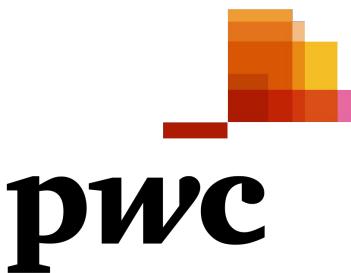




# Navigating the Global Crypto Landscape with PwC: 2024 Outlook

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December 2023



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# Report Overview

## Purpose and objectives

This is PwC's second annual Global Crypto Landscape report. The report provides an overview of the global regulatory landscape, how the regulatory frameworks are developing across the world, and the impact on crypto and traditional financial services firms.

## Jurisdictional Equivalence

This section highlights the important role of jurisdictional equivalent in navigating global crypto regulations.

## Globalisation of crypto operations

This section explains opportunities and challenges which come with choosing the right jurisdiction for incorporation and base of operations.

## Views from global standard-setters

This section summarises recent developments by the key global standard-setting institutions.

## EU single market for digital assets/MiCAR

These sections focus on the significant advancements in digital asset regulation at the European Union (EU) and jurisdictional level.

## Global regulatory summaries

The section provides an overview of the advancements in digital asset regulation at the jurisdictional level globally.

## Terminology used in the report

Some local 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 emphasising substance over form.

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 follows the one adopted by the authorities in the relevant jurisdiction.

For further digital assets research, please also see PwC's other global reports published in 2023, including [Global CBDC Index & Stablecoin Overview](#), [Crypto Hedge Fund Report](#) and Annual Crypto Tax Report (published in December 2023).



The development of regulatory and legal frameworks in the past year have been instrumental in restoring trust in digital assets.

The market resilience, underscored by a pursuit of innovation, sets the stage for regulatory frameworks, which seek to balance risk with opportunity and innovation.

For industry players across the globe, 2024 is not just about weathering the storm – it's about building a foundation for a thriving ecosystem, where clear regulatory guidance acts as the cornerstone of renewed stability.



**Matt Blumenfeld**

Web3 & Digital Asset Lead  
PwC US



# Crypto regulation at a glance

The table provides a summary of digital asset legislative, regulatory, and licensing status as of January 2024. It factors in the implications of the EU's Markets in Crypto-Assets Regulation (MiCAR), which came into effect in June 2023. For more information, see jurisdiction specific pages.

	Regulatory Framework	Licensing / Registration	Travel Rule	Stablecoins
<b>United States</b>	☒	✓	✓	☒
<b>United Kingdom</b>	☒	✓	✓	☒
<b>Australia</b>	☒	☒	☒	☒
<b>Austria</b>	✓	✓	✓	✓
<b>Bahamas</b>	✓	✓	✓	✓
<b>Bahrain</b>	✓	✓	✓	☒
<b>Brazil</b>	☒	☒	☒	☒
<b>Bulgaria</b>	✓	✓	✓	✓
<b>Canada</b>	☒	✓	✓	☒
<b>Cayman Islands</b>	✓	✓	✓	☒
<b>Denmark</b>	✓	✓	✓	✓
<b>Estonia</b>	✓	✓	✓	✓
<b>Finland</b>	✓	✓	✓	✓
<b>France</b>	✓	✓	✓	✓
<b>Germany</b>	✓	✓	✓	✓
<b>Gibraltar</b>	✓	✓	✓	✓
<b>Greece</b>	✓	✓	✓	✓
<b>Hong Kong SAR</b>	✓	✓	✓	☒
<b>Hungary</b>	✓	✓	✓	✓
<b>India</b>	☒	☒	✓	☒
<b>Ireland</b>	✓	✓	✓	✓
<b>Isle of Man</b>	✓	✓	☒	✓
<b>Italy</b>	✓	✓	✓	✓

	Legislation/regulation in place	Signifies that comprehensive crypto legislations/regulations have been established.
	Active legislative/regulatory engagement	Indicates that there is ongoing activity, such as regulatory discussions, consultations, or pending implementation of crypto-related laws and regulatory frameworks.
	Legislative/regulatory process not initiated	Implies that the jurisdiction has not yet started formulating or considering specific crypto asset legislations or regulatory frameworks.

# Crypto regulation at a glance (continued)

The table provides a summary of digital asset legislative, regulatory, and licensing status as of January 2024. It factors in the implications of the EU's MiCAR, which came into effect in June 2023. For more information, see jurisdiction specific pages.

	Regulatory Framework	Licensing / Registration	Travel Rule	Stablecoins
<b>Japan</b>	✓	✓	✓	✓
<b>Latvia</b>	✓	✓	✓	✓
<b>Lithuania</b>	✓	✓	✓	✓
<b>Luxembourg</b>	✓	✓	✓	✓
<b>Malta</b>	✓	✓	✓	✓
<b>Mauritius</b>	✓	✓	✓	✗
<b>Norway</b>	✗	✓	✓	✗
<b>Poland</b>	✓	✓	✓	✓
<b>Portugal</b>	✓	✓	✓	✓
<b>Qatar</b>	✗	✗	✗	✗
<b>Singapore</b>	✓	✓	✓	✗
<b>Slovakia</b>	✓	✓	✓	✓
<b>South Africa</b>	✗	✓	✗	✗
<b>Spain</b>	✓	✓	✓	✓
<b>Sweden</b>	✓	✓	✓	✓
<b>Switzerland</b>	✓	✓	✓	✓
<b>Taiwan</b>	✗	✗	✓	✗
<b>Turkey</b>	✗	✗	✗	✗
<b>UAE</b>	✓	✓	✓	✗
<b>Uganda</b>	✗	✗	✗	✗

	Legislation/regulation in place	Signifies that comprehensive crypto legislations/regulations have been established.
	Active legislative/regulatory engagement	Indicates that there is ongoing activity, such as regulatory discussions, consultations, or pending implementation of crypto-related laws and regulatory frameworks.
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# Why jurisdictional equivalence matters?

Jurisdictional equivalence stands for the notion that the regulatory standards in one jurisdiction are comparable to the standards of another jurisdiction. Digital asset firms need to consider this early, to benefit from a multi-jurisdictional strategy.

## Meaning and challenges

The importance of jurisdictional equivalence is significant for digital assets firms, as the complex and sometimes fractured nature of existing regulatory frameworks can be difficult to interpret and comply with.

This is particularly the case when navigating through contradictory regulatory obligations between countries which are at different stages of regulatory maturity.

The global landscape is not uniform or harmonised. Europe and Middle East have made significant progress towards forming comprehensive guidance and enabling digital asset firms to move forward with a semblance of clarity.

Others, including the US, have complex and fragmented regulatory systems, where federal and state agencies have overlapping and sometimes conflicting mandates or rules. Digital asset service providers have to navigate multiple regulatory frameworks and comply with separate standards and expectations, creating uncertainty and operational complexity.

Some jurisdictions remain restrictive or outright prohibitive, not only banning or limiting the use and circulation of digital assets, but also hindering the market and innovation growth.

The speed of legislative process can vary greatly between countries, leaving the slower jurisdictions to drive their digital assets regulatory agenda through enforcement.

In an ideal scenario, jurisdictional equivalence is granted with mutuality. However, where one region is advanced and the other nascent, what will conceptual equivalence mean and how can it be applied?

For less advanced regions, granting equivalence or other forms of mutual recognition to the rules of a comparably more advanced jurisdiction can drive interest in the region and may secure a competitive advantage for the nascent jurisdiction. The ability for a company to easily comply with in region regulation while not requiring a large uplift of internal functions can incentivise firms looking to relocate their business.

## Application and impact

The likelihood of jurisdictional equivalence depends on several factors, but is ultimately centered around the willingness of local legislators and/or regulatory authorities to acknowledge common principles across jurisdictions.

The application of these factors allows authorities to grant equivalence on the basis of shared regulatory goals, even in cases where specific rules and obligations differ. If jurisdiction/authority 'X' grants equivalence (or other forms of mutual recognition) to the rules of jurisdiction/authority 'Y', firms operating under standards applicable to 'Y' may be able to offer with greater ease, when meeting standards applicable in 'X'.

Long-standing relationships can play a large role in determining the likelihood of reciprocity in equivalence or other forms of mutual recognition being granted. Countries which have historically worked together on regulatory matters, either bi-laterally or through global standard-setting bodies, can be more likely to play nice in the sandbox.

As global regulatory standardisation remains in flux, firms need to develop a long-term multi-jurisdictional strategy. Firms aiming to operate in the highest number of territories, should in most cases aim to design internal standards which comply with the strictest and most reputable regulatory jurisdictions.

The aim of regulators is not to make operating a digital asset business costly or impossible, but to protect consumers and financial stability. However, authorities follow several rule books to achieve this.

# Cost of global operations - Finding a home

Choosing the right jurisdiction for incorporation and operational base is not a trivial matter.

Crypto native firms should consider several factors, when evaluating jurisdictional options. In particular, the regulatory maturity, cost of operations, available talent pool and the global reputation of the jurisdiction.

Decisions made at the point of structuring and incorporating a firm, can provide significant financial benefits and are especially important to firms issuing or operating tokens.

For more information on global tax treatment please see the 'PwC Global Crypto Tax Report 2023', published in December 2023.

## Regulatory maturity

The regulatory maturity of a jurisdiction reflects on how well-developed, clear, and comprehensive its (supervisory) guidance and rules are for digital assets.

A mature regulatory regime can offer certainty, legitimacy and protection for service providers and consumers, while fostering a conducive and competitive environment for innovation and growth.

A less mature regulatory regime, on the other hand, can create ambiguity, risk, and barriers for digital asset service providers, due to regulatory gaps, inconsistencies, or contradictions, as well as lack of recognition or support from the authorities.

A region's regulatory maturity is not only defined by the status of its legislation and enforcement, but also by its licensing regime the speed at which a license can be obtained and the strength of subsequent supervision. With continued advancements across the globe, maturity of any one individual jurisdiction will continue to evolve as jurisdictions go live with regulatory frameworks.

## Operational cost

Operating a global crypto exchange, protocol or services company in the existing regulatory landscape can be expensive. The cost can also vary greatly, depending on the jurisdiction chosen for a headquarters or business activity.

A key factor for firms is the cost of obtaining and maintaining a license or registration. The complex layers of regulatory, risk, compliance, legal, operational and organisational requirements across regimes do not only amount to rising costs, but can also quickly hamper innovation.

Once up and operational, firms must also understand their tax obligations, based on the selected home jurisdiction. Tax laws and reporting requirements are often complex and onerous, depending on which jurisdiction(s) firms operate in, and should be factored into the strategic selection process from the start.



# Choosing the right location

## Talent pool

The size of the local talent pool can significantly vary between jurisdictions. Some countries have well-established talent pools with deep subject matter expertise in digital assets, blockchain technology, and related fields. Those jurisdictions will also often have a favorable regulatory environment, attracting talent and fostering innovation.

Countries including Switzerland, Singapore, Hong Kong SAR, and Malta have emerged as hubs for digital asset talent, due to the supportive regulatory frameworks and investment in blockchain education and research. They have a strong ecosystem of digital asset professionals, developers, engineers, legal experts and financial analysts.

Regulatory delays or restrictions, as well as the resulting lack of investment in research and technology ecosystem, will decrease the talent pool. Certain countries, including the US, are seeing the talent repositioning themselves to jurisdictions with concrete rules and standards in place. Finding skilled professionals with subject matter knowledge in digital assets may be more challenging and result in an underdeveloped ecosystem.

However, talent is not limited to specific jurisdictions. With the global nature of the digital asset industry, talent can be sourced from anywhere in the world. Remote work and cross-border collaborations have become increasingly common, allowing firms to access talent and leverage their expertise from different jurisdictions. Where operations are established matters however given that jurisdictional differences may result in the availability and depth of skilled workforce due to different allowed incentive structures allowed, pay and tax law.

## Jurisdictional Reputation

Not all jurisdiction around the world are created equal. Some adopt stricter rules and obligations than required by the global standard-setters. Others take a more pragmatic approach, with a focus on meeting the minimum requirements only.

This is particularly true with the application of the Financial Action Task Force's (FATF) Travel Rule for crypto assets, with a wide range of thresholds set globally. In a world where perception is reality, the intent of a legislative or regulatory action can be overshadowed by the enforcement, resulting in the notion that a jurisdiction will be less favourable for digital assets.

A strong jurisdictional reputation instills confidence and trust in the market participants. It signals that the jurisdiction has a stable and transparent regulatory framework, which is essential for the growth and development of the digital asset industry.

Investors and businesses are more likely to operate in jurisdictions with a positive reputation, providing them with a sense of security and assurance that their rights and interests will be protected.

## Putting this to action

Where a firm is incorporated can have a significant impact on its long term success. Factors to consider when analysing a possible jurisdictional relocation include:

- logistical costs associated with relocation;
- tax implications and strategy;
- future-oriented cost/benefit analysis;
- availability of talent and capabilities; and
- maturity and stability of the regulatory regime.

This is not the case for emerging digital assets firms only, but is also highly important for those which exist today and could realise significant benefits by reincorporating or moving operations elsewhere.

The decision of where to establish a business, move it or stay put needs to be substantiated by an independent perspective which considers more than just dollars and cents.

Proven frameworks and use cases can help to support the critical decision-making process.

In a quickly-shifting landscape, jurisdictional decisions should not be made too hastily, but should also not be discounted.



Views from global  
standard-setters



# Global regulatory frameworks

The recommendations and guidance from global standard-setters do not carry a legal status, but provide an important roadmap for national authorities. Firms should consider the policy standards in the context of the likely implementation into their local regulation.

## FSB: Global regulatory framework

The Financial Stability Board (FSB) published its global regulatory framework for crypto-asset activities and crypto-asset roadmap in July 2023.

The framework consists to sets of interlinked recommendations for 1) the regulation, supervision and oversight for crypto-asset activities and 2) revised recommendations for 'global stablecoin' arrangements.

The final recommendations draw on recent market events, implementation experiences of national jurisdictions and build on the principles of 'same activity, same risk, same regulation', as well as high-level, flexible and technology neutral.

The FSB works closely with other standard-setters to ensure that the work underway regarding the monitoring and regulation of crypto-asset activities and markets is coordinated, mutually supportive and complementary.

The FSB will review of the implementation status of the recommendations at the jurisdictional level by the end of 2025 and continues is work on assessing the policy implications for decentralised finance.

## Crypto-assets and stablecoins

In the light of recent market events, the FSB has strengthened its previous recommendations, published in 2022, in three areas.

**Safeguarding of client assets:** Service providers holding or controlling client assets must ensure an effective segregation from their own assets. The FSB notes that many service providers are commingling proprietary assets with client assets, often without consent of the clients. This enables service providers to misuse customer assets and to amplify leverage and liquidity transformation by the re-use of the assets.

The FSB expects national authorities within each jurisdiction to ensure that crypto-asset service providers maintain adequate safeguarding of customer assets and protect ownership rights, including in insolvency.

**Conflicts of interest:** Some crypto-asset intermediaries combine multiple functions, may operate in ways which do not comply with existing requirements, and are not transparent about their governance structures.

The FSB has strengthened the high-level recommendations by stating that authorities should have in place requirements to address the risks associated with conflicts of interest. Firms must be subject to appropriate regulation, supervision and oversight, including a legal separation of certain functions.

**Cross-border cooperation:** The borderless nature of crypto-assets underlines the importance of strong and consistent jurisdictional regulatory, supervisory and enforcement practices. Crypto-asset issuers and service providers may seek to evade regulation and oversight by migrating to places where regulation is (comparably perceived as) lighter.

The FSB has strengthened its recommendations on information sharing requirements. In particular, the level of compliance spanning multiple jurisdictions, especially those in jurisdictions which have not implemented international standards.

## Global stablecoin (GSC) arrangements

The final framework, published by the FSB, includes ten recommendations, complementing the FSB's high-level recommendations for crypto-assets and markets.

The FSB's expects that authorities appropriately regulate, supervise and oversee GSC arrangements, activities and functions. This should be done in international cooperation and follow international standards.

The FSB also sets out its expectations for national authorities to ensure that GSC arrangements have robust and comprehensive governance and risk management frameworks, as well as a framework for systems and processes for collecting, storing, safeguarding and reporting of data.

GSC arrangements should have appropriate recovery and resolution plans, and ensure users have transparency on how the GSC arrangement functions.

Authorities should require that GSC arrangements guarantee timely redemption.

All national regulatory, supervisory and oversight requirements should be met before a GSC arrangement is commenced in that jurisdiction.

# Global policies and financial integrity

## IMF-FSB: Policies for crypto-assets

The International Monetary Fund (IMF) and FSB published a policy recommendation paper in September 2023. It outlines the commonly cited risks and benefits of crypto-assets, with a focus on macroeconomic and financial stability.

IMF-FSB calls for a comprehensive regulatory and supervisory oversight of crypto-assets, which should be a baseline to address the potential macroeconomic and financial stability risks.

Regulation and supervision of licensed or registered crypto-asset issuers and service providers will support the functioning of capital flow measures, fiscal and tax policies, and financial integrity requirements.

Jurisdictions should also safeguard monetary sovereignty and strengthen monetary policy frameworks to guard against excessive capital flow volatility.

## FATF: Financial integrity

The Financial Action Task Force (FATF) raises serious concerns over the lack of implementation of its global AML/CFT standards application on virtual assets (VAs) and virtual asset service providers (VASPs).

According to FATF's June 2023 paper, 75% of the 98 jurisdictions assessed are only partially or non-compliant with the requirements. 73% are not conducting adequate risk assessments.

30% of the 151 survey respondents have not yet decided if and how to regulate the VASP sector. 60% have decided to permit VAs and VASPs. 11% report opting to prohibit VASPs, while only one jurisdiction is assessed as largely compliant with the requirements.

The progress to implement the Travel Rule, which requires financial institutions to share data on transactions beyond a threshold, is insufficient. Over 50% of respondents have not taken steps towards the implementation.

The FATF notes that decentralised finance (DeFi) and unhosted wallets, including peer-to-peer (P2P) transactions, pose money laundering, terrorist financing and proliferation financing risks, including abuse by sanctioned actors.

Some jurisdictions have difficulties in mitigating the risks, including identifying specific natural or legal persons responsible for VASP obligations in DeFi arrangements,

assessing the illicit finance risks associated with unhosted wallet and P2P transactions, and filling data gaps.

The FATF expects jurisdictions to urgently implement and operationalise the Travel Rule. Jurisdictions should also adequately identify risks and put in place mitigation measures, including monitoring or supervising the VASP population and enforcing against noncompliance.

Jurisdictions should assess illicit finance risks of DeFi arrangements and unhosted wallets, consider how those fit into their AML/CFT frameworks, and share their practices globally.

The private sector firms are expected to support authorities in the implementation, compliance and monitoring activities.

The FATF will publish the steps jurisdictions have taken in H1 2024.

## IOSCO: Cryptoasset standards

The International Organization of Securities Commissions (IOSCO) set out its recommendations on how to regulate crypto and digital assets markets, in a final report published in November 2023.

The recommendations are aimed at crypto-asset service providers (CASPs), including trading, operating a market, custody, lending, and the promotion and distribution of crypto assets on behalf of others.

IOSCO calls for regulators to achieve similar regulatory outcomes for investor protection and market integrity as those required in traditional financial markets, to facilitate a level playing field between crypto-assets and traditional financial markets and reduce the risk of regulatory arbitrage. The watchdog stresses the importance of increased regulatory cooperation to address cross-border issues, and calls for all members to apply the recommendations consistently.

