto-assets in South Africa. Consequently, there are no current regulatory compliance requirements or licensing requirements. The regulatory treatment of crypto-assets is, however, likely to change going forward – in November 2020, the Financial Sector Conduct Authority (FSCA) issued a draft Declaration of Crypto Assets as a Financial Product (draft Declaration) under the Financial Advisory and Intermediary Act, 2002 (FAIS Act). The Declaration is made in terms of paragraph (h) of the definition of 'financial product' in the FAIS Act, which provides that a financial product includes 'any other product similar in nature to any financial product referred to in paragraphs (a) to (g), inclusive, declared by the FSCA to be a financial product for the purposes of this Act.'

The FSCA has taken the view that crypto-assets (including cryptocurrencies) are similar in nature to other financial products hence the draft Declaration. The effect of declaring crypto-assets as a financial product under the FAIS Act will be that any person: (a) furnishing advice (a recommendation or proposal of a financial nature); or (b) rendering intermediary services (any act other than advice that results in the conclusion of a transaction), in relation to crypto-assets must be authorised under the FAIS Act as a Financial Service Provider (FSP), and must comply with all the requirements under the FAIS Act.

Once registered as a FSP, a crypto-asset service provider (CASP) will in turn become subject to the requirement to register as an accountable institution under the Financial Intelligence Centre Act, 2001 (FICA).

The FICA sets out the legal and administrative framework designed to combat money laundering in South Africa, and prescribes a variety of AML requirements, including the identification and verification of clients and the reporting of suspicious transactions to the Financial Intelligence Centre.

The FSCA has yet to issue any guidance as to when the legislative changes introduced in the draft Declaration are likely to take effect. However given the current investor interest in cryptocurrencies, and the need to regulate the same, it is likely that these changes are imminent.

Singapore

There is no statutory definition of "crypto-assets" in Singapore and the regulation of crypto-assets depends on the specific features and characteristics of each crypto-asset. There are two common types of crypto-assets in Singapore.

First, securities tokens, which are essentially traditional securities in a digital form. Securities tokens are generally regulated under the Securities and Futures Act 2001 (SFA) as traditional securities.

Second, cryptocurrencies (such as Bitcoin) which constitute digital payment tokens (DPTs) and are generally regulated under the Payment Services Act 2019 (PSA). The PSA does not have a blanket prohibition on the trading of DPTs by the public in Singapore. Currently, the PSA regulates (amongst other things) DPT services which include any service of dealing in DPTs and any service of facilitating the exchange of DPTs. The PSA has also recently been amended to implement the enhanced international standards adopted by the Financial Action Task Force aimed at addressing ML/TF risks posed by virtual asset service providers. Additionally, the amendments expand the definition of DPT services to cater for the evolution and development of new DPTs. Under the amended PSA, the Monetary Authority of Singapore (MAS) will have new powers to impose user protection measures on certain DPT service providers to ensure safekeeping of customer assets or when the MAS forms the view that it is necessary in the interests of the public. The amendments have yet to come into effect. The MAS has not provided an indication of the effective date.

The MAS has always warned that trading DPTs is highly risky and not suitable for retail investors. The promotion of their services by some DPT service providers either online or through physical advertisements has been viewed by the MAS as encouraging consumers to trade DPTs without fully understanding the risks involved. On January 17, 2022, the MAS issued the Guidelines on Provision of Digital Payment Token Services to the Public to discourage cryptocurrency trading by the general public. These Guidelines apply to service providers that have been granted licenses to provide DPT services under the PSA as well as banks and other financial institutions providing DPT services in Singapore, among others (DPT service providers). Under these Guidelines, the MAS expect DPT service providers not to engage in marketing or advertising of DPT services in public areas, or through any other media directed at the general public in Singapore, or through the engagement of third parties – such as social media influencers or third-party websites, to promote their DPT services to the general public in Singapore. DPT service providers cannot provide in-person access to DPT services in public areas through the use of automated teller machines, and can only market or advertise on their own corporate websites, mobile applications or official social media accounts – provided that such promotion does not trivialize the risks of trading in DPTs or is inconsistent with or contradicts the risk disclosures that DPT service providers are required to make under the PSA.

Hong Kong

There is no official categorisation of crypto-assets other than a regulator statement in 2014 that digital tokens should be considered to be virtual commodities rather than currencies. The key question is whether a digital asset is a security under existing regulation and, if so, it will fall under the supervision of the Securities and Futures Commission (SFC) with all the licencing and regulatory requirements that that entails.

The current regulatory framework for crypto-asset trading platforms has been in place since 2019. The regime works on an opt-in basis being only available to exchanges that offer trading of at least one securities token. A range of licensing conditions are imposed on these platforms. For example, these platforms are open only to professional investors, and various controls around custody, AML, financial soundness, market conduct, operations, cybersecurity, risk management, ongoing reporting, auditing and insurance apply.

Different types of assets are being traded on crypto exchanges. We are seeing spot and derivatives exchanges (solo or combined). The perpetual swap (similar to a futures contract in that it allows traders to speculate on the future price movements of cryptocurrencies) is a popular instrument that was devised on Asia-based exchanges.