The 18 recommendations cover six areas, consistent with IOSCO standards: conflicts of interest arising from vertical integration of activities and functions; market manipulation, insider trading and fraud; cross-border risks and regulatory cooperation; custody and client asset protection; operational and technological risk; and retail access, suitability and distribution.

The recommendations are designed to apply to all types of crypto-assets, including stablecoins

Sources: FATF: Targeted update on implementation of the FATF standards on virtual assets and virtual asset providers, 27 June 2023, IOSCO: Policy Recommendations for Crypto and Digital Asset Markets Final Report, 16 November 2023, FSB: IMF-FSB Synthesis Paper: Policies for Crypto-Assets, 07 September 2023.

# Global prudential standards

## IOSCO:

IOSCO published a consultation on global approach to address decentralised finance (DeFi) risks in September 2023.

The IOSCO's recommendations apply to DeFi products, services, arrangements and activities. In summary, regulators should:

- apply the 'same activity, same risks, same regulatory outcome' principle;
- identify the natural persons and entities of a purported DeFi arrangement or activity;
- apply the IOSCO standards when supervising DeFi arrangements;
- identify and address conflicts of interest, particularly those arising from different roles and capacities of, and products and services offered by, a particular provider and/or its affiliates;
- require identification and addressing of material risks, including operational and technology risks;
- require clear, accurate and comprehensive disclosures;
- enforce applicable laws;
- promote cross-border cooperation and information sharing; and
- understand and assess interconnections between the DeFi market, the broader crypto-asset market and traditional markets.

## BCBS: Global prudential standards

The Basel Committee on Banking Supervision (BCBS) set its rules on the prudential treatment of crypto asset exposures in December 2022. The BCBS will implement the standards by January 2025. Most jurisdictions have indicated that they are taking steps to incorporate the rules into their national regulations.

As per the rules, unbacked crypto assets and stablecoins with ineffective stabilisation mechanisms will be subject to a conservative prudential treatment. Banks are required to classify crypto assets on an ongoing basis into two groups

## Group 1

The cryptoassets must meet a set of classification conditions. The assets in this Group include tokenized traditional assets which pose the same level of credit and market risk as the non-tokenized form of the asset (1a assets) and cryptoassets with effective stabilisation mechanism, linking the value to one or more traditional assets (stablecoins) (1b assets).

The capital requirements for Group 1 assets generally follow the existing Basel Framework. An infrastructure risk add-on to risk-weighted assets (RWA) may apply if weaknesses are identified in the underlying exposure on which the cryptoassets is based. Group 1 stablecoins must also satisfy a redemption risk test and an additional supervision/regulation requirements which are likely to evolve in the future.

In December 2023, the BCBS announced that it will consult on potential revisions related to the criteria for stablecoins to receive a preferential "Group 1b" regulatory treatment, as well as on various technical amendments to help promote a consistent understanding of the standard.

## Group 2

The cryptoassets do not meet the classification conditions for Group 1 and are subject to a new conservative capital treatment. These assets include un-backed cryptoassets, algorithmic stablecoins and assets using protocols to maintain their value.

An additional hedging recognition criteria sets the conditions for those Group 2 assets where a limited degree of hedging can be recognised (2a) and where hedging is not recognised (2b).

Banks' total exposure to Group 2 assets must not exceed 2% limit of the Tier 1 capital and should generally be lower than 1%. Exposures under the 1% threshold will be risk-weighted according to whether the asset does or does not meet the hedging recognition criteria for Group 2a assets.

Banks breaching the 1% limit expectation must apply Group 2b capital treatment (1250% risk weight) to the amount by which the limit is exceeded. Where 2% limit is exceeded, the whole of Group 2 exposures are subject to the Group 2b capital treatment.

Additional operational risk, liquidity, leverage ratio and large exposure, supervisory review and disclosure requirements apply to both Groups.



EU single market for  
digital assets



# MiCAR: introduction and scope

## Background

The Markets in Crypto-Assets Regulation (MiCAR) is the first cross-jurisdictional regulatory and supervisory framework for crypto-assets and entered into force in July 2023.

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

The adoption of MiCAR concludes a successful legislative process introducing a new chapter into the EU's Single Rulebook and is applicable to crypto-asset services providers (CASPs) and crypto-asset issuers (CAIs) operating in or across the EU.

It thus replaces a patchwork of individual Member States' national frameworks on the regulation of crypto-assets and aims to strike a fair balance between addressing different levels of risk posed by each type of crypto-asset and the need to foster financial innovation.

The European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) are preparing regulatory technical standards (RTS), implementing technical standards (ITS) and guidelines which will further specify the application of MiCAR.

A number of EU Members are issuing their own legislative instruments to support the implementation of MiCAR, RTS, ITS and guidelines.

National competent authorities (NCAs) of the EU Member States are publishing their own supervisory guidance and expectations of how they will authorise and supervise CASPs and CAIs and/or traditional financial services providers wishing to provide MiCAR regulated activity.

## MiCAR 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 MiCAR; and
- MiCAR introduces rules regarding regulated crypto-asset services, including authorisation, passporting and ongoing supervision requirements for CAIs and CASPs.

## Firms in scope

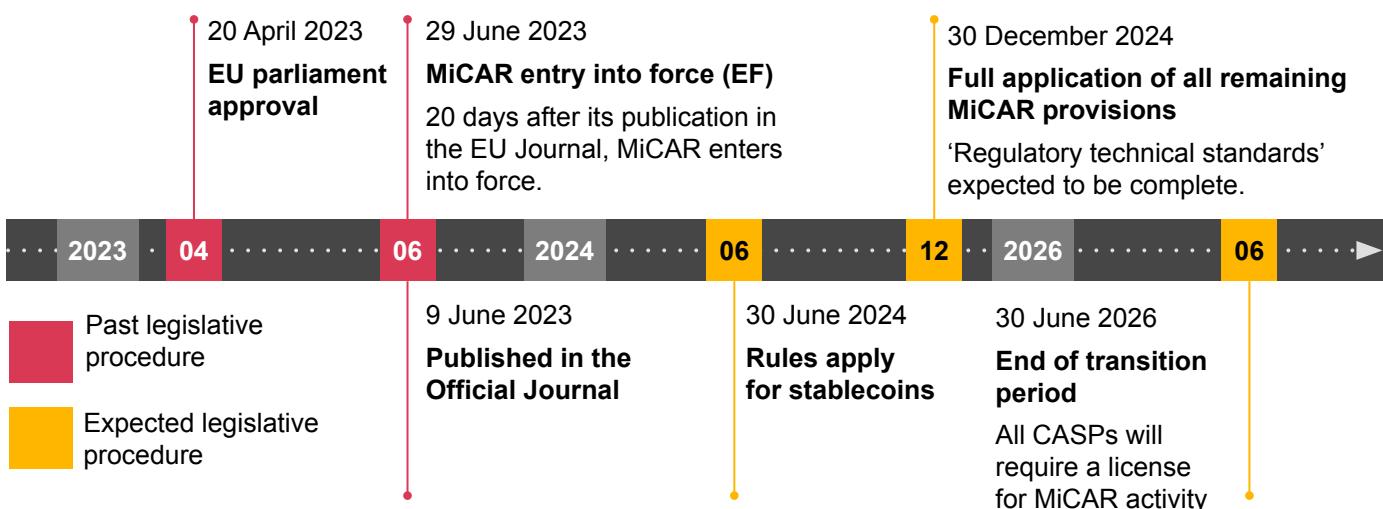
In general, any business activity related to crypto-assets which is not categorised as 'financial instruments' in the EU is likely to fall under MiCAR. Certain types of crypto-assets are (currently) exempt from MiCAR, but may still be subject to some form or no regulatory requirement set out elsewhere.

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

## Products in scope

The majority of crypto-assets which are not already in scope of existing regulation (such as MiFIR/MiFID II) will fall under MiCAR: Asset Reference Tokens (ART), E-money tokens (EMT) and Other crypto-assets (including utility tokens).

## Timeline for MiCAR Implementation



# MiCAR: product classification

## Services in scope

The scope of services governed by MiCAR are largely similar to the approach taken in traditional financial services rulemaking instruments (such as MiFID II, as amended by IFR/IFD) and trigger a licensing requirement for CASPs.

These services include custody and administration, operation of trading platforms, exchange, execution and transfer activities, advise, and portfolio management.

MiCAR 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 MiCAR's authorisation requirements.

## Out of scope for MiCAR

Digital assets categorised as 'financial instruments' and regulated under other relevant rules applicable to financial instruments. These include financial instruments as defined in MiFID II (including e-money under the EMD II), deposits (including structured deposits), funds (except if they qualify as EMTs under MiCAR), securitisation positions, and pension products under PEPP as well as Non-life or life insurance products, or reinsurance and retrocession contracts within the Solvency II Directive.

The following types of digital assets are specifically excluded from MiCAR: digital assets which cannot be transferred, are offered for free or are automatically created, non-fungible tokens (NFTs) unless certain conditions are met, decentralised finance (DeFi) protocols, and central bank digital currencies (CBDCs).

## Significant tokens and stablecoins

MiCAR may designate an ART or EMT (in particular algorithmic crypto-assets and stablecoins) as 'significant'. This depends on the token's volume, transaction frequency and systemic risk impact.

The designation triggers rigorous regulatory regime with stringent requirements, including remuneration, liquidity management, and higher capital and reserve requirements. The EBA will become the lead regulator for any significant tokens, which must demonstrate adequate financial resources to withstand potential market fluctuations.

## MiCAR scope by token categorisation



### Asset-referenced token (ART)

Tokens aiming to maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies.



### E-money token (EMT)

DLT equivalents for coins and banknotes and uses as payment tokens. EMTs must be backed by one official currency.



### Other crypto-assets

Tokens with a digital representation of value or rights which may be transferred and stored electronically.

Utility tokens which provide access to a good or service and only accepted by the issuer of that token.

Payment tokens which are not EMTs or security tokens.

**Algorithmic crypto-assets and algorithmic stablecoins**

**Significant tokens\* and stablecoins**

\*MiCAR 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.

# MiCAR: summary of compliance obligations

## Algorithmic crypto-assets and stablecoins

Algorithmic stablecoins are not defined in MiCAR and none of the operative provisions refer to them directly. Recital 41 of MiCAR makes it clear that stablecoins should fall within the scope of regulation ‘irrespective of how the issuer intends to design a crypto-asset, including the mechanism for maintaining a stable value of the crypto-asset’. Meaning that where a stablecoin falls within the definition of an ART or an EMT, Titles III or IV will apply. The same applies to algorithmic stablecoins.

Where the algorithmic crypto-assets do not aim to stabilise the value of the crypto-assets, by referencing one or several assets, the recital states that offerors or persons seeking admission to trading should in any event comply with Title II of MiCA.

## Transferability

Transferability is an important aspect of the definition of crypto-assets, which means that digital assets which cannot be transferred to other holders do not fall within scope of MiCAR (for example, loyalty schemes where loyalty points can be exchanged for benefits only with the issuer or offeror of those points).

## Crypto-asset issuers (CAIs)

CAIs will have to meet several 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.

The requirements include a white paper describing the technical information of the crypto-asset, approved market communication, legal entity registration, financial conditions 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, disclosures on risks, any restrictions on transferability of the tokens issued, and regular audit of reserves.

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

A white paper is also not required if the offering is made to fewer than 150 natural or legal persons per Member State, the total consideration of does not exceed EUR 1 million over a period of 12 months starting with the beginning of the offer, or if the offering is addressed exclusively to qualified investors.

## Requirements for ART and EMT offerings

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. NCAs may also set additional supervisory expectations.

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 MiCAR. Discounts, rewards or compensation for holding EMTs will be considered as offering interest.

## Crypto-asset service providers (CASP)

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 has at least one director who is a resident in the EU, has its place of effective management in the EU, and complies with prudential capital and governance, risk and compliance, as well as internal organisational requirements.

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 EMTs) 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. The amount of minimum capital requirements that are applicable to a CASP will depend on the type of regulated activity that it conducts.

# MiCAR: Other regulatory requirements

## Market abuse

MiCAR 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.

The MiCAR-specific 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.

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

## Enforcement and supervision

NCAs act as the front-line supervisors and enforcement agents of CASPs and CAIs. NCAs 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).



Sources: PwC: Countdown to MiCA How Swiss firms need to prepare for a regulatory game changer, July 2023; The EU's Markets in Crypto-Asset Regulation (MiCAR), July 2023; Mastering MiCAR - The EU's Markets in Crypto-Asset Regulation (MiCAR) - how to apply and comply, July 2023; Tokenised Crowdfunding - obstacles, opportunities and the outlook ahead in the EU, November 2023.

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# United States

## Government outlook

Public policy has shifted its focus to assess the potential risks that cryptocurrencies pose to traditional finance.

Both federal and state authorities have issued regulatory guidance outlining how banks can engage with crypto, and California has enacted legislation to require crypto service providers to license with the state's Department of Financial Protection and Innovation (DPFI). Notably, despite the ongoing availability of federal charters, two preliminary federal approvals have lapsed since our 2023 update.

In early 2023, several banks collapsed or chose to wind down, citing the impact of 'crypto contagion', and new license approvals at the state level have experienced a slowdown.

## Asset classification framework

Throughout 2023, there have been significant efforts to enhance guidance on the classification of digital assets. There is currently no formalised Federal policy framework, and the matter is actively contested in the courts.

In a pivotal 2023 event, the U.S. District Court for the Southern District of New York's July 13 ruling introduced a precedent for classifying tokens as securities or non-securities based on the transaction type. This nuanced decision challenges the traditional binary classification of tokens. While the SEC's appeal is pending, the outcome's practical application remains on hold. Concurrently, the Digital Asset Market Structure Bill's introduction and markup process have shed additional light on regulatory perspectives in this evolving domain.

The states, however, continue to emphasise the importance of risk management for the asset listing process to their licensees, with New York revising its coin listing guidance and California including the requirement for asset listing in the recently passed legislation.

## Crypto asset regulation

Several legislative and regulatory developments have emerged during 2023, reflecting the need for regulatory clarity and oversight in the digital asset space. These encompass critical aspects, including the issuance and regulation of payment stablecoins, the definition of digital assets, market structure, and taxation.

Sources: U.S. District Court for the Southern District of New York: Ripple Labs, Inc. et al., July 13, 2023 Ruling. H.R. 4766 - Clarity for Payment Stablecoins Act of 2023, Introduced July 20, 2023. H.R. 4763 - Financial Innovation and Technology for the 21st Century Act, Markup July 26, 2023. H.R. 4766 - Clarity for Payment Stablecoins Act of 2023, Passed House Financial Services Committee July 27, 2023. House Financial Services Committee: Markup of H.R. 4766 - Clarity for Payment Stablecoins Act of 2023, July 2023. Financial Accounting Standards Board (FASB) Media Advisory, December 13, 2023.

The Clarity for Payment Stablecoins Act of 2023 is aimed at regulating payment stablecoins. The Act outlines that only specific entities, such as subsidiaries of insured depository institutions, federal qualified nonbank payment stablecoin issuers, and state-qualified payment stablecoin issuers are authorised to issue payment stablecoins enacted.

Federal non-bank issuers would be subject to bank-like regulations, including capital, liquidity, risk management, and compliance standards. The legislation classifies payment stablecoins as non-securities. However, questions remain on their issuance on private blockchains. Recent developments include the approval of a stablecoin issued through a state trust, signaling increasing acceptance of stablecoins in the financial ecosystem.

Another legislative development is the Market Structure Act proposed alongside the Financial Innovation and Technology for the 21st Century Act.

The Bill seeks to define the regulatory roles of the Commodity Futures Trading Commission (CFTC) and SEC in the digital asset industry. It grants the CFTC control over digital commodities markets and provides clarity on the classification of tokens, stating that an investment contract alone does not classify a token as a security.

In tandem with these legislative initiatives, there has been progress in the Internal Revenue Service guidance, introducing a new Form 1099-DA. The form's objective is to simplify tax reporting for digital asset transactions, aligning it with reporting practices for other asset classes.

Additionally, the Financial Accounting Standards Board (FASB) published an Accounting Standards Update (ASU) aimed at improving the accounting for and disclosure of certain crypto assets. The ASU requires entities to measure crypto assets at fair value each reporting period in order to enhance transparency and reduce complexity in accounting practices for crypto assets. This change also strengthens the rationale for holding bitcoin on a corporate balance sheet.

## Stablecoins

Since inception, US-dollar denominated stablecoins have dominated digital asset capital markets and payments use cases, with two primary issuers consistently accounting for a substantial share of the market's total capitalization.

# United States (continued)

The destabilising stablecoin events in 2022 have awoken the need for stablecoin regulation in the US. The Clarity for Payment Stablecoins Act of 2023, known as H.R. 4766, was introduced on 20 July 2023, and passed the House Financial Services Committee on 27 July 2023. The Bill aims to provide a regulatory framework for the issuance and oversight of stablecoins, but has been met with critique over the mix of reserves required. The proposed legislation advances the conversation, but given the contentious debate seems as though it is back to the drawing board for the time being.

## Central Bank Digital Currency (CBDC)

The US Federal Reserve (Fed) is actively exploring CBDCs to address wholesale and retail opportunities. The significant global role of the US dollar, as a reserve currency, requires that the Fed remains at the forefront of CBDC research, policy development, and technology innovation. No decision has been made to issue a CBDC.

## Other digital assets

The Federal Government and certain state regulators are promulgating laws, rules and regulations around financial crimes compliance for virtual asset firms and virtual asset service providers. Many of the firms have not necessarily been included in the past, but are now watching closely as bills are published and/or enacted to determine their compliance requirements.

## Registration/licensing regime

The US lacks a comprehensive and cohesive digital assets federal licensure and registration process. Much of the guidance on licensure and/or registration is provided by the Courts, as litigation is resolved and judgments rendered. Many participants in the crypto ecosystem continue to pursue state money transmitter licenses or state-specific crypto licenses, such as the bitlicense.

## Financial crime

Three public enforcement actions have been taken against virtual asset firms during 2023. The Office of Foreign Assets Control (OFAC), CFTC and New York State Department of Financial Services (NYDFS) have primarily focused on:

- sanctions violations and deficiencies in the sanctions screening processes;

- Violations of federal laws, requiring Customer Identification information (CID) and enabling the violation of CID laws; and
- deficiencies in cybersecurity and anti-money laundering program expectations outlined by state law.

The federal and state legislators and regulators have primarily focused on KYC expectations, extending AML and Bank Secrecy Act (BSA) requirements to virtual asset service providers not previously covered under existing AML/BSA rules. These include DeFi, digital asset wallet providers, miners, validators, and other network participants which may act to validate, secure, or facilitate digital asset transactions.

Another focus remains on establishing examination standards for crypto assets and firms which conduct crypto asset activities, in an effort to help examiners better assess risk and ensure compliance with AML/BSA and sanctions laws.

## Pending legislation or imminent regulatory announcements

We expect the examination and supervision departments of the federal and state regulators to continue to issue guidance and to conduct rigorous examinations that may lead to financial crimes compliance regulatory findings and even public actions.

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# United Kingdom

## Government outlook

The Government remains committed to setting up a clear regulatory regime for digital assets, supporting the UK's ambition of becoming a global hub for starting and scaling cryptoasset businesses. As a result, a number of key developments have taken place during 2023.

## Crypto asset regulation

The Financial Services and Markets Act 2023 (FSMA 2023) received royal assent on 29 June 2023. It provides the Government with powers to specify cryptoasset activities within the Financial Services and Markets Act 2000 (FSMA) (Regulated Activities) Order 2001 (RAO), and to designate activities as part of the Designated Activities Regime (DAR).

FSMA 2023 also gives authorities powers to deliver a regulatory regime for the use of 'digital settlement assets' (DSA), e.g. stablecoins, in payments.

The new regime will capture all cryptoassets. The requirements will be determined by the activities firms undertake and are primarily delivered by amending the existing legislations.

All financial entities undertaking cryptoasset activities will be impacted, including those already registered with the Financial Conduct Authority (FCA). Firms will need to comply with compliance responsibilities, including conduct and prudential requirements, safeguarding, reporting, consumer protection, operational resilience and location policy.

The framework will capture activities provided in, from or to the UK. Entities based overseas will also need to comply with the new regime, if they provide services to customers in the UK.

## Asset classification framework

The Government will apply a phased approach to regulating digital assets.

Phase 1: fiat-backed stablecoins used for payments, including issuance, payment and custody.

Phase 2: all other tokens, when used for regulated activities, including issuance, exchange, investment and risk management, lending, borrowing and leverage, as well as custody.

The in-scope cryptoassets will include exchange tokens (e.g. cryptocurrencies), asset-referenced tokens, commodity-linked tokens, crypto-backed tokens, algorithmic tokens and governance tokens, as well as NFTs, utility tokens and fan tokens (where used for regulated activities). DeFi activities will be considered at a later stage.

## Stablecoins

Two new fiat-backed stablecoin activities will be regulated. These are: issuance of fiat-backed stablecoins in or from the UK, and custody activities carried out from the UK or to UK based consumers for UK-issued fiat-backed stablecoins.

HMT will also amend the Payment Services Regulations 2017 (PSRs) to allow fiat-backed stablecoins to be used as a means of payment.

Issuers will need to constitute and maintain a reserve of backing assets, equivalent in value to the circulating supply of the regulated stablecoin, together with adequate safeguarding arrangements.

For custody, the core requirements include arrangements to protect clients' rights to their cryptoassets, organisational arrangements to minimise risk of loss or diminution of clients' custody assets, accurate books and records of clients' custody assets holdings, and adequate controls and governance to protect clients' custody asset holdings.

The FCA will apply the same or equivalent organisational requirements to regulated stablecoin issuers and custodians, as in place for traditional finance firms.

The regulator also plans to issue a dedicated prudential sourcebook for regulated stablecoin issuers and custodians, applied cumulatively with other activity-based prudential requirements. The rules will later apply to other cryptoasset activities.

For those overseas stablecoins not registered in the UK, HM Treasury may introduce a new activity of 'payment arrangers' (PA). PAs would assess and approve any overseas stablecoin (used for payments) before the stablecoin could be used in UK payment chains. The PAs would be required to assess all relevant information and compliance and be required to appoint an independent third party (such as an auditor) to verify certain elements of their assessment.

The Bank of England (BoE) will supervise systemic, stablecoins, which are used for retail purposes in the UK. The regime will apply to systemic payment systems using stablecoins, systemic service providers to payment systems using stablecoins and other service providers.

# United Kingdom (continued)

## Central Bank Digital Currency (CBDC)

The BoE and HMT have indicated that a retail CBDC will likely be needed by 2030. The digital pound is in the design phase, with a focus on technology and policy options.

### Registration/licensing regime

Currently, cryptoasset firms 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 FCA before conducting business or notify the regulator before a proposed acquisition of a registered crypto asset firm.

Under the new regime, firms undertaking regulated activities must adhere to the same financial crime standards and rules which apply to equivalent or similar traditional financial services activities.

Firms already registered with the FCA will also need to seek authorisation from the FCA, under the new wider regime.

Firms which have an existing authorisation under Part 4A of FSMA (e.g. multilateral trading facilities) can apply for a Variation of Permission (VoP).

Similarly, firms which have established FSMA authorised status for regulated activities relating to fiat-backed stablecoins (phase 1) can apply for a VoP, if seeking to undertake additional regulated cryptoasset activities, regulated in phase 2.

### Financial crime

HMT has extended information sharing requirements for wire transfers (known as the Travel Rule) to include cryptoassets.

The Travel Rule came into effect in September 2023. It extends information sharing and record keeping requirements which apply to bank transfers to transfers of cryptoassets, to assist in the prevention and detection of money laundering.

The new market abuse regime for cryptoassets will be based on elements of the Market Abuse Regulation (MAR) regime. The market abuse offences will apply to all persons committing market abuse on cryptoassets which are admitted (or requested to be admitted) to trading on a UK cryptoasset trading venue and apply regardless of where the person is based or where the trading takes place.

## Sales and Promotion

The FCA classifies qualifying cryptoassets as 'Restricted Mass Market Investments' under the Financial Promotions Order (FPO).

Since October 2023, firms marketing qualifying cryptoassets to the UK customers must be registered with the FCA under the MLRs, irrespective of the firms' location or the technology used to make the promotion.

The financial promotion must be either: communicated by an authorised person; made by an unauthorised person but approved by an authorised person; communicated by (or on behalf of) a cryptoasset business registered with the FCA under the MLRs; or communicated in compliance with the conditions of an exemption in the FPO.

Firms must comply with a further set of rules, including clear risk warnings and banning incentives to invest. First-time investors with a firm cannot receive a Direct Offer Financial Promotion (DOFP) unless they reconfirm the request to proceed after waiting at least 24 hours. Further restrictions apply to DOFPs, including personalised risk warnings, client categorisation and appropriateness assessments.

## Pending legislation or imminent regulatory announcements

Fiat-backed stablecoins: secondary legislation by early 2024, authorities' discussion period ends in February 2024, final rules for consultation in H2 2024, implementation in 2025.

Wider cryptoassets: secondary legislation in 2024, followed by regulatory consultations, implementation in 2025 at the earliest.

Authorities are also expected to launch a Digital Securities Sandbox at the end of Q1 2024. The initiative will help to facilitate the adoption of digital asset technology in the financial markets.

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# Australia

## Government outlook

In February 2023, the Australian Government released a consultation paper on 'token mapping'. This was a foundational step in the Government's multi-stage reform agenda with a commitment in developing appropriate regulatory settings for the crypto sector.

Leveraging from the token mapping, in October 2023 the Government released its latest consultation paper, 'Regulating digital asset platforms'.

The paper has been clear to promote innovation (through technology neutrality and regulatory clarity), with innovation being one of the four objectives: 1) protecting consumers, 2) promoting innovation through technology neutrality and regulatory clarity, 3) aligning Australia's digital asset regulatory framework with international jurisdictions, where appropriate, and 4) utilising regulatory tools that provide agility, flexibility, and adaptability.

Draft legislation is expected to be released in 2024 with the law coming into effect via a 12-month transitional period.

## Asset classification framework

The Government proposes to incorporate digital asset platforms and other intermediaries within the existing financial services framework. This will involve introducing a new type of financial product called a 'digital asset facility'.

The proposed framework adopts the 'similar activity, similar risk, same regulatory outcome' approach. It proposes to use asset holding as the regulatory anchor point.

## Crypto asset regulation

The latest consultation paper puts forward a proposed legislation which would require digital asset platforms in Australia that hold over a certain threshold of Australians assets (AU\$1,500 for an individual; AU\$5 million in aggregate) to obtain an Australian Financial Services Licence (AFSL).

Platforms which offer trading, staking, tokenization and fundraising will have additional obligations to meet.

In addition to the AFSL, it is intended that the following obligations will also apply: standard form platform contracts, minimum standards for holding tokens, standards for custody software and standards when transacting in tokens.

## Stablecoins

The Council of Financial Regulators (CFR) agreed that developing a framework for regulating 'payment stablecoins' should be a priority, given the potential for these arrangements to become widely used as a means of payment and a store of value in the economy.

## Central Bank Digital Currency ('CBDC')

In August 2023, the Reserve Bank of Australia (RBA) and Digital Finance Cooperative Research Centre (DFCRC) released a report which was the culmination of a research project and testing with industry participants on CBDC use cases.

The report concluded that, considering the broader context, where the Australian payments system is currently meeting most of the needs of end users and work on CBDC in advanced economies is generally still in an exploratory stage, it is likely that any serious policy consideration of issuing a CBDC in Australia is still some years away.

The Government's Strategic Plan for the Payments System published in June 2023 indicated support for the Treasury and RBA continuing to explore the policy rationale for a CBDC in Australia. As part of this, the Treasury and RBA are planning to release a paper in mid-2024 that takes stock of the work to date on CBDC and outlines a forward work plan on CBDC in the broader context of the future of digital money.

# Australia (continued)

## Registration/licensing regime

The licencing regimes states that a digital asset platform providers must comply with a number of general obligations, financial and disclosure obligations:

Some of the obligations include:

- providing the financial service efficiently, honestly, and fairly;
- managing conflicts of interest;
- the standard solvency and positive net asset requirements;
- the standard cash needs requirement; and
- a net tangible assets (NTA) requirement for holding cash or cash equivalents and holding liquid assets of at least: 0.5 per cent of the value of the facility (if using a sub-custodian digital asset facility that has AU\$5 million NTA), or AU\$5 million (if performing the custody function.

## Sales and Promotion

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

Australian Securities and Investment Commission (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 regulated products 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.

## Financial crime

In September 2023, Australia's Attorney-General's Department issued a consultation, seeking feedback on the proposed rules for 'Modernising Australia's anti-money laundering and counter-terrorism financing regime'. The paper outlined the proposed plans to expand the operation of the travel rule in line with FATF standards.

## Pending legislation or imminent regulatory announcements

The ASIC's 'Corporate Plan 2022–26' sets out crypto-assets as one of its core projects. Specifically:

- developing a robust consumer protection and market integrity regulatory framework post the Treasury's consultation;
- enforcing safeguards against crypto-asset
  - related consumer risks and regulatory circumvention;
- overseeing Product Disclosure Statements and target market assessments for major crypto products;
- managing the regulatory model for crypto-based exchange traded products;
- promoting awareness of crypto-asset and DeFi risks; and
- collaborating with global counterparts to monitor, coordinate, and shape international crypto-asset and DeFi policy.

The draft legislation is expected to be released in 2024, with the law coming into effect via a 12-month transitional period.

The APRA will consult on the prudential treatment for crypto-assets in 2024, which is expected to come into effect in 2025.

In mid 2024, the Treasury and RBA paper taking stock of the work to date on CBDC in the broader context of the future of digital money in Australia.

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# Austria

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

Austria does not have dedicated cryptocurrency regulation, but adheres to the EU legislation. With MiCAR, issuers of crypto assets and crypto asset service providers will be subject to a comprehensive regulatory framework.

The EU's DLT Pilot Regime also provides a sandbox environment to enable and regulate the trading and settlement of DLT-based securities.

Until MiCAR comes into effect, in December 2024, the existing local rules will continue to apply (please refer to the Austrian section in the PwC Global Crypto Regulation 2023 report for further details).

The Financial Market Authority (FMA) has positioned itself as technology-neutral and open to new business models related to crypto assets and new technologies. The FMA views the EU regulations as an important step and filling critical regulatory gaps for the widespread application of blockchain technology in European financial and capital markets.

## Asset classification framework

The MiCAR classification will apply in Austria from 30 December 2024, reflecting the digital asset classification set by the Austrian regulator.

## Stablecoins

As of 30 December 2024, the MiCAR classification will apply in Austria. This means that stablecoin can be issued as e-money token or asset-referenced token under MiCAR.

## Central Bank Digital Currency (CBDC)

The Austrian National Bank 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 application of MiCAR and the DLT Pilot Regime at the EU-level.

## Registration/licensing regime

Entities intending to act as crypto asset service providers are required to register with the FMA as the competent authority responsible for conducting the registration procedure and verifying compliance with the legal and regulatory provisions governing the prevention of money laundering and terrorist financing (AML/CFT). As of 30 December 2024, MiCAR applies for the licensing of business models in relation to crypto asset services.

## Financial crime

The existing Austrian legal framework applies to crypto assets. In 2020, crypto asset services were incorporated into the Austrian AML/CTF regime to enhance efforts against money laundering and terrorist financing. Fraudulent behavior is generally subject to punishment in accordance with Austrian criminal law.

## Sales and Promotion

At the moment, no specific guidance is in place for the sale and promotion of crypto assets, but the general Austrian legal framework applies (e.g., especially with respect to marketing activities).

## Pending legislation or imminent regulatory announcements

No specific guidance is in place for the sale and promotion of crypto assets, but the general Austrian legal framework applies (e.g. especially with respect to marketing activities).

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# 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 (Paper) 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 in the legislative and regulatory framework needed for the administration of digital assets business activity jurisdiction.

## 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.

The DARE Bill 2023 adds activities considered within the scope of the regulation, emphasises that systems and controls of digital asset exchanges are scaled to the size of the operations, enhances the requirements for entities providing custody/wallet services for digital assets, provides rules for the staking of digital assets, heightens disclosure requirements for issuers of digital assets and stablecoins, restricts certain activities regarding proof of work mining, prohibits privacy tokens, and addresses other topics such as NFTs, liquidity, and conflicts of interest.

## Stablecoins

The DARE Bill 2023 proposes amendments that clearly define and allow for the registration of existing stablecoins, clarify which reserve assets are acceptable, and how reserve assets should be custodied, managed, segregated, reported and redeemed. The proposed legislation also prohibits the issuance of algorithmic stable coins.

## Central Bank Digital Currency (CBDC)

In 2020, the Central Bank of The Bahamas issued a CBDC, the sand dollar. The sand dollar is one of the first live CBDCs in the world.

# 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, 2018 (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.

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# Bahrain

## Government outlook

Bahrain has established itself as a pioneer in the terms of virtual assets (VA) regulation and open ecosystem.

The Central Bank of Bahrain (CBB) was one of the first regulatory authorities globally to issue a comprehensive regime in February 2019, in line with other initiatives launched to boost the fintech ecosystem and position the country as a regional financial hub.

The VA regulation has become a module of the CBB Capital Markets Rulebook, and is quarterly updated as needed.

The latest update to the Crypto Assets module (CRA) was applied in April 2023, in relation to the following rules and frameworks: cybersecurity, issuance (and related whitepaper), crypto assets advisory, BoD and Legal Advisors declarations.

The CBB has also issued a Guideline for FIs to monitor and report suspicious activities concerning the misuse of VAs or virtual assets service providers (VASPs) for ML/TF purposes, in addition to potential red flags and indicators of ML/TF.

In December 2021 Bahrain also launched a fintech regulatory sandbox where VASPs have access to test their solutions before obtaining a full license.

## Asset classification framework

Bahrein adopts an activity-based framework to VAs, regulating exchange, trading (as agent and principal), asset management, custody and advisory businesses.

Crypto-assets are defined in the CBB Rulebook as divided into four categories:

1. Payment tokens: virtual tokens which can be digitally traded and be used for acquiring goods or services or for investment purposes.
2. Utility tokens: tokens that are intended to provide access to a specific application or service.
3. Asset tokens: tokens that represent assets such as a debt or equity claim on the issuer. These tokens are analogous to equities, bonds or derivatives. Tokens which enable physical assets to be traded on the blockchain also fall into this category.
4. Hybrid Tokens: those that have features of one or more of the other three types of tokens.

## Licensing Regime

The CBB Capital Markets Rulebook define Licensing Requirements applicable to VASPs as part of its CRA Module, such as regulatory capital requirements, market abuse and manipulation, conduct of business rules, client money and client assets safeguard measures, client protection rules in general, technology standards, AML and CFT rules, cyber security, risk management, and reporting requirements, conduct of business obligations,

The CBB mandates all persons marketing or undertaking, by way of business, regulated Virtual Asset services within or from Bahrain, to obtain a license from the CBB.

## Stablecoins

The CBB framework regards stablecoins as payment tokens and are therefore considered admitted Virtual Assets.

No stablecoins-specific regulation has been issued, all the CRA rules apply, in light of the 'same risk, same rule' principle.

## Central Bank Digital Currency (CBDC)

As part of the CBB's vision to improve the customer experience for safe and efficient settlement solutions, CBB has activated in 2021 a collaboration with two private sector banks in a pilot scheme to introduce instantaneous cross border payment solution leveraging a private blockchain technology and digital currency.

Specifically, the pilot will include payments from buyers to suppliers, from Bahrain in USD dollars.

This anticipate a possible interest for Bahrain to move towards a CBDC.

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# Brazil

## Government outlook

The relevance of foreign exchanges (c. 40% of market share) weakens national regulation on transactions carried out with crypto-assets as nationally instituted rules rarely apply to foreign companies. Legal mechanisms to prevent money laundering and data protections are difficult to apply to exchanges, due to the lack of jurisdiction. Despite this, the regulatory parameters for crypto-assets in Brazil are provided for in law 14,478/21 and in Normative Instruction nº. 1,888/19 of the Federal Revenue of Brazil.

According to the law 14.478/21, focused on AML/CTF, Brazilian Central Bank is responsible to establish the conditions and deadlines, for crypto-asset service providers (crypto-asset brokers) to adapt to the new requirements. These may exclusively provide the crypto asset service or combine it with other activities, in accordance with the regulations to be issued.

The Brazilian Central Bank's responsibilities include: authorising the operation and transfer of control of brokers, supervise their operation, cancel authorisations, and establish the conditions in which activities will be included in the foreign exchange market or must be subject to regulation of Brazilian capital abroad and foreign capital in the country.

The Central Bank of Brazil considers crypto-assets part of a broad agenda of digitalisation, focused on inclusion, cost reduction, competition, risk control efficiency, data monetisation and tokenization of financial assets and contracts.

## Asset classification framework

Access to the Brazilian crypto-asset intermediation market is characterised by the presence of four different exchange business models:

1. National (majority), those domiciled in Brazil, with corporate structure made up of Brazilian individuals and/or legal entities.
2. Nationalised, they constitute tax domicile in Brazil, but were founded abroad.
3. Partially nationalised, they only have financial intermediation companies domiciled in Brazil, which indicates that part of the operations is carried out abroad.
4. Foreign exchanges do not have operations domiciled in Brazil, they rely on hiring financial intermediaries, with whom they have no corporate link, to carry out operations in national territory.

## Crypto asset regulation

Crypto-assets and stablecoins are not specifically regulated in Brazil.

## Central Bank Digital Currency (CBDC)

The Central Bank of Brazil initiated the development and piloting of a CBDC, Drex, in August 2020. Drex is designed to facilitate various financial transactions and smart contracts. The transactions will be settled within the Central Bank's Drex Platform, utilising DLT.

## Registration/licensing regime

Crypto-asset exchanges applying to be authorised as a payment institution, must register with the Central Bank of Brazil.

## Pending legislation or imminent regulatory announcements

The Central Bank of Brazil is expected to provide further regulatory updates, with a focus on AML and CTF, as well as authorisation, operation, and conditions for crypto-asset broker-dealers.

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# Bulgaria

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

Until recently, the Bulgarian financial services regulators, the Bulgarian National Bank (BNB) and the Financial Supervision Commission (FSC) were of the position that crypto assets should not qualify as financial instruments. Transactions involving crypto assets remain outside the scope of Bulgarian financial services regulations, and are not subject to a license, registration, or any other form of authorisation in Bulgaria.

As Bulgarian regulators follow the EU approach to crypto asset regulation, these positions will change with the implementation of MiCAR on 30 December 2024.