We are seeing fewer tokenised asset exchanges due to regulatory and legal hurdles.

In May 2021, the Financial Services and the Treasury Bureau (FSTB) published consultation conclusions to the earlier public consultation on legislative proposals to enhance the AML/CTF regulation in Hong Kong. These include a new licensing regime that will bring virtual asset services providers (VASPs) within the regulatory perimeter of the SFC under the to-be-amended Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO). The proposed regime will initially only encompass virtual asset exchanges. The Hong Kong government aims to introduce the AMLO amendment bill into the Legislative Council in the 2021-22 legislative session. The SFC will also prepare and publish for consultation the detailed regulatory requirements before commencement of the licensing regime.

In January 2022, the Hong Kong Monetary Authority issued a discussion paper in which it sets out its views on how to expand Hong Kong's regulatory framework for crypto-assets. One of the key proposals concerns the regulation of payment-related stablecoins. The deadline for responding to the discussion paper is March 31, 2022.

China

China has had a negative attitude towards unrecognised crypto-assets for almost a decade. The Chinese financial authorities have prohibited the use of Bitcoin as a currency since 2013. From 2017, all bitcoin-related financing activities, fiat conversion business and pricing/information intermediary services were required to cease.

A new wave of crackdowns commenced in 2021. In May, three industry associations in China jointly issued a risk alert, which not only reiterated the existing policies implemented from 2013, but also imposed some additional policy bans, covering almost all ancillary cryptocurrency services.

Over the next few months, regulatory scrutiny also extended to investors and miners of cryptocurrencies. Banks and payment giants were requested to cease investors' cryptocurrency transactions and close down their trading accounts, and report any of these activities to the regulators immediately. Crypto miners (especially those formed as legal entities) were forced to cease their activities too.

However; the most stringent and far-reaching clampdown policies in relation to cryptocurrencies (especially Bitcoin) came in September 2021. Although this has been the fourth time in the past nine years that the government has made strong negative statements on cryptocurrency-related business activities, this most recent crackdown was not just a repeat:

- Almost all of the most significant Chinese regulators (including not only administrative agencies, but also judicial and enforcement agencies) jointly issued the clamping down policies. The government delivered a strong message that all relevant regulators would enforce the new crackdown jointly.
- Cryptocurrency related business activities were formally described as illegal financial activities. This catch-all policy provided the competent PRC regulators with the discretion to impose liability over any entities or individuals in breach of these requirements.
- The new crackdown also extended to offshore markets, i.e. "any offshore cryptocurrency platforms providing services to residents in China via the internet are also deemed as illegal financial activity". This approach will force a stop to any solicitation and/or promotion of crypto related services provided to residents in China on a cross border basis.
- A detailed plan was prepared to phase out crypto mining activities. It will no longer be possible for the government to approve any new crypto mining projects. The government will also assist any existing mining projects to gradually exit the market through various ways. This policy impacts the Chinese mining industry materially, which has already triggered a massive exodus of miners.

However, compared to the adverse regulatory environment in relation to unrecognised cryptocurrencies in China, China has absolutely been at the forefront of the development of its own recognised central bank digital currency, also known as Digital Currency Electronic Payment (DCEP), since 2017.

The speed at which this is being developed is driven by a number of factors, including (i) the ability to push out unrecognized cryptocurrencies, and (ii) the ability to avoid the digital payment systems established by private companies or clearing system established/supported by offshore entities to affect China's financial payment and/or clearing system.

The Chinese regulators continue to draft DCEP related regulations and have not yet announced a timetable to officially launch the DCEP. However, testing (including regulatory sandbox testing) relating to DCEP has evolved significantly in China's major cities and pilot areas.

Australia

Firms that issue crypto-assets that fall within the definition of 'financial product' will be subject to Australian laws, including the requirement to hold an Australian financial services licence.

AUSTRAC is the Australian regulatory body that administers the AML/CTF Act. Cryptocurrency was brought under this Act through a 2017 amendment. Under the Act, exchanging digital currency for money in the course of carrying on a digital currency exchange business is a designated service.

We are seeing a number of major banks and financial services companies having new or ongoing relationships with crypto businesses. This includes relationships with Coinbase, a bitcoin wallet and exchange platform.

There remains differing tolerance levels amongst financial institutions as to whether or not to accept and transact in cryptocurrencies, especially given the potential for enforcement action should a systemic breach occur.

It is possible to operate a regulated crypto-asset exchange but so far no entity has gone down that path.

The multiple functions that a crypto exchange provides raises some concerns that they are not always acting in best interests of customers. For example, such exchanges can be trading against their own customers.

Recently, the Select Committee on Australia as a Technology and Financial Centre issued its report into digital assets, markets and regulation. The report makes 12 recommendations to develop Australia's regulatory regime for digital assets and markets. The report's most surprising recommendation is the creation of a new type of corporate structure for Decentralised Autonomous Organisations. The report also seeks to address the problems of money-laundering and taxation in a balanced manner by recommending the AML/CTF regulations be clarified, in particular with reference to the "travel rule".

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Navigating financial crime risks in the time of crypto-assets

Navigating global crypto-custody requirements

Regulatory considerations for crypto exchanges

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