The FSC has stated that crypto asset derivatives may qualify as MiFID financial instruments, in which case the local MiFID legislation (i.e. the Bulgarian Markets in Financial Instruments Act) should apply.

In 2021, the FSC published its strategy for monitoring financial innovations in the non-banking financial sector (2021-2024). The strategy aims to achieve common European goals, taking into account the development of the local financial services market, as well as consumer attitudes and protection.

## Asset classification framework

No asset classification framework is adopted at national level.

## Crypto asset regulation

Crypto assets are not specifically regulated in Bulgaria. The EU DigFin package (MiCAR, DORA and the DLT Pilot Regime) apply directly in Bulgaria, as primary EU legislation.

## Stablecoins

No specific framework for stablecoins is adopted at national level. After 30 December 2024, the provisions of MiCAR shall apply directly in Bulgaria as primary EU legislation.

## Central Bank Digital Currency (CBDC)

The Bulgarian National Bank has not made plans to issue a CBDC. Bulgaria is not part of the Eurozone.

## Registration/licensing regime

No licensing regime is adopted at national level. Virtual asset service providers (VASP) providing services in Bulgaria are subject to registration with the National Revenue Agency for AML/CFT purposes.

After 30 December 2024, the authorisation regime under MiCAR will apply.

## Financial crime

Since December 2019, crypto asset exchanges and custodian wallet providers are covered by the Bulgarian AML Act (transposing the EU's AMLD V, which extended the scope of its financial crime prevention rules to crypto asset exchanges and wallet providers).

With amendments to the AML Act, effective as of 10 October 2023, VASPs providing services of exchange or transfer of virtual assets (VA), safekeeping and administration of VAs enabling control over the assets, or public offering of VAs, are also covered by the Act. Since VASPs are not subject to authorisation or registration in Bulgaria, all VASPs providing any of the abovementioned services in Bulgaria should register with a special registry administered by the Bulgarian National Revenue Agency (NRA). The registration documents and steps are regulated in an Ordinance of the NRA.

As obliged persons under the Bulgarian AML Act, VASPs are required to implement an effective risk management to prevent money laundering and terrorist financing. This includes adoption of an internal AML/ CFT risk assessment, implementation of internal policies and procedures on the prevention of money laundering and terrorist financing, rules on the conduct of customer due diligence (CDD), including enhanced CDD for clients and transactions flagged with higher level of risk, nomination of an AML Officer, specific AML trainings to those categories of employees whose work is exposed to the risk of money laundering, reporting of suspicious activities to the Financial Intelligence Unit with the State Agency of National Security.

Sources: Bulgarian Markets in Financial Instruments Act, promulgated in State Gazette issue 15 of 16 February 2018, as amended and supplemented; Bulgarian Measures Against Money Laundering Act, promulgated in State Gazette issue 27 of 27 March 2018, as amended and supplemented; Ordinance No. H-9 of 7 August 2020 issued by the National Revenue Agency, on the conditions and the procedure for registration in the register of persons who by way of occupation provide services of exchange between virtual currencies and fiat currencies and custodian wallet providers, promulgated in State Gazette issue 72 of 14 August 2020, as amended and supplemented.

# Bulgaria (continued)

## Sales and Promotion

No specific national regulation or guidance is in place for the sale and promotion of crypto assets. This excludes transactions with derivatives on crypto assets which should comply with the MiFID II requirements (transposed in the Bulgarian Markets in Financial Instruments Act).

Sale and promotion of crypto assets may also be subject to the general Bulgarian law requirements (including, no unfair commercial practices, no distortion of competition, general rules on advertising, general rules on electronic commerce).

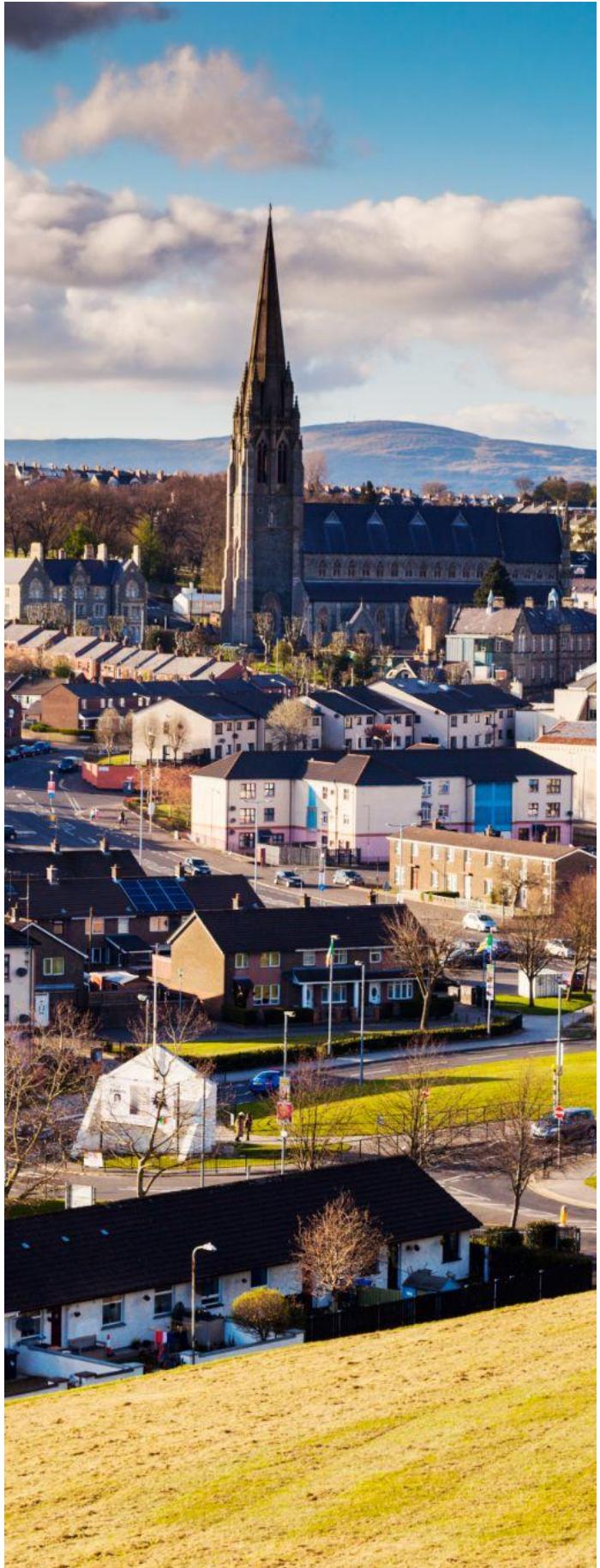
## Pending legislation or imminent regulatory announcements

After 30 December 2024, all MiCAR requirements will be directly applicable in Bulgaria as primary EU legislation.

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# 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. As of April 30, 2023, there were 22 Public Crypto Asset Funds in Canada that collectively had approximately CAD\$2.86 billion in net assets. Authorities favour an approach where the crypto industry is regulated in a similar way to other asset classes, enabling the right safeguards and custody solutions to be in place to protect investors and consumers.

In July 2023, CSA Staff issued a notice intended to provide guidance to stakeholders and to outline CSA Staff's views and expectations regarding the operations of Public Crypto Asset Funds within the framework of National Instrument 81-102.

## Crypto Asset regulation

The CSA and the Investment Industry Regulatory Organization of Canada (IIROC) oversee 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. In February 2023, as a result of recent global crypto trading insolvencies, the CSA strengthened its oversight with enhanced expectations of crypto asset trading platforms operating in Canada.

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 advisory 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.

In July 2023, OSFI launched a public consultation on two guidelines that address the capital and liquidity considerations of crypto asset exposures. One guideline is for deposit-taking institutions, and the other is for insurers. Final versions of these guidelines, which will replace the aforementioned interim advisory, are expected to come into effect in early 2025.

## 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.

In June 2023, the Department of Finance issued a public consultation contemplating certain changes to Canada's anti-money laundering and anti-terrorist financing regime including proposals affecting virtual currency, digital assets, and technology-enabled finance in Canada. Notable examples of new technologies for which money laundering and terrorist financing risks continue to evolve include; crypto-mixers, DeFi including decentralized cryptocurrency exchanges (DEX) and decentralized autonomous organizations (DAO), NFTs, the metaverse, privacy-enhancing coins, and tokenized assets.

# Canada (continued)

## 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 (CBDC)

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 CBDC.

In May 2023, the Bank of Canada launched a public consultation exploring the possibility of issuing a CBDC. The Bank of Canada's stated objectives of researching a digital Canadian dollar are financial inclusion and protection of the economy and financial systems. The Bank of Canada intends to publish a report summarizing the results of the public consultation at a later date. At present, the formal position remains that there is no need to issue a CBDC.

## Pending legislation or imminent regulatory announcements

In October 2023, the CSA announced that it may allow, subject to terms and conditions, trading of certain value-referenced crypto assets that are referenced to the value of a single fiat currency. They also set out interim terms and conditions that would apply to crypto asset trading platforms and the issuers of fiat-backed crypto assets.

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Sources: 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, Bank of Canada: Digital Canadian dollar, accessed on 23 August 2023, Government of Canada: Consultation on Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime, accessed on 28 August 2023, Office of the Superintendent of Financial Institutions: OSFI invites input on proposed new guidelines for the regulatory capital and liquidity treatment of crypto-asset exposures, accessed on 23 August 2023, Ontario Securities Commission: CSA Staff Notice 81-336 Guidance on Crypto Asset Investment Funds That Are Reporting Issuers, accessed on August 23 2023, Ontario Securities Commission: Canadian securities regulators strengthen oversight, enhance expectations of crypto asset trading platforms operating in Canada, accessed on September 5, 2023.

# Cayman Islands

## Government outlook

The Cayman Islands is among the few jurisdictions which have enacted virtual asset regulations to provide clarity around the registration, policies and controls expected of virtual asset service providers (VASP). As part of the Cayman Islands' 2021 National Risk Assessment exercise, a sectoral risk assessment was conducted over VAs, which aimed to further deepen and advance the Cayman Islands' risk understanding in this area. These efforts contributed to Cayman's ability to meet technical criteria based on FATF's recommended actions.

## Crypto Asset regulation

The Virtual Asset (Service Providers) Act, (2022 Revision), (VASP Act) brought digital assets and related service providers under the oversight of the Cayman Islands Monetary Authority's (CIMA). The regulatory framework for the VASP Act is implemented in two phases as outlined on CIMA's website.<sup>1</sup>

Phase one focuses on:

- Registration and notification of VASP entities, as well as the AML and CFT compliance, supervision and enforcement, and other key areas of risk.
- Entities engaged in or wishing to engage in VA services must be registered with CIMA under the VASP Act.
- Entities engaged in or wishing to engage in VA services, already subject to the Authority's supervision under another regulatory law, must notify (in the case of licensees) or register with (in the case of registrants) CIMA.

Phase two refers to the licensing and virtual asset issuance approval process which will begin when the appropriate clauses and aspects of the VASP Act are in effect.

The Government has amended a number of existing laws, in order to extend them to virtual assets. These include the Mutual Funds Act (Revised), the Securities Investment Business Act (Revised), the Proceeds of Crime Act (Revised) and the Anti-Money Laundering Regulations (Revised) which are already in effect.

The VASP Act also introduces the sandbox licence. A sandbox licence is a temporary licence granted for a period of up to one year. It allows, for example, for CIMA to assess, monitor and supervise the innovative service, technology or method of delivery of a sandbox licensee.

## Regulated virtual asset activities

Under the VASP Act, 'virtual asset' means 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 representation of fiat currencies.

In the VASP Act, 'virtual asset service' means the issuance of virtual assets or the business of providing one or more of the following services or operations for or on behalf of a natural or legal person or legal arrangement:

- (a) exchange between virtual assets and fiat currencies; (b) exchange between one or more other forms of convertible virtual assets;
- (c) transfer of virtual assets;
- (d) virtual asset custody service; or
- (e) participation in, and provision of, financial services related to a virtual asset issuance or the sale of a virtual asset.

The 'issuance of virtual assets' or 'virtual asset issuance' means the sale of newly created virtual assets to the public in or from within the Islands in exchange for fiat currency, other virtual assets or other consideration but does not include the sale of virtual service tokens.

## Central Bank Digital Currency (CBDC)

There are currently no plans to issue a CBDC in the Cayman Islands.

## Registration/licensing regime

All new market entrants and pre-existing service providers wishing to provide virtual asset services are required to register in phase one. This includes entities engaged in virtual asset custodial services or in the operation of virtual asset trading platforms.

At the time of writing, the licensing regime for virtual asset custodians or virtual asset trading platforms has not commenced.

Sources: Cayman Island Monetary authority: Virtual Asset Service Providers and associated details including VASP regulations, frequently asked questions, forms and other reference material. Virtual Asset (Service Providers) Act,(2022 Revision), Supplement No. 6 published with Legislation Gazette No. 7 dated 31st January, 2022.

# Cayman Islands (continued)

## Financial crime

Effective from 1 July 2022, all VASPs are required to comply with Part XA of the Anti-Money Laundering Regulations which contains definitions and provisions pertaining to the identification, verification, production, record-keeping and other relevant obligations relating to virtual assets including Travel Rule requirements. Part XA of the Anti-Money Laundering Regulations is aimed at aligning the Cayman Islands compliance posture with requirements from Financial Action Task Force.

All new applicants for VASP registrations/licences are required to indicate in their applications how they will comply with the Travel Rule related provisions as part of their compliance arrangements. VASPs are required to obtain and hold required and accurate originator information and required beneficiary information on virtual asset transfers while ensuring the security and confidentiality of this information.

VASPs are required to prevent, detect and disclose money laundering, terrorist financing and suspicious transactions. VASPs should implement robust policies, procedures and controls including a risk based approach to assess its customers and business; maintaining internal control procedures including suspicious transaction reporting; maintaining customer identity verification, including third party verification and eligible introducers; and record keeping.

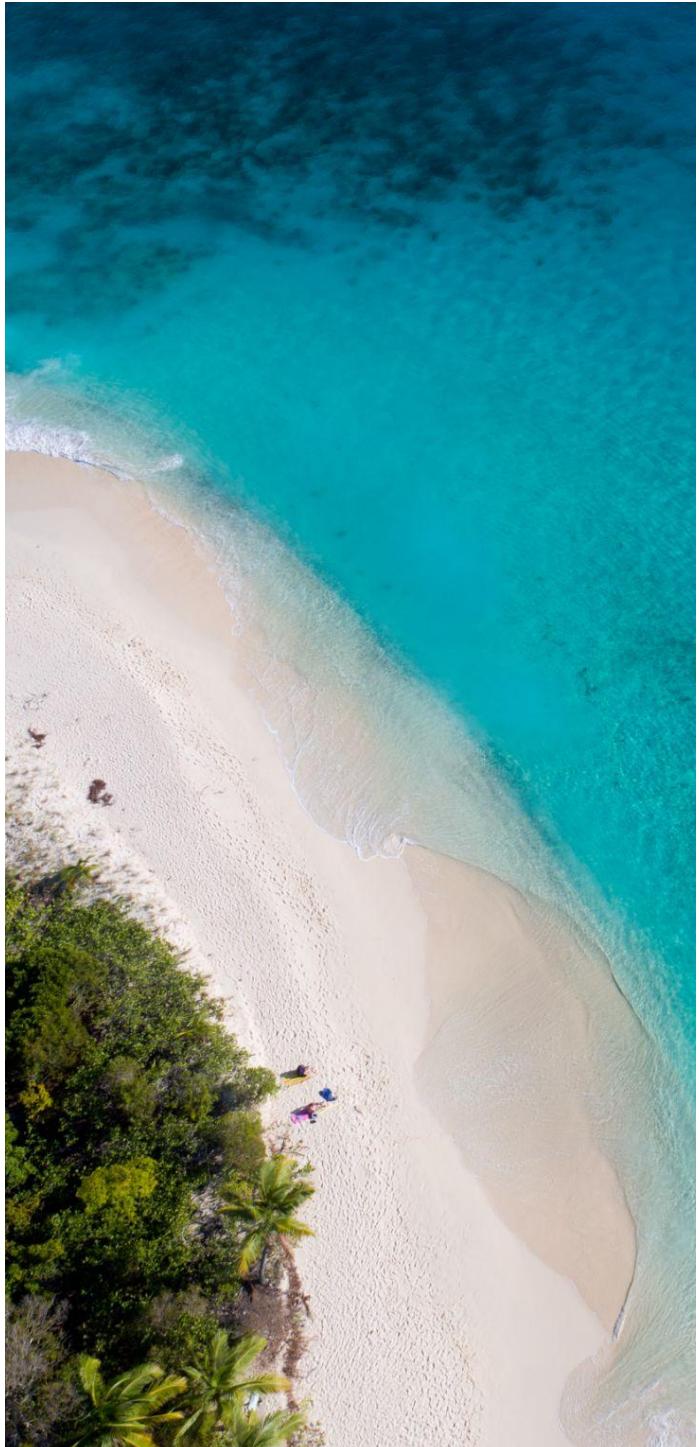
## Sales and Promotion

The VASP Act prohibits any person from carrying on or being involved in the business of virtual assets sales without being registered by CIMA.

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# Denmark

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## 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 implementation of MiCAR at the EU-level Titles III and IV of MiCAR will apply from June 2024, with the remaining regulation applying from December 2024.

## 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.

The DFSA has been conducting controlled experiments with companies through the DLTR, and identifies potential benefits from DLT, but has not formulated an opinion on whether the technology should be implemented in the sector.

## Registration/licensing regime

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. Businesses providing the services must comply with the provisions set out in the regulation, including KYC checks and suspicious reporting.

## Sales and Promotion

No specific guidance is in place for the sale and promotion of crypto assets. Changes are likely to occur, with the implementation of MiCAR 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 implementation of MiCAR 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.

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Sources: 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, Finanstilsynet: DLT skaber nye muligheder for infrastrukturen på kapitalmarkedene, og den nye DLT-pilotordning kan hjælpe teknologien på vej, 23 June, 2023.

# Estonia

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## 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.

## Asset classification framework

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.

## Crypto asset regulation

Changes to the regulation of crypto assets in Estonia are coming due to MiCAR entering into force from 30 June 2023 and all of its provisions becoming applicable from 30 December 2024. Under the classification of crypto assets adopted with MiCAR, the crypto assets are grouped into three categories, depending on the content of the token: asset-referenced tokens (ART), e-money tokens (EMT), and crypto-assets other than asset-referenced tokens or e-money tokens (e.g. utility tokens). MiCAR will not be applicable to crypto assets already included in the scope of existing EU legislation on financial services.

EMTs will be deemed to be 'e-money' under the Electronic Money Directive and their issuers must be authorised as a credit institution or as an electronic money institution, bringing their own sets of requirements in order to be offered to the public within the EU.

Issuers of ARTs will be subject to a new authorisation regime under MiCAR, which will be valid throughout the EU.

In the case of crypto-assets other than asset-referenced tokens or e-money tokens, the issuer will not need to obtain an authorisation from competent authorities.

The drafting of a white paper will generally be required from all issuers of crypto-assets in scope of MiCAR.

## Stablecoin

No regulatory framework has been adopted to specifically target stablecoins.

Under the new classification of crypto-assets introduced with MiCAR, stablecoins may either be ARTs or EMTs. The relevant requirements on issuers of such tokens will become applicable from 30 December 2024. Prior to this, Estonia has not adopted a regulatory framework targeting stablecoins as such.

# Estonia (continued)

## 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.

## Registration/licensing regime

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

In May 2023, the European Council adopted rules which will make crypto asset transfers traceable.

Under the new rules, crypto asset service providers are obliged to collect and make accessible certain information about the sender and beneficiary of the transfers of crypto assets they operate, regardless of the amount of crypto assets being transacted. This ensures the traceability of crypto-asset transfers in order to be able to better identify possible suspicious transactions and block them. These steps are necessary 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.

## Pending legislation or imminent regulatory announcements

Implementation of MiCAR into Estonian law with the adoption of the proposed Markets in Crypto Assets Act, of which a draft version has been published for gathering feedback from stakeholders.

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Sources: 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, Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937, Financial Supervision and Resolution Authority: Technical Regulatory Authority: Requirements for financial services advertising, 10 June 2017, Draft version of the Estonian Markets in Crypto-Assets Law, 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

# Finland

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

The government recognises cryptocurrencies to be an increasingly popular investment product. The Finnish Supervision Authority (the FIN-FSA) has a cautious view on crypto assets and investment, reminding consumers that their investments may not be protected. However, the ownership or trading of crypto assets is not prohibited. The government supports the work to drive digital transformation of financial services in the European market, by the EU.

As the Finnish legislation does not target crypto assets, tokens or fintech blockchain solutions, governmental entities and regulators are awaiting the arrival of MiCAR by the end of 2024.

## Asset classification framework

At present, there is no framework at national level that classifies crypto-assets. 'Virtual currency' has been defined in the Finnish Act on Virtual Currency Providers (572/2019, the Virtual Currency Act), lining up with the AMLD5, referring to a value that is in digital form and which:

- is not issued or guaranteed by a central bank or other public authority
- is not a legal means of payment, but which can be used as means of payment; and
- can be transferred, stored, and traded electronically.

The Virtual Currency Act does not draw any distinctions between different types of virtual currency (such as stablecoins and other crypto-assets).

## Crypto asset regulation

Pursuant to the Fifth Anti-Money Laundering Directive (AMLD5) the Finnish government took steps in 2019 to regulate the issuers of virtual currencies with the Virtual Currency Act. The Virtual Currency Act took effect in 1 May 2019 and it is based on the requirements set out in the AMLD5 for member states to register virtual currency exchange services and wallet service providers.

The Virtual Currency Act covers the registration requirements, regulates on the supervising authority and provides legal definitions for virtual currency related actions. The key regulations and requirements for virtual asset providers include:

- the obligation for registration of virtual currency providers;
- the requirements for registration;
- the information to be recorded in the register
- removal from the register; and
- consequences arising from operating without registration.

In accordance with the Virtual Currency Act, the FIN-FSA acts as the registration authority and supervisory authority for virtual currency providers.

Additional legislation relevant to virtual currency providers and virtual currencies consists of the Finnish Act on Preventing Money Laundering and Terrorist Financing (444/2017, Finnish AML Act) and the Finnish Act and the detailed guidance of the Finnish Tax Administration on the taxation of income from virtual currencies.

## Stablecoin

No national regulatory framework has been adopted to specifically target stablecoins, nor does the existing national law specifically refer to stablecoins. However, if based on its characteristics, a stablecoin falls under the definition of a 'virtual currency' under the Virtual Currency Act, it is likely that the obligations under the Virtual Currency Act would apply to the issuer of stablecoin if the issuer provides 'virtual currency services' in Finland.

Stablecoins will be regulated with the adoption of MiCAR at EU-level from June 2024.

## Central Bank Digital Currency (CBDC)

The Bank of Finland participates in the work carried out by the European Central Bank (ECB) on the possible issuance of the digital euro.

Sources: Finnish Government: National Risk Assessment of Money Laundering and Terrorist Financing 2021 and Action Plan 2021- 2023 - Chapter 5.2 on Virtual Currencies, April 2021. Bank of Finland: A digital euro and a mobile instant payment solution could facilitate a secure digitalised economy in the future, October 2023. The Finnish Act on Virtual Currency Providers (572/2019, the Virtual Currency Act) and the legislation preparatory work of the Act (HE 187/2018).

# Finland (continued)

## Other digital assets

At the time of writing, there is no regulatory framework for other digital assets, such as the NFTs and DeFis, which fall outside the scope of MiCAR.

## Registration/licensing regime

According to the Virtual Currency Act, anyone who offers virtual currency services in Finland must register with the FIN-FSA. Registration is required for virtual currency exchange services, custodian wallet providers and issuers of virtual currencies.

The obligation to register does not apply to a natural or legal person who provides virtual currency services within a limited network, a natural or legal person who provides virtual currency services occasionally in connection with other professional activities that require some other authorisation, registration or prior approval, or virtual currencies issued by central banks and other authorities.

Registration is available only when the applicant has the right to carry out business in Finland, thus, the applicant must be a Finnish company or a Finnish branch of a non-Finnish entity.

## Financial crime

### AML/CFT Rules

The Finnish AML Act applies to virtual currency providers who have registered with the FIN-FSA in accordance with the Virtual Currency Act. Registered virtual currency providers must comply with all the obligations under the Finnish AML Act such as the preparing a risk assessment on money laundering and terrorist financing, conducting customer due diligence and ongoing monitoring, as well as reporting suspicious transactions.

Virtual currency providers are obliged to know their customers (identifying the beneficial owner and the person acting on behalf of the customer and verifying their identity) and to have a sufficient risk management system.

### Payment instrument crime

The provisions of Chapter 37 of the Finnish Criminal Code (39/1889) on payment instrument fraud, apply to virtual currency as the definition of means of payment was extended to cover virtual currencies, implementing the Directive on Copyright in the Digital Single Market (2019/790).

## Sales and Promotion

Only virtual currency providers registered with the FIN-FSA can market virtual currencies and related services in Finland.

Under the Virtual Currency Act, the registered virtual currency providers must provide the customer with all information about the service being marketed that may be relevant when the customer makes decisions about the service and withhold from providing false or misleading information.

Promotion of crypto assets must also comply with the Finnish Consumer Protection Act when marketing to consumers. When virtual currencies constitute securities, promotion must also comply with the Finnish Securities Markets Act.

## Pending legislation or imminent regulatory announcements

Implementation of MiCAR into Finnish law will lead to re-evaluation and harmonization of the terminology and classification related to virtual currency in the Finnish legislation of the field.

The Bank of Finland and the national legislator are closely monitoring the ongoing developments regarding the formation of the regulatory regime of digital currencies on a European level.

It should be noted that the current or future regulation does not entail any actions for the investors themselves.

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# France

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

France has established a regulatory framework tailored to digital assets, with the Blockchain Order (for security tokens) and the Pacte Law (for other fungible crypto assets).

In response to the adoption of the Pilot and MiCAR, France has introduced the DDADUE law on 9 March 2023, and a Decree on 31 May 2023. The measures refine the financial securities framework and the legal landscape governing digital asset-based services.

## Asset classification framework

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.
- Security tokens: Subject to certain conditions (as further explained below), some security tokens are accordingly recognised in France as financial instruments.

## Crypto asset regulation

France has implemented a framework for crypto assets, covering utility tokens, payment tokens, and security tokens. See below for an outline of key regulations and requirements governing these digital assets and the entities involved in their services.

- Utility tokens: French law regulates the issuance of utility tokens and Initial Coin Offering (ICO), which is subject to an optional visa of the AMF. Other crypto assets such as cryptocurrencies are outside the scope of this regulation.
- All (fungible) crypto assets (other than securities): Ahead of MiCAR and since 2019, the Pacte Law already sets out a framework for the provision of 'digital asset services' by digital asset services providers (DASP).

Digital asset services are for the most part identical to those provided for under MiCAR.

The framework currently provides for mandatory registration in respect of certain services and for optional authorisation.

For security tokens, the French law allows DLT financial instruments meeting certain conditions to be registered and traded via DLT. More specifically:

- Since 2018, it is possible to register and transfer via DLT financial securities in nominative form, that are not admitted to trading by a central depository
- Since 2023 (DDADUE Act) it has become lawful to register and trade financial securities in bearer form, admitted on a recognized 'DLT market infrastructure'.

In both cases, they are subject to compliance with financial securities law and prospectus regulations.

## Stablecoins

France lacks a specific framework for stablecoins at the national level. However, such assets would fall under the scope of DASP regulations.

## Central Bank Digital Currency (CBDC)

The Banque de France has launched a wholesale digital CBDC experiment programme to establish that a tokenized form of central bank money could improve cross-border payments as well as the finality and security of settlement for a wide range of financial assets.

## Other digital assets

NFTs are generally considered exempt from regulation.

## Registration/licensing regime

Digital assets services providers (for digital assets other than securities): DASPs offering custody, purchase or sale, exchange of digital assets services, and/or exploiting a digital asset trading platform must be registered with the French AMF, after receiving prior approval from the ACPR.

DASPs may also request a specific license from the AMF for the performance of all digital assets services, which entails additional organisational and conduct of business requirements.

# France (continued)

DLT market infrastructures: Entities subject to specific authorisation include investment firms, market operators and central securities depositories (CDS) to operate a DLT multilateral trading facilities, as well as DLT settlement and trading and settlement systems.

Competent authorities: the AMF, the Autorité de contrôle et prudentiel (ACPR) and the Banque de France - depending on the authorization requested.

## Financial crime

AML/CFT rules: For tokens recognised as securities, traditional rules applying to associated regulated services will need to be complied with.

For other digital assets, France has transposed the 5<sup>th</sup> 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:

- DASPs providing custody or sale and purchase 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.
- Other DASPs, offering exchange services or operating a trading platform for digital assets, are subject to ex post compliance control in respect of their AML/CFT obligations.

Travel rule: France also implemented travel rule requirements arising out of FATF Recommendation n° 16 which aimed at ensuring the traceability of crypto-asset transfers at all times. DASPs (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 (this obligation applies to all transactions on digital assets).

## Sales and Promotion

Under French law, communication of simple advertising information, excluding any contractual or pre-contractual document, regardless of the medium, are not subject to the rules on banking and financial promotion.

With respect to product or service-specific marketing and promotion:

- Digital assets that qualify as securities will trigger rules which apply to the marketing of investment products or services in connection therewith
- Other digital assets and/or digital asset-related services (DASP) will also trigger rules on banking and financial promotion, wherever unsolicited contact is made with the customer/purchaser. It should be noted that for utility tokens in particular, any ICO which has not been approved by the AMF cannot give rise to active customer solicitation.

## Pending legislation or imminent regulatory announcements

Article 8 of the DDADUE, introduced a new transitional regime into French law, pending the entry into force of the MiCAR, which will take effect on 1 January 2024. Under this new regime, DASPs will no longer be subject to a mandatory simple registration, but to a mandatory 'enhanced' registration, for the provision of custody services, purchase or sale services, digital asset exchange services, and/or operation of a digital asset trading platform.

An optional license will still be possible for DASPs registered prior to 1 July 2023, and for DASPs which are subject to enhanced registration.

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# Germany

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

Germany's Federal Financial Supervisory Authority (BaFin) is the national competent authority responsible for financial services regulation and supervision. BaFin has since 2013 been working with the German legislator to enable 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.

## 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 had 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 licencing 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). 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.

Sources: 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, 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.

Additionally, the eWpG introduced a new regulated financial service under the KWG, 'crypto securities register management' (Kryptowertpapierregisterführung), though it is not mirrored in the WpIG. This development is complemented by a new regulation on crypto-asset fund units (KryptoFAV), which allows fund managers to issue electronic fund certificates (elektronische Anteilscheine) registered in a crypto securities register under the eWpG instead of physical certificates. These changes follow through from Germany's Fund Location Act (Fondstandortgesetz), enabling institutional investors to invest in crypto-assets.

## Asset classification framework

Various types of tokens and business models under Germany's existing rules 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 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. The existing national regime will transition (in full) to accommodate MiCAR by 30 December 2024. In order to facilitate that, a draft law on the digitalisation of financial markets (Finanzmarktdigitalisierungsgesetz - FinmadiG) has been published as a draft proposal on 23 October 2023. FinmadiG, once it completes its legislative journey, makes targeted amendments to existing EU and domestic law, so as to reinforce MiCAR's but also achieve DORA's as well as the EU's revised Wire Transfer Regulation (WTR II) along with the Crowdfunding Service Provider Regulation's (ECSPR) implementation into and interoperability with other German laws and rulemaking instruments, including those of BaFin.

## FinmadiG's proposed changes

The draft FinmadiG aims to implement and ensure interoperability of several EU Regulations and Directives related to crypto-assets (MiCAR), digital operational resilience (DORA), crowdfunding (ECSPR), and market abuse, as well as to introduce national provisions for the supervision and enforcement of these rules in Germany. Set to enter

# Germany (continued)

into force on 30 December 2024, the draft law consists of several articles that amend various existing EU German laws and regulations applicable to the financial sector. This includes establishing a new law on the supervision of crypto-asset markets (Kryptomärkteaufsichtsgesetz – KMAG) as the implementing act of MiCAR. KMAG clarifies BaFin's supervisory processes and powers for compliance with MiCAR and the KMAG and makes requisite targeted amendments to definitions, concepts, and processes in the KWG and the WpHG, including new reporting and auditing obligations for institutions dealing with crypto-assets. The changes also extend to the Securities Prospectus Act (Wertpapierprospektgesetz – WpPG), the German Investment Code (Kapitalanlagegesetzbuch - KAGB), the Insurance Supervision Act (Versicherungsaufsichtsgesetz – VAG), the ZAG, and the Money Laundering Act (Geldwäschegegesetz – GwG), introducing new rules on valuation, custody, risk management of crypto-assets, authorization, reporting, and auditing of payment service providers, and reinforcing Travel Rule for CASPs. The Finanzkonglomerate-Aufsichtsgesetz (FKAG) will include new rules on the identification, supervision, and reporting of financial conglomerates dealing with crypto-assets, granting BaFin additional supervisory and investigative powers. Similar changes are made in respect of supervision of (mixed) financial holding companies that deal with crypto-assets, along with various measures to implement DORA, ECSPR into German law, and further miscellaneous amendments to align domestic laws and regulations in the financial sector with new EU regulations and directives and the national provisions introduced by the draft FinmadiG.

## Stablecoins

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

## Other digital assets

The classification and regulation of other digital assets, such as NFTs and utility tokens, are yet to be conclusively clarified by the German legislator or BaFin, indicating an area of ongoing development in Germany's regulatory approach to digital finance.

## Central Bank Digital Currency (CBDC)

The Bundesbank is actively involved in the digital euro project.

## Registration/licensing regime

The custody and safekeeping of crypto-assets require authorisation under the German Banking Act (KWG), including activities conducted from outside Germany for those located or ordinarily resident in Germany. This regulated activity is defined as the 'custody, management, and securing of crypto-assets or private cryptographic keys used to hold, store, and transfer crypto-assets for others'. The regulatory requirement and need for authorisation for several DeFi business models and services are not fully clarified by BaFin and the German legislator. Given the crypto-assets' classification as financial instruments under the KWG/WpIG, certain staking and lending activities may be considered regulated lending. BaFin applies a case-by-case, technology-neutral approach to determine the regulatory scope, ensuring parity between crypto-assets and traditional financial assets. It also possesses extensive sanctioning and enforcement powers, including the initiation of criminal proceedings against individuals responsible for non-compliance. BaFin, in its regulatory capacity, maintains a case-by-case and technology-neutral approach to determine the need for authorization and regulation of DeFi business models and services. The regulated activity of crypto-custody, as defined in the KWG, often hinges on the service provider's access to the client's private cryptographic keys. BaFin's broad sanctioning and enforcement powers extend to initiating criminal proceedings against individuals responsible for non-compliance in firms, including those lacking proper authorizations.

## Financial crime

The GwG, transposing AMLD V, extends AML rules to crypto-asset exchanges and wallet providers. Crypto-asset service providers under the KWG or WpIG are obliged entities, requiring robust AML/CTF risk management. Service providers arranging crypto-asset transfers must comply with the 'travel rule' in the KryptoWTransferV.

# Germany (continued)

## Sales and Promotion

Marketing of crypto-assets in Germany depends on their classification. BaFin's intervention measures on CFDs, especially for crypto-assets, impose stricter limitations due to high volatility. Retail clients in Germany face leverage restrictions when trading CFDs with crypto-assets as underlying.

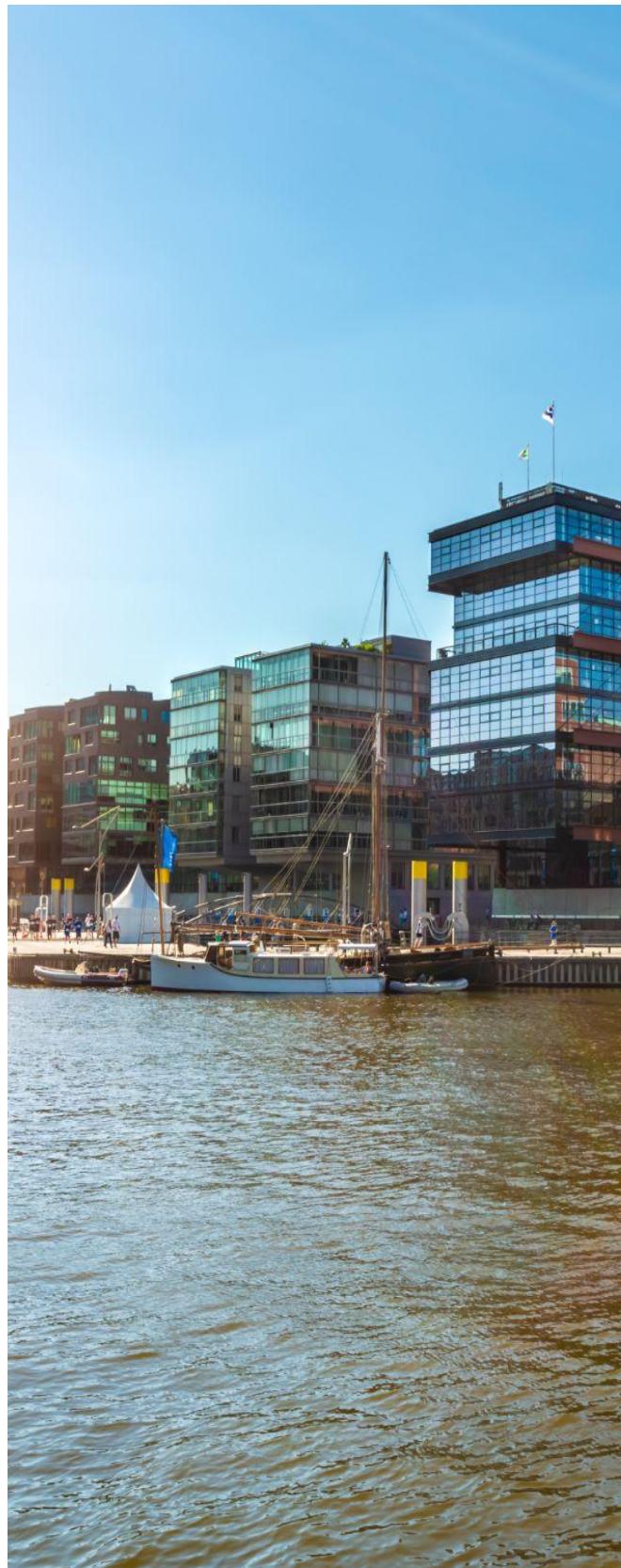
## Pending legislation or imminent regulatory announcements

Germany is set to implement MiCAR, DORA, a new AML Regulation, the Revised Wire Transfer Regulation, and changes to the Crypto Value Transfer Ordinance. Revisions to the EU's payment services and E-Money Directives will also impact crypto-asset service providers.

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Sources: 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.

# Gibraltar

## 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 approach towards the crypto industry, with the aim of attracting the right organisations 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 being included in the DLT Regulations in April 2022.

In December 2021, Gibraltar announced 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.

## Asset classification framework

Gibraltar's regulatory framework does not include a specific taxonomy for digital assets. Virtual assets are either caught by the DLT Regulations or other existing financial services regulatory frameworks.

## Crypto asset regulation

The DLT Regulations have since been superseded by the Financial Services (DLT Providers) Regulations 2020. Any entity which, as a business, stores or transmits value belonging to others using DLT, 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 currently ten 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 subject to regular supervision by the GFSC, including regular meetings, reports, financial submissions and on-site reviews.

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/licensing regime

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 2015 (Relevant Financial Business) (Registration) Regulations 2021 (POCA Registration Regulations).

# Gibraltar (continued)

The POCA Registration Regulations is legislation made under the Proceeds of Crime Act 2015 (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.'

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 tokenized 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.

## Stablecoins

Stablecoin issuers may fall within the scope of the DLT Regulations if they are storing or transmitting value as described above or within the scope of the POCA Registration Regulations. However, consideration should also be given to the potential broader financial services regulatory implications.

Key regulatory frameworks that should be considered are electronic money, investment services and collective investment schemes, depending on how the stablecoin offering and operations are structured.

## 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.

Sources: GFSC: Guidance Note 3 – Financial and Non-Financial Resources, GFIU: Proceeds of Crime Legislative Amendments, March 2021, GFSC: Registrations – Applying for registration – Other VASP activities

## Other digital assets

The DLT Regulation covers all digital assets that are stored or transmitted on behalf of others using DLT technology and the POCA Registration Regulations cover the issuance of other digital assets should they not fall within the DLT Regulation. This includes NFTs and other digital assets. NFTs that are not used for payment or investment purposes, however, may not be deemed virtual assets from a POCA Registration Regulations perspective which means that an issuer of NFTs that are not used for payment or investment purposes, may not be required to register.

## Financial crime

Gibraltar updated the 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

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# Greece

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

The Greek legal system has not introduced a coherent legislative text regulating exclusively crypto assets. As the blockchain ecosystem of Greece is in its formative stages, Greece holds an observational approach towards crypto asset related activities.

Provisions referring to blockchain technology and digital assets can be identified in scattered pieces of various Greek laws. For example, Greek law 4557/2018 on anti-money laundering and terrorist financing, as currently amended, and particularly by law 4734/2020 which transposed the 2018/843 EU Directive (5th AML Directive) (the Greek AML Law), provides the definition of virtual currencies. As per the Greek AML Law, the Hellenic Capital Market Commission (HCMC) is the competent supervisory authority, from an AML perspective, of providers of exchange services between virtual currencies and fiat currencies, as well as custodian wallet providers. The law introduces a registration requirement, with the relevant registers kept by the HCMC. The Greek law 4961/2022 on emerging technologies makes references to blockchain and DLT technology and introduces the first attempt of the Greek legislator to address regulatory issues relating to contracts based on blockchain technology.

As the legal characterisation of crypto assets has not been crystallised, there are voices advocating that crypto-assets may constitute 'financial instruments' and thus fall into the spectrum of 2014/65 EU Directive (MiFID II) which was transposed into the Greek legislation by virtue of law 4514/2018 (the Greek Law on Financial Instruments). Another opinion that was also raised was that crypto-assets constitute 'electronic money' and fall into the scope of Greek law 4021/2011 (as amended) on electronic money (the Greek Law on E-Money), transposing the Electronic Money EU Directive II (EMD 2).

On an institutional level, the Greek authorities acknowledge the rapid expansion of crypto asset related activities, and the need for the creation of a unified national legislative framework or, at least, at this stage, the provision of sound guidelines and robust mechanisms.

Towards this direction, the HCMC adopted the Risk Analysis on 'Crypto-assets and their risks for financial stability', issued by the European Securities & Markets Authority (ESMA) in 2022.

The HCMC has issued public warnings to investors drawing their attention to the risks entailed in the transactions relating to crypto assets. The HCMC has established the Financial Innovation Hub, the Innovation Hub Working Group and the Fintech Forum. The Bank of Greece (BoG) in its annual fintech report of 2021 made specific references to the rapid intake of crypto asset and blockchain related queries. In addition, the BoG has established the Innovation Hub and the so called 'Regulatory Sandbox' to facilitate fintech activities and joined the European Forum for Innovation Facilitators (EFIF). The BoG has issued various warnings concerning trading activities relating to crypto assets. Lastly, Greece has joined the European Blockchain Partnership (EBP).

## Asset classification framework

On a national level there is no distinct classification of crypto assets. Article 3 par. 24 of the Greek AML Law defines the virtual currencies as 'digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily linked to legally circulating currency and does not have the legal status of currency or money, but is accepted by individuals or legal persons as a means of transaction and can be transferred, stored or circulated electronically'. In general, it can be argued that Greece acknowledges the classification of crypto assets into three (3) main categories (payment/exchange/currency tokens investment tokens and utility tokens) as per the provisions of the European Banking Authority (EBA) Report issued on 9 January 2019.

## Crypto asset regulation

Currently, there is no unified legal framework governing crypto assets and no specific legal provisions exist for each category of crypto assets. Greece's national legislation has not, either explicitly or implicitly, prohibited the creation, distribution, trading of crypto assets. Greece has introduced specific licensing requirements and respective formalities on virtual asset providers and crypto asset providers operating in Greece, in an attempt to supervise, from an AML perspective, crypto asset business activities.

Sources: Greek Law 4557/2018 on the prevention and combating of money laundering and terrorist financing, Greek Law 4961/2022 on emerging technologies, Greek Law 4021/2011 on E-Money, Greek Law 4514/2018 on markets of financial instruments, 2021 Annual Report Fintech Innovation Hub of the Bank of Greece, European Banking Authority Annual Report of 2019.

# Greece (continued)

## Stablecoins

To date, there is no harmonised legal framework regulating stablecoins both in an EU and a national level. Due to this legislative gap, national and EU legislators have not concluded on the legal characterisation of stablecoins and in particular on whether stablecoins can be considered 'money', carry contractual rights, or securing redemption rights against an issuer or an asset. Considering the above, on a national level stablecoins may either qualify as 'financial instruments' or as 'electronic money'. It is worth noting that under the second scenario, a relevant authorization/license is required to be granted by the BoG. It is also highly possible that, due to their unique characteristics, many stablecoins cannot fall into the scope of the existing EU financial services legislation.

## Central Bank Digital Currency (CBDC)

National competent authorities are closely monitoring and keeping up with the developments of the digital euro project launched by the European Central Bank.

## Other digital assets

On a national level, there are no specific legal provisions regulating digital assets in general. In respect of non-fungible tokens (NFTs) and the fact that act as a proof of ownership of an underlying asset often associated with art, it can be argued that intellectual property law provisions may apply. In addition to the above and although digital asset related transactions are performed on an anonymous basis, individuals who perform relevant transactions, could be potentially linked with an array of evidence (data revealing the location, avatars, particulars of an online transaction). Taking the above into consideration, one could argue that data privacy provisions could also apply.

## Registration/ Licensing regime

As mentioned above, the Greek AML Law is also applicable on providers of exchange services between virtual currencies and fiat currencies and custodian wallet providers (collectively the 'Providers'). According to Article 6(1)(b) of the Greek AML Law, the HCMC has been appointed as the competent authority for the registration and supervision for the prevention of money laundering and terrorist financing of the Providers. By virtue of the HCMC's decision no. 5/898/3.12.2020 (as amended), Providers who intend to provide their services in Greece or from Greece to a foreign territory, are required to be registered, prior to the commencement of their activities, with the relevant registers held for each category of Providers. However, such registration does not provide any type of authorisation or license granted by the HCMC to the registered Providers. In that respect, the registered Providers must ensure not to mislead investors regarding the level of protection that they enjoy from the HCMC based on the registration of the Provider with the Register. The relevant registers entailing the entries of the Providers is published on the HCMC's website.

## Financial crime

According to the Greek AML Law, the Providers are bound by its provisions and specific AML and transparency requirements have been imposed on them.

## Sales and Promotion

Currently in Greece there is no legal regulatory framework regarding the sales and promotion activities relating to crypto assets. Due to the current ambiguity around the legal nature and definition of crypto assets, it can be argued that crypto assets may qualify as 'financial instruments' under the Greek Law on Financial Instruments. Based on this assumption, general rules arising from the local legislative framework on the sale and promotion of investment products may be applicable. However, it is safe to say that MiCAR's unified legislative framework shall most likely cover that legislative gap.

# Greece (continued)

## Pending legislation or imminent regulatory announcements

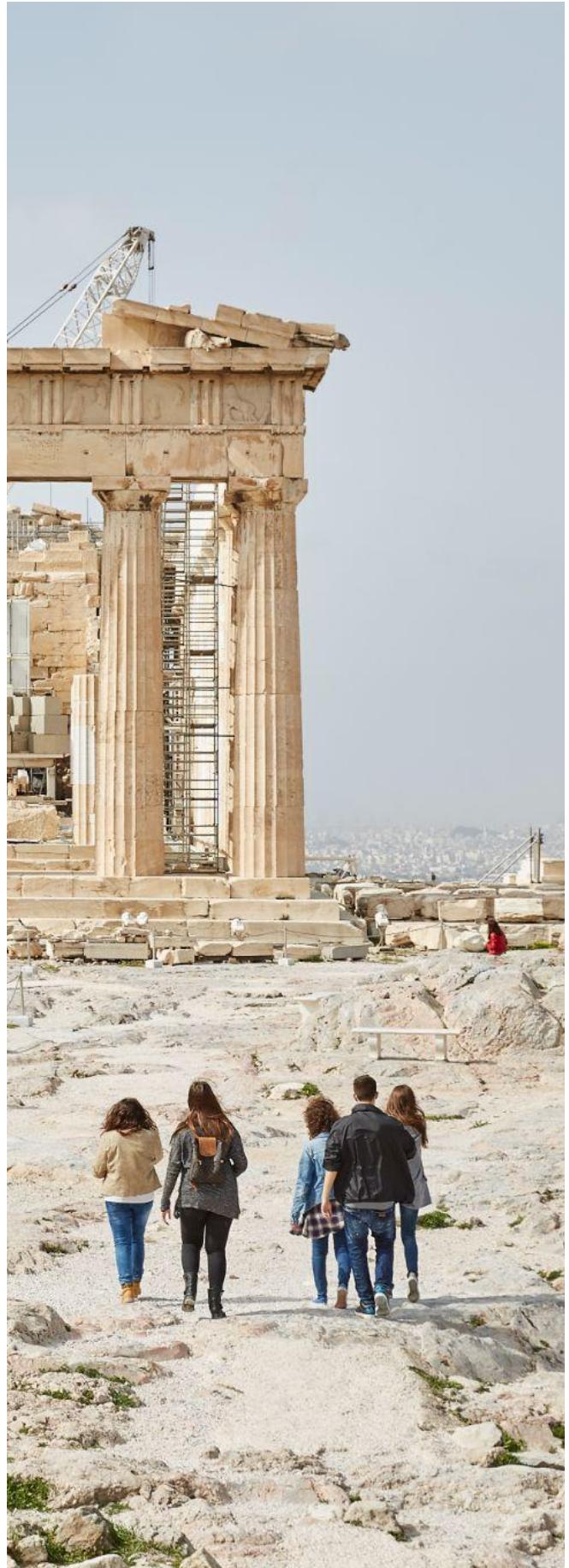
The HCMC and the BoG together with the national legislator are closely monitoring the ongoing developments regarding the formation of the regulatory regime of digital currencies on a European level.

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# Hong Kong SAR

## Government outlook

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

In October 2022, the Financial Services and Treasury Bureau (FSTB) issued a policy statement setting out the Government's vision, approach and proposed future steps to facilitate a 'sustainable and responsible' development of the VA sector. Subsequently in August 2023, the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC) and the Insurance Authority issued a roadmap to promote fintech adoption (including DLT) in the financial sector.

## Asset classification framework

Under Hong Kong SAR law, cryptocurrencies are not legal tender regulated by the HKMA and do not qualify as money.

In a joint circular published in October 2023 (Joint Circular), the SFC and the HKMA adopted the definition of 'virtual assets' in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO), which defines VA as a digital representation of value that:

(a) is expressed as a unit of account or a store of economic value; (b) (i) functions (or is intended to function) as a medium of exchange accepted by the public (1) as payment for goods or services, (2) for the discharge of a debt, or (3) for investment purposes, or (ii) provides rights, eligibility or access to vote on the management, administration or governance of any cryptographically secured digital representation of value; and (c) can be transferred, stored or traded electronically. Amongst other things, digital representations of value issued by central banks are explicitly carved out from the definition of VA.

The definition of VA in the AMLO is consistent with the one adopted by the Financial Action Task Force. On security tokens, the SFC distinguishes between Digital Securities, which comprise all securities which utilise DLT or similar technology in their life cycle, and a narrower definition of 'Tokenised Securities' (which are tokenised forms of traditional securities).

While Digital Securities are likely to be classed as complex products and therefore are not generally available for distribution to retail investors, in November 2023, the SFC released a circular clarifying that.

Tokenised Securities, depending on the complexity of the underlying security, may be distributed to retail investors, provided that the products are suitable to the relevant investor. It should be noted that another circular published by the SFC in November 2023 paves the way for the tokenisation of SFC-authorised investment products (such as collective investment schemes) subject to prior consultation with the SFC and other requirements relating to disclosure, staff competence and distribution.

## Crypto asset regulation

In Hong Kong SAR, cryptocurrencies are considered a form of VA and generally categorised either as security tokens or utility tokens.

VAs which exhibit characteristic characteristics of 'securities' under the Securities and Futures Ordinance (SFO) are considered 'security' tokens that fall under the jurisdiction of the SFC.

Since 1 June 2023, non-security tokens are regulated in Hong Kong SAR by the SFC to the extent that a party proposes to operate a virtual asset trading platforms (VATP) in Hong Kong SAR (or offer VATP services into Hong Kong SAR), even if that VATP will only list non-security tokens for trading. This is the first time the SFC has extended its jurisdiction over assets that are non-securities (as defined under the SFO).

### Stablecoins

Stablecoins are generally considered a subset of VAs and are also currently not legal tender in Hong Kong SAR. In January 2023, the HKMA proposed a stablecoin licensing regime requiring entities to obtain a licence from the HKMA if they (a) conduct a regulated activity (RA) in Hong Kong SAR; (b) actively market a RA to the Hong Kong SAR public; (c) conduct a RA concerning a stablecoin that references the value of the Hong Kong SAR dollar regardless of whether such RA is conducted in Hong Kong SAR or actively marketed to the Hong Kong SAR general public; or (d) are considered by the HKMA that they should be regulated having regard to "matters of significant public interest".

Sources: FSTB, HKMA, SFC: dedicated web pages to fintech developments, SFC: New Roadmap to Promote Fintech Adoption in Financial Services Sector, 08/2023, HKMA: Conclusion of Discussion Paper on Crypto-assets and Stablecoins, 01/2023, SFC: Licensing Handbook for Virtual Asset Trading Platform Operators, 06/2023, SFC: Guidelines for Virtual Asset Trading Platform Operators, 06/2023, SFC: Joint Circular on Intermediaries' Virtual Asset-related Activities, 10/2023.

# Hong Kong SAR (continued)

## Central Bank Digital Currency (CBDC)

Hong Kong SAR continues to lead global research and testing of a potential wholesale CBDC with (1) the Multiple CBDC Bridge (mBridge) and (2) the eHKD projects. More recently, the HKMA, Bank for International Settlements Innovation Hub and the Bank of Israel jointly experimented on a retail CBDC project.

## Other digital assets

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

## Registration/licensing regime

**VATP Regime:** On 1 June 2023, the SFC published the Guidelines for VATPs which kickstarted the VATP licensing regime, with transitional arrangements for certain qualified unlicensed exchanges that had established a significant presence and operations in Hong Kong SAR prior to that date.

Subject to certain conditions, licensed VATPs may allow trading of non-security VAs by retail investors.

In line with the existing licensing regime for carrying out RA under the SFO, the VATP licensing regime also imposes certain baseline requirements on potential applicants including a sufficient presence in Hong Kong SAR. In addition, the SFC may impose any conditions on the VATP licence to be granted, including financial resources and risk management policies.

**VA management:** In October 2019, the SFC introduced a new licensing regime for businesses directly managing a portfolio of VAs.

Under such regime, managers who currently hold a regular Type 9 (Asset Management) licence (Type 9 Managers), and who seek to directly manage a portfolio of VAs that account for 10% or more of that portfolio's gross asset value (GAV), must expand their licences to a Type 9 VA licence with additional terms and conditions (T&Cs) imposed on their existing Type 9 license.

However, Type 9 Managers managing a portfolio of VAs below such 10% threshold will only need to notify the SFC that they intend to manage such VAs (without requiring the SFC's consent). New managers managing a portfolio of pure non-security VAs may also choose, but are not required, to apply for a Type 9 VA licence.

The latest set of T&Cs was published in October 2023 and it imposes requirements on managers holding a Type 9 VA licence (Type 9 VA Managers). Under the T&Cs, Type 9 VA Managers must obtain insurance in respect of the fund's VA but are allowed to provide discretionary accounts management services to retail investors (subject to conditions such as VA knowledge test and large-cap VAs only) and offer VA funds to retail investors (subject to the relevant authorisation and prospectus rules).

## Distribution, dealing and advisory services:

In January 2022, the SFC and HKMA expanded their jurisdictions over Type 1 (dealing in securities) and Type 4 (advising on securities) RAs involving non-security VAs. Entities which are licensed to carry out Type 1 and Type 4 RAs, and which intend to carry out distribution activities and dealing and advisory services involving non-security VAs must comply with the T&Cs additionally imposed by the SFC. The latest T&Cs were published in October 2023 and the requirements imposed cover VA knowledge, suitability and risk-related disclosure, VA distribution, dealing and advisory services to retail investors subject to additional conditions such as risk tolerance assessment and high-cap VAs only.

**ETFs:** In October 2022, SFC-licensed entities were allowed to offer trading of eligible VA futures ETFs to retail investors subject to the SFC's prior authorisation with additional requirements (such as Bitcoin and Ether futures only and a good tra

## Financial crime

VASPs registered in Hong Kong SAR are subject to the AMLO, which sets out requirements similar to those imposed on traditional financial institutions such as banks. In June 2023, the SFC amended its Guideline on AMLO to incorporate sector-specific standards for VASPs.

# Hong Kong SAR (continued)

## Sales and Promotion

In the Joint Circular, the SFC and the HKMA reiterated that generally VA-related products (except for a limited suite of exchange-traded VA-related derivative products) are likely to be considered 'complex products' under the SFO and should only be offered to 'professional investors'.

## Pending legislation or imminent regulatory announcements

A public consultation issued by the HKMA on a Mandatory Stablecoin Licensing Regime is expected in due course.

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Sources: FSTB, HKMA, SFC: dedicated web pages to fintech developments; SFC: New Roadmap to Promote Fintech Adoption in Financial Services Sector, 08/2023; SFC: Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers) 06/2023.

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# Hungary

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

Hungary does not have a specific legal framework for crypto-assets. This will change with the implementation of MiCAR at the EU-level.

The relevant local legislation is limited to following areas: AML/FCT, tokenization of financial instruments e.g. securities (i.e. digitalisation via blockchain technology), and Criminal Procedure Act, allowing the seizure of virtual assets as an electronic data.

The National Bank of Hungary (NBH) acts as the supervisory. It exercises supervision over entities subject to financial sectoral laws. The main aspects of its supervision are: prudential operation, integrity of capital markets, consumer protection, AML/CTF, and sanctions.

The NBH has identified and officially communicated significant risks associated with crypto-assets. On the other hand, the NBH is actively involved in promoting crypto regulation and supporting the spread of innovative financial solutions and the creation of the fintech ecosystem. It has launched several pilot projects to test the technology (e.g. private blockchain based NFT issuance platform, CBDC-related Student Safe project), and has opened a platform (Innovation-Hub) for consultation for innovative fintech firms, and established a regulatory test environment.

Through its recommendation, the NBH gives support, explanation and also sets expectations for financial institutions regarding the AML treatment of their customers offering services related to virtual means of payment. The NBH also prepares, by way of individual requests, unique assessments which could also be requested in the case of specific crypto-relevant questions.\* The assessments contain legal interpretation and apply only to the facts on which the assessment is based, and are not considered binding.

The Hungarian Financial Intelligence Unit (FIU) acts as a 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.

## Asset classification framework

The EU Digital finance package (MiCAR, DORA and the DLT Pilot Regime regulations) will apply directly. There are no general rules and definitions covering the different types of virtual assets set out in Hungary. This will change with the implementation of MiCAR at the EU-level.

On the AML/FTC Act, 'virtual currency' means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, it does not possess a legal status of currency or money, but is accepted as a means of exchange and which can be transferred, stored and traded electronically.

According to the existing regulations, crypto-assets do not qualify as:

- Fiat money, but in the case of contracts, if the contracting parties agree that the consideration can be settled with crypto-assets, then the buyer is entitled to make the payment with crypto-assets. Additionally, the seller can demand that the buyer pay with such assets.
- Financial instruments in most cases. However, each case must be examined individually in detail, including the properties of the asset, the customers, the platform, the activity performed with it, and the entity performing the activity. Some of the crypto-assets already belong to the category of financial instruments, based on the current EU and Hungarian regulations. Therefore, all sectoral regulations apply to these instruments and the issuers of such instruments. The Act on Investment Firms allows for the 'tokenization' of financial instruments, i.e. the digital representation of financial instruments in shared ledgers or the issuance of traditional financial instrument classes in tokenized form. The aim of the legislation is to ensure the technology-neutral solutions.

## Crypto asset regulation

No regulatory framework is adopted for crypto assets. This will be defined with the adoption of MiCAR at the EU-level.

## Stablecoins

No regulatory framework is adopted for stablecoins. This will change with MiCAR at the EU-level.

Sources: NBH: Fintech És Digitalizációs Jelentés, July 2023, NBH: Conscious money management digitally and playfully, 12 May 2023. \*e.g. legal assessment of the operation of Bitcoin ATM; Assessment regarding subscription platform providing educational materials related to financial instruments and crypto market instruments.

# Hungary (continued)

## Central Bank Digital Currency (CBDC)

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

## Registration/licensing regime

No registration or 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 need to comply with AML/CTF and sanctions obligations, approved by the FIU. Changes will occur with the adoption of MiCAR at the EU-level.

## Financial crime

In practice, cases which give rise to suspicion of money laundering, terrorist financing, or suspicion that the property concerned is derived from a criminal offence (reportable cases specified in AML/CTF Act) also include the category of financial crime. Thus, if data gathered by an obliged service provider relates to the suspicion of financial crime, it must also be reported.

The rationale is as follows: Money that has been laundered must originate from a prior criminal act (predicate offence), which could be of a financial nature or of a different type. If a cryptocurrency service provider, governed by the AML/CTF Act, identifies such a scenario, the provider is obligated to report it.

## Sales and Promotion

No specific regulations exist for advertising or promoting crypto-assets, nor are there explicit guidelines for the conduct of entities engaged in crypto-asset activities.

Only the existing general rules can be applied if they meet the necessary criteria. Transactions involving commodities, tokenized representations of financial instruments or commodities, and derivatives based on crypto assets must adhere to applicable EU regulations (e.g. MiFID II, MiFIR, MAR, etc.) and Hungarian laws (e.g. the Act on Investment Firms, the Act on the Capital Market, and regulations concerning commercial advertising).

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# India

## Government outlook

India's emergence as an innovation hub, with the accommodative regulatory regime and conducive policy landscape, has led to the fostering of a thriving fintech ecosystem. The policy makers and financial regulators have encouraged the adoption of blockchain and DLT for governance and financial ecosystem. However, they have been more cautious than optimistic towards virtual assets like cryptocurrencies.

India's Central Bank, the Reserve Bank of India (RBI), prohibited regulated financial entities from facilitating sale and purchase of cryptocurrencies. In 2020, the Supreme Court of India ruled that the prohibition was unconstitutional.

In September 2023, at the G20 summit, India joined its fellow G20 member countries in unanimously adopting the G20 New Delhi Leaders' Declaration. The Declaration endorsed the Financial Stability Board's (FSB's) high-level recommendations for the regulation, supervision and oversight of crypto-asset activities and markets as well as global stablecoin arrangements.

The G20 meeting between the 'Finance Ministers and Central Bank Governors' (FMCBG), held in October 2023, unanimously adopted the roadmap proposed in IMF's Synthesis Paper as the G20 Roadmap on crypto-assets. The group called for swift and coordinated implementation of the G20 roadmap on crypto-assets through global coordination

## Asset classification framework

The Government has categorised all virtual currencies, NFTs and other digital assets as virtual digital assets (VDA) under the Income Tax Act, 1961, and are defined as under:

- Any information or code or number or token (not being Indian currency or foreign currency) which meets the prescribed conditions;
- NFT or any other token of similar nature, by whatever name called; and
- Any other digital asset, as the Government may specify by notification.

## Registration/licensing regime

There is no framework to register/license VASPs (crypto platforms) in India.

## Crypto asset regulation

India does not have an overarching regulatory framework governing the trading in VDAs or setting up/operations of VASPs, although the activities are not explicitly prohibited. Cryptocurrencies cannot be used as a legal tender or a medium of exchange.

In March 2023, the Government bought all VASPs under the ambit of Prevention of Money Laundering Act, 2002 (PMLA), as a reporting entity. Declaring VASPs as reporting entities does not amount to regulating crypto exchanges or crypto transactions. The PMLA amendment is aimed at safeguarding the financial ecosystem and customers from risks of trading in VDAs. The notification defines VASPs in line with the recommendations made by the Financial Action Task Force (FATF) in 2021.

VASPs are defined as any natural or legal person carrying out in the course of business as an activity for the purposes as under:

- Exchange between virtual digital assets and fiat currencies;
- Exchange between one or more forms of virtual digital assets;
- Transfer of virtual digital assets;
- Safekeeping or administration of virtual digital assets or instruments enabling control over virtual digital assets; and
- Participation in and provision of financial services related to an issuer's offer and sale of a virtual digital assets.

## Stablecoins

The outlook of the Government and the RBI towards stablecoins has been cautionary. Since many stablecoins are VDAs based on a foreign currency, they are deemed to be high-risk as they could pose a substantial threat to India's economic stability and sovereignty of its macroeconomic policies.

Sources: PwC India: Future of digital currency in India, August 2023, G20: G20 New Delhi Leader's Declaration: September 9-10, 2023, BIS: The crypto ecosystem: key elements and risks: July 2023, FSB: High-level Recommendations for the Regulation, Supervision and Oversight of Crypto-asset Activities and Markets: Final report; July 17, 2023, G20: Fourth G20 Finance Ministers and Central Bank Governors Meeting: October 12-13, 2023, Government of India: Section 2(47A) of the Income Tax Act, 1961.

# India (continued)

## Central Bank Digital Currency (CBDC)

The RBI released its 'Concept Note on CBDC' in October 2022, outlining roadmap and design considerations for issuance of CBDCs in India (Digital Rupee (e₹)). The RBI launched pilots for wholesale and retail CBDCs in November and December 2022. In 2023, the RBI expanded the scope of retail payments through CBDC by making CBDC-Retail QR code interoperable with Unified Payments Interface (UPI) QR code, India's leading instant digital payments system.

## Financial crime

Since trading in VDAs facilitated by VASPs is deemed as high-risk, the RBI has urged its regulated entities to carry out customer due diligence processes of those customers who transact in VDAs, in line with regulations governing the standards for KYC, AML, CFT and comply with the obligations of regulated entities under PMLA and relevant provisions under FEMA for overseas remittances.

In April 2022, the Government vide Indian Computer Emergency Response Team's Directions (CERT-In Directions) appointed the Computer Emergency Response Team (CERT) as the nodal cybersecurity agency. The Government has mandated that VASPs and entities like VASPs must maintain KYC data and records of financial transactions for at least a period of five years.

Further, VASPs must comply with KYC obligations, in accordance with RBI, Securities and Exchange Board of India (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.

Additionally, as a part of its obligations under the PMLA, the VASPs must comply with Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (PML Rules).

VASPs must ensure Customer Due Diligence (CDD) for account-based relationships (in addition to compliances vis-à-vis CERT-In Directions), ongoing Customer Due Diligence, maintenance of records, registration with Central KYC Registry (CKYCR), and reporting to FIU-IND.

## Sales and Promotion

There is no dedicated regulation on sales and promotion of virtual currencies. The Advertising Standards Council of India (ASCI), a membership-based self-regulatory body, has issued guidelines for advertising and promotion of VDAs and services (VDA Ad Guidelines). The Guidelines are only binding to ASCI members for ads across any medium, and to ads on cable television (for members or non-members).

The guidelines require disclaimers to be added in a VDA advertisement and prohibit the use of certain words like 'currency, securities, custodian, and depositories' in advertisements.

## Pending legislation or imminent regulatory announcements

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 proposed to promote the 'underlying technology of cryptocurrencies and use cases. The Bill is presently under discussion and has not yet been tabled. However, it is important to highlight that India has already introduced a pilot of CBDC wholesale and retail.

As a part of its commitment towards the New Delhi Leader's Declaration (2023 G20 Summit in New Delhi), the Government has reaffirmed its stance that any step towards regulating virtual currencies must be in conjunction with international cooperation as the ripple effects of any legal direction towards virtual currencies will transcend international boundaries.

# India (continued)

## Prudential Treatment

There is no dedicated prudential framework for virtual currencies. However, in 2021, the Government amended the Companies Act to mandate that all Indian companies must declare details about crypto or virtual currencies transactions, 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, deposits or advances from any person for the purpose of trading or investing in VC.

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# Ireland

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

The Central Bank is the competent authority in Ireland for the authorisation of financial services firms. The CBI is measured in their approach to crypto assets and has issued materials to consumers about the risks associated with investing in crypto assets. The CBI does not recognise crypto assets as legal tender however, there is currently no prohibition or ban on the ownership of crypto assets in Ireland.

The CBI is the designated as the National Competent Authority for the authorisation and supervision of entities subject to the MiCAR. The CBI is in the early stages of integrating MiCAR into its supervisory and authorisation processes and methodologies, and will issue further communications regarding the MiCAR application process in Ireland.

In April 2021, Ireland transposed the EU's Fifth Anti-Money Laundering Directive (5AMLD) into national law, which brought Virtual Asset Service Providers (VASPs) under EU AML regulations. Firms which meet the definition of a 'VASP' are required to register with the CBI and comply with ongoing AML/CFT requirements.

Currently the CBI does not permit direct investment in digital assets for professional investors. However, in April 2023, the CBI released new guidelines for Qualifying Investor Alternative Investment Funds (QIAIFs) intending to invest in crypto assets. Professional investors can gain indirect exposure to crypto assets of up to 20% of Net Asset Value for open-ended QIAIFs and up to 50% of Net Asset Value where the QIAIF has either limited liquidity or is closed ended.

## Asset classification framework

The current CBI regulations do not specify a taxonomy for crypto assets. While considering crypto assets, the CBI differentiates between 'backed crypto assets' and 'unbacked crypto assets'. The CBI has an open outlook on backed crypto assets in the MiCAR (E-money tokens and Asset Referenced Tokens), as firms' will be required to have in place appropriate reserves and controls.

Unbacked crypto assets (including poorly or unreliably backed) are one of the reasons for the CBI's concern and caution to consumers.

## Crypto asset regulation

Currently, firms providing crypto services, such as exchange, transfer, custody and issuance of crypto are required to register with the CBI and comply with AML/CFT obligations. However, AML/CFT obligations provided in MiCAR will apply directly, once implemented.

## Stablecoins

Ireland does not have specific regulations tailored exclusively to stablecoins. However, under MiCAR, stablecoins will be classified as either ARTs or EMTs.

## Other Digital Assets

There are no specific legal provisions regulating other digital assets such as NFTs. While NFTs are out of scope for MiCAR, there is the potential for further policy development to capture new and innovative aspects of other digital assets.

## Central Bank Digital Currency (CBDC)

The CBI has recognised the need to reconsider the way in which Central Banks deliver core functions and core objectives in light of an evolving digital economy. With support from the wider Eurosystem (ECB), the CBI is investigating the potential issuance of a CBDC, the digital euro.

## Registration/licensing regime

Many crypto asset service providers seek authorisation in Ireland through an e-money and/or VASP license.

The CBI is responsible for the AML/CFT registration and supervision of VASPs. Firms which qualify as a VASP are required to register with the CBI for AML/CFT purposes only. Each applicant seeking registration must satisfy the CBI that it can meet the obligations under the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2021.

The CBI is responsible for the authorisation, prudential regulation and supervision of e-money firms. Ireland is home to a substantial number of e-money firms which seek authorisation due to the strong regulatory framework, ability to passport into other EU Member States, favourable tax regime and access to a well established financial services ecosystem.

# Ireland (continued)

## Financial Crime

VASPs are 'designated persons' for the purposes of the Criminal Justice (Money Laundering and Terrorist Financing) Acts (CJA) 2010 to 2021 and are required to comply with the AML/CFT obligations contained under Part 4 of the CJA 2010 to 2021.

VASPs in Ireland are required to implement robust AML and KYC procedures, including a comprehensive ML/TF risk assessment of their business and must conduct thorough customer due diligence to reduce the risk of ML/TF. VASPs are also obligated to carry out ongoing monitoring and report any suspicious transactions to the relevant authorities.

Non-compliance may result in enforcement actions. Ireland collaborates with international organisations and authorities to share information and combat cross-border financial crimes.

## Sales and Promotion

The CBI remains concerned at the potential for consumer harm and, in particular, discourages the marketing of unbacked crypto assets to the public. Mainly on aggressive advertising – which is sometimes false or misleading – through the use of 'influencers' to promote crypto while not disclosing the fact they are being paid. This raises a question as to the need for bringing a cross authorities response on crypto advertising via social media.

Advertisements and marketing materials for crypto assets must be accurate, clear, and not misleading. Any claims made about the assets or associated investments should be substantiated. Advertisements must prominently display warnings about the risks associated with investing in crypto assets. These warnings are intended to inform potential investors about the volatility and speculative nature of the market. Any entity involved in solicitation or marketing of crypto assets may be subject to regulatory scrutiny from CBI.

## Pending legislation or imminent regulatory announcements

The CBI has commenced its preparation for the implementation of MiCAR and established a cross-sectoral team to integrate MiCAR into the CBI's supervisory and authorisation process. In addition to MiCAR and looking at the cross-global nature of crypto, the European Supervisory Authorities, European Central Bank, Financial Stability Board, and other standard-setters continue to monitor and develop positions on crypto assets, thus informing the future direction of regulations. The CBI intends to support the European Commission's plan to continue to monitor crypto assets and to consider possible further regulation in this area.

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# Isle of Man

## Government outlook

The Isle of Man Government is currently working with the Isle of Man Financial Services Authority and other Government agencies to further develop the fintech industry in the Isle of Man. In support of this effort, the Isle of Man Financial Services Authority sought commentary from the industry on the current disposition towards crypto-assets and the potential for a broader regulatory framework.

## Asset classification framework

Crypto asset business, or convertible virtual currency (CVC) activity, was brought under the remit of the Isle of Man Financial Services Authority by amendment to the Designated Business (Registration and Oversight) Act 2015.

The Isle of Man Financial Services Authority's regulatory approach is driven by the nature of the activity, rather than the medium through which the activity is conducted.

Therefore, CVC activity which bear the characteristics of a regulated activity, set out in the Regulated Activities Order 2011 (as amended), may fall within the established regulatory framework.

## Crypto asset regulation

CVC's, subject to regulation:

- security tokens which meet the definition of investments set out in the Regulated Activities Order 2011 (as amended); and
- e-money tokens which meet the definition of electronic money set out in the Regulated Activities Order 2011 (as amended).

## Stablecoins

Stablecoins meet the definition of Electronic Money, set out in the Regulated Activities Order 2011 (as amended). Firms seeking to issue and provide payment services relating to Stablecoins require a Class 8 (Money Transmission Services) Licence.

## Central Bank Digital Currency (CBDC)

The Isle of Man Government has made no announcements concerning a CBDC.

## Other digital assets

NFT's and related activities, e.g. arranging deals or providing safe custody of NFT's, may fall within the scope of the established regulatory framework, if the NFT meets the definition of investments set out in the Regulated Activities Order 2011 (as amended).

## Registration/licensing regime

All CVC firms are required to register as a Designated Business with the Isle of Man Financial Services Authority. Those CVC firms seeking to conduct business that meets the definition of a regulated activity, must be supervised by the Isle of Man Financial

## Financial crime

Regulated and Designated Business CVC firms are required to comply with the requirements of the Proceeds of Crime Act 2008 and the Anti-Money Laundering and Countering the Financing Terrorism Code 2019.

## Sales and Promotion

CVC firms subject to regulation are subject to the same conduct of business rules applicable to traditional regulated firms.

## Pending legislation or imminent regulatory announcements

The development of FINTECH remains an ongoing process and there is no pending legislation within the Isle of Man Government's programme.

Following its consultation with industry, the Isle of Man Financial Services Authority has elected not to broaden the regulatory perimeter at this time. However, It is anticipated that a Travel Rule (Virtual Assets) Code will be introduced in 2024.

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# Italy

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

The Government has not set a specific regulatory framework or taxonomy for digital assets.

However, the International Regulatory Framework has seen the entry into force of the MiCAR, the legislative document with the aim of regulating the crypto-asset market.

As a Regulation, MiCAR will be adopted in the Italian legislation at the same time as the adoption of the legislation at European level.

## Asset classification framework

There are no general rules and definitions covering the different types of virtual assets set out in Italy. The EU Digital finance package (MiCAR, DORA and the DLT Pilot Regime regulations) will apply directly, once implemented.

## Crypto asset regulation

No specific national regulation applies for crypto assets. In 2022, the Bank of Italy issued non-binding guidelines for market participants operating in the digital asset market, whereas the public authority responsible for regulating the Italian financial markets (CONSOB) supervises digital asset services which could trigger reserved activities or public offerings of financial products/investments.

The 'Legge di Bilancio 2023' introduced provisions to regulate the taxation of cryptocurrencies domestically, in line with the possible introduction of the 'DAC8' at the European level.

As mentioned above, the crypto asset regulation provided in MiCAR shall be adopted in Italy.

## Stablecoins

No regulatory framework has been adopted for stablecoins. However, under MiCAR, stablecoins will be classified as either ARTs or EMTs.

More regulatory standards regarding stablecoins can be found in the treatment framework set out by the Basel Committee on Banking Supervision (BCBS), where the classification rules and criteria will be applied to stablecoins.

## Central Bank Digital Currency (CBDC)

The Bank of Italy participates in the work carried out by the European Central Bank on the possible issuance of the digital Euro.

## Other digital assets

Regulators are still at early stages of assessing their approach towards wider digital assets. However, the application of the DLT Pilot Regime has opened the door to the tokenization of traditional assets.

The entry into force of the DLT Pilot, together with the applicability of MiFID II at a European level, provides a dedicated regulatory framework for the so-called 'security tokens' within the Member States of the Union.

MiCAR itself provides requirements aimed at regulating types of crypto-assets different from the stablecoins. Specifically, the Regulation details the regulatory obligations with reference to the so-called other tokens of the regulation (i.e. utility tokens).

## Registration/licensing regime

Virtual assets service providers (VASPs) are required to be enrolled in the Registry held by the Organismo Agenti e Mediatori (OAM) which is the body in charge of registering crypto operators operating on national soil.

The Registry dedicated to Providers of services related to the use of virtual currency and digital wallet services (VASP) became operational in May 2022.

Sources: European Commission: Proposal for a Regulation of the European Parliament and of the Council on the establishment of the digital euro, COM(2023) 369 final, 28 June 2023, European Commission: Proposal for a Regulation of the European Parliament and of the Council on the legal tender of euro banknotes and coins, COM(2023) 364 final, 28 June 2023, BCBS: Prudential treatment of cryptoasset exposures, 16 December 2022, Comunicazione della Banca d'Italia in materia di tecnologie decentralizzate nella finanza e cripto-attività, 15 June 2022, Testo della legge 29 dicembre 2022, n. 197, recante: «Bilancio di previsione dello Stato per l'anno finanziario 2023 e bilancio pluriennale per il triennio 2023-2025, Regolamento sull'emissione e circolazione in forma digitale di strumenti finanziari, 10 July 2023.

# Italy (continued)

## Financial crime

VASPs are subject to AML provisions, pursuant to Legislative Decree no. 231 of 2007.

In May 2023, the Italian Financial Intelligence Unit (UIF) published a set of new anomaly indicators. In particular, two new indicators are referred to virtual assets: (i) indicator 26 considers the transaction to be suspicious when there is an inconsistent use of crypto-assets in terms of amount, frequency and method of use (including the origin and destination of the funds) with respect to the characteristics of the client and (ii) indicator 27 considers the transaction in virtual assets to be suspicious when it is not possible to clearly trace the beneficial owner or, when it is connected, even indirectly, with risky countries.

## 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).

## Pending legislation or imminent regulatory announcements

On 10 July 2023, CONSOB launched a public consultation aimed at defining the Regulation governing the list of 'digital circulation register managers', in implementation of the DLT Pilot.

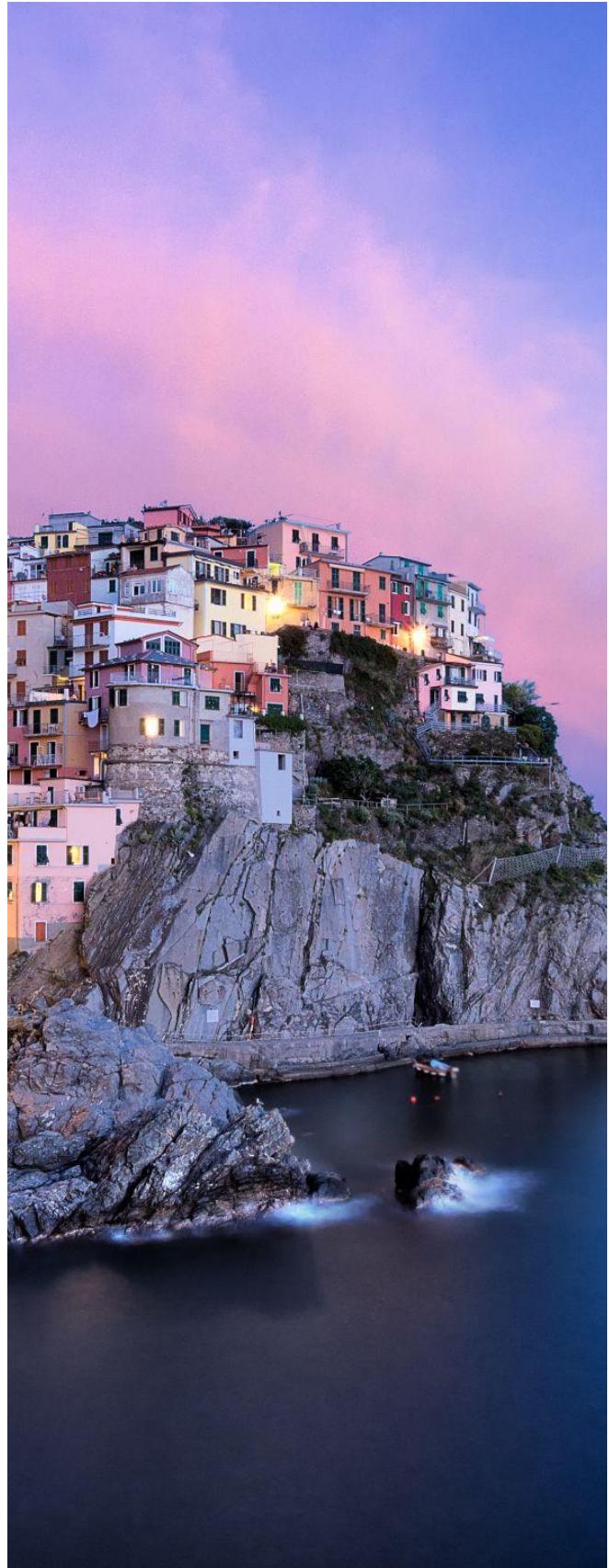
Regarding MiCAR there is the need to wait for implementing regulation.

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Sources: CONSOB: Regolamento sull'emissione e circolazione in forma digitale di strumenti finanziari, 10 July 2023.

# Japan

## Government outlook

The Government has indicated web 3.0 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 web 3.0 advancement initiative aimed at moving the digital asset economy forward.

In April 2023, the Liberal Democratic Party (as ruling party) published a web 3.0 white paper to demonstrate its continued commitment to web 3.0.

## 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 (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 categorised 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 and Crypto Assets Exchange Association (JVCEA) which is a self-regulatory organisation, and firms are expected to 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). Further legislation requesting firms to follow the travel rule became effective in June 2023.

## 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 2023, the Amendment to the PSA came into effect, which defines the status of stablecoins denominated in legal currency and separates 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.

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Sources: Bank of Japan: Commencement of Central Bank Digital Currency Experiments (Proof of Concept Phase 2), 25 March 2022, Central Bank Digital Currency Experiments: Results and Findings from 'Proof of Concept Phase 2', 29 May 2023

# Latvia

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

Latvia does not have a regulatory framework to specifically target virtual assets, including crypto assets. This will change with the implementation of MiCAR at the EU-level.

Regulatory authorities, including the Bank of Latvia and State Revenue Service (SRS) categorise virtual assets by their functional use and resulting obligations.

Virtual asset can be used for: contractual means of payment, to make payments for goods or services between parties which accept the specific payment type; charitable activities; or consumption activities (i.e. where the virtual assets grant access rights to virtual assets issuer's platform or the right to use a product or service produced by the issuer).

The performance of the activities between parties are mainly regulated by a mutual contractual agreements based on private law transactions (including Civil Law, Regulations on distance contract, Law on Consumer Rights Protection and Advertising Law). Specifically for charitable activities, Law on Taxes and Fees is applicable and Public Benefit Organisation Law must be additionally taken into consideration as provided by the Bank of Latvia.

If the virtual assets are intended to fulfill the functions listed above, they are not obliged to obtain licence or register with the Bank of Latvia or SRS, and are not considered to be the subjects of Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing (AML/CTPF Law).

If the virtual asset is used as a financial instrument or financial instrument to attract public funds (investment-type virtual assets, issued tokens and e-money tokens), the issuance of virtual assets and the monitoring of the activity of the issuers is in the competence of the Bank of Latvia.

Guidance specifically provides that if the issuer of the crypto-asset is corresponding to the definition and nature of the financial instrument, it is bound by the requirements of the Financial Instruments Market Law (FIML).

Criminal liability (Section 194 Of Criminal Law) applies if a person commits manufacturing and putting into circulation of financial instruments, if they do not conform to the provisions of the articles of association, issuing prospectus or other document issued for this purpose, or issuing of a certificate of deposit (investment) without receipt of the relevant deposit.

AML/CTPF introduces with virtual currency service providers and is the only regulatory act providing definitions of virtual currency and virtual currency service providers.

- 'Virtual currency, Section 1(22) of AML/CTPF Law provides that virtual currency is a digital representation of the value which can be transferred, stored or traded digitally and operate as a means of exchange, but has not been recognised as a legal means of payment, cannot be recognised as a banknote and coin, non-cash money and electronic money, and is not a monetary value accrued in the payment instrument which is used in the cases referred to in Section 3(10) and 3(11) of the Law on the Payment Services and Electronic Money;
- 'Virtual currency service provider', the person providing virtual currency services, including the provider of services of exchange of the virtual currency issued by other persons, which provides the users with the possibility to exchange the virtual currency for another virtual currency by receiving commission for it, or offer to purchase and redeem the virtual currency through a recognised legal means of payment.

Since virtual currency service providers are listed as subjects of the AML/CTPF Law, they have to comply with the necessary legal framework (including customer due diligence, AML/CTPF policy and appointment of responsible employees).

## Asset classification framework

In general, there are no regulatory acts covering the different types of virtual assets and relating transactions. The legislation does not prohibit the creation, ownership or use of virtual asset/cryptocurrencies, except additional restrictions apply if it is used as a financial instrument or financial instrument to attract public funds where FIML definitions are applicable.

# Latvia (continued)

## Stablecoins

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

## Central Bank Digital Currency (CBDC)

Together with a number of other financial institutions, the Bank of Latvia continues to participate in the work carried out by European Central Bank for the possible issuance of the digital euro.

## Other digital assets

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

## Registration/licensing regime

Virtual currency service providers, as the subjects of AML/CTPF Law, must register within SRS and ensure that the requirements of AML/CTPF are complied with.

The subjects which are planning to issue investment type virtual assets 'issued tokens' to attract public funds, they are required to evaluate whether they need to obtain a license of the investment brokerage company for the provision of investment services and investment-related services in Latvia.

For subjects issuing e-money tokens, similar to electronic money, these types of crypto-assets are considered as electronic substitutes for coins and banknotes and can be used for making payments or as a means of accumulation. The implementation of the mentioned activities is planned to be regulated by the MiCAR and currently, the issuance of such e-money tokens would require the authorisation of an electronic money institution under the Law on Payment Services and Electronic Money.

## Financial crime

Since January 2017, all crypto asset service providers must comply with the AML/CTPF Law. In particular, they must register with the State Revenue Service (SRS) and ensure that the due diligence and reporting obligations set out in the AML/CTPF Law are complied with.

SRS has issued:

- Guidelines for all virtual asset service providers regarding application of tax and accounting regulations, providing also assessment of existing risks in relation to virtual currencies.
- AML/CTPF risk assessment for virtual asset service providers providing that AML/CTPF risks are medium (last data in 2019).

Additionally, Financial Intelligence Service (FIU) has developed and published various assessments of the risks of ML/TPF of virtual currencies service providers and regularly updates the risks according to the market data.

## 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 MiCAR at the EU-level.

## Pending legislation or imminent regulatory announcements

Implementation of MiCAR and proposed new AML/CTF legislative package into national regulatory framework.

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# Lithuania

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

The Lithuanian Government is tightening conditions for crypto exchanges to reduce the number of exchanges in Lithuania and to achieve greater stability in the market. Due to the global scandals and the decline in the value of crypto assets, the growth of cryptocurrency companies is being monitored more closely. Although a license is not yet required to engage in this activity, the legal entity must be registered when it engages in virtual asset service provision (i.e. exchange and/or wallet operator), and must meet specific requirements.

## Asset classification framework

Crypto assets fall within the definition of property not under the Lithuania's AML/CFT law (NFT's are equated to virtual currency, if said token is utility token). Because of broad definitions of crypto assets, NFT's and cryptocurrencies may fall within the same definition. The purchase and sales of virtual currencies by virtual currency operators is always subject to AML/CFT regulation.

## Crypto asset regulation

No regulatory framework has been adopted to specifically target stablecoins. MiCAR is not yet applicable in Lithuania. The current legislation does not provide for a separate concept for stablecoins, which are regulated and treated in the same way as regular cryptocurrencies.

## Central Bank Digital Currency (CBDC)

In 2020, the Bank of Lithuania released blockchain-based digital collector coin (LBCOIN). The coins were intended for collection and their use as a means of payment is not encouraged. The Bank of Lithuania applied its knowledge from the LBCOIN project to the digital euro Project and now it is continuing to work with ECB, banks, and other institutions on the digital euro.

## Other digital assets

NFT assets are generally treated the same as works of art, collectibles, and other non-financial assets with subjective value, but because of broad definition of virtual currencies in the AML/CFT law, NFTs in certain circumstances, could fall under the traditional definition of financial assets.

## Registration/licensing regime

The activity of virtual currency exchange operators and/or depository virtual currency wallet operators is not licensed in Lithuania. However, firms must register as a Virtual Asset Service Provider (VASP) and meet mandatory requirements foreseen in the law, such as:

- Capital of at least 125 000 EUR.
- Inform the Register of Legal Persons about starting or ceasing to operate;
- Managing staff must not represent more than one virtual currency operator (unless they are under the Senior manager must be a permanent resident of Lithuania);
- Lithuanian company must not be left with only non-essential functions; and
- Person cannot take up a governing position in the company if he was found guilty of criminal offence.

## Financial crime

AML rules are generally applicable for virtual asset service provision and VASPs are considered obliged entities. In May 2023, the European Council adopted rules which will make crypto-asset transfers traceable.

Under the new rules, crypto asset service providers are obliged to collect and make accessible certain information about the sender and beneficiary of the transfers of crypto assets they operate, regardless of the amount of crypto-assets being transacted, the Travel Rule. This ensures the traceability of crypto-asset transfers, for identifying possible suspicious transactions and block them. These steps are necessary 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.

Sources: Law on the prevention of money laundering and terrorist financing; Explanatory memorandum from State Tax Inspectorate regarding taxation of income from virtual currency sale, September 29, 2022; Accounting guidelines on Cryptocurrency and tokens; Position of Bank of Lithuania regarding the distribution of crypto assets and initial crypto tokens, January 27, 2022.

# Lithuania (continued)

## Sales and Promotion

General marketing requirements and regulations apply for virtual assets, however in some cases additional requirements may apply, e.g. where a token has characteristics of a security.

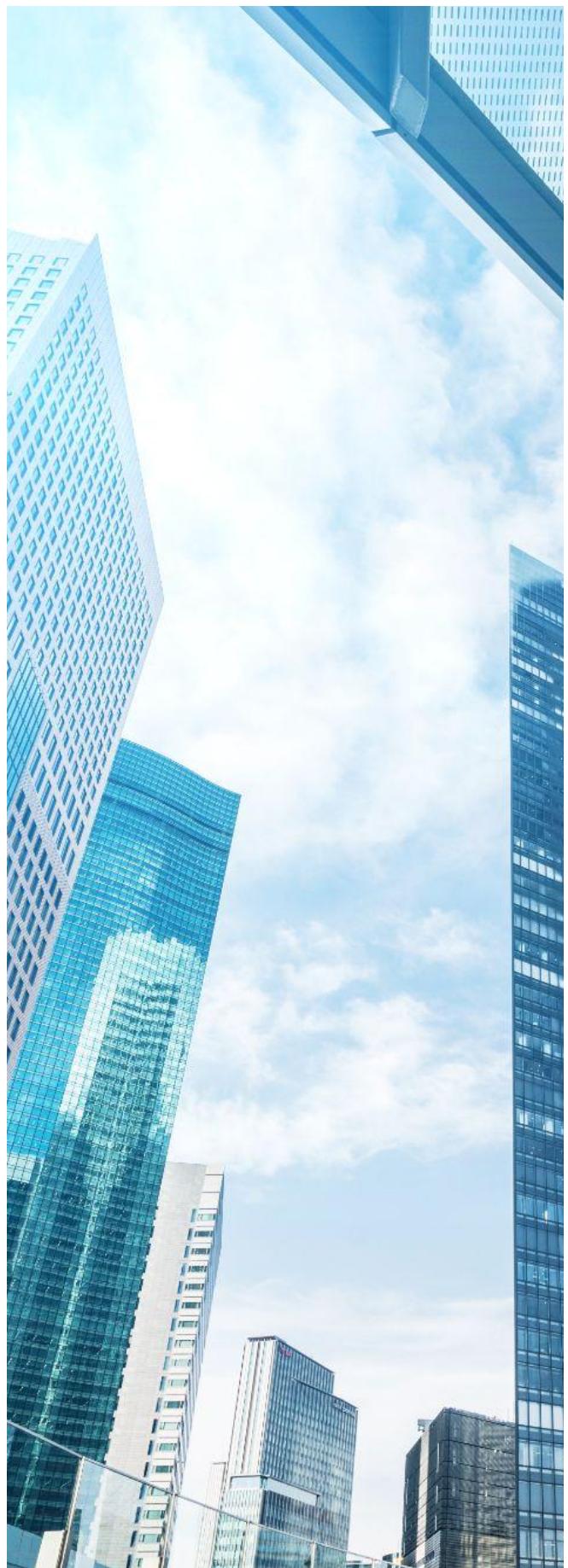
## Pending legislation or imminent regulatory announcements

The date of implementation of MiCAR into Lithuania law has not yet been set. The Travel Rule is set to be implemented into Lithuanian law on 1 January 2025, regardless of MiCAR's implementation.

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# Luxembourg

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

Financial innovation is a central consideration for the Government, with DLT and virtual assets playing an important role in this context. Since 2018, the Government has been supporting a comprehensive initiative around DLT and blockchain in the form of an educational white paper addressed to the broad market participants.

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.

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.

## Asset classification framework –

### 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 existing 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 via Q&As and additional clarifications on specific areas might be issued until the effective entry into force of MiCAR across the EU.

The legal framework for those virtual assets which fulfill 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).
- The law of 14 March 2023 (Bill n°8055) amends the Luxembourg law of 5 April 1993 on the financial sector, the law of 5 August 2005 on collateral arrangements, and the law of 30 May 2018 on markets in financial instruments. These amendments reflect the implementation of the Pilot Regime (EU Regulation 2022/858) into national laws and recognise the use of DLT for collateral arrangements.

Sources: 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, CSSF: FAQ - Virtual asset service providers - August 2023.

# Luxembourg (continued)

## 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 MiCAR 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.

## Registration/licensing regime

Since March 2020, all Virtual Asset Service Providers (VASPs) active in Luxembourg need to register with the CSSF and be compliant with AML/CFT 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; and
- Participation in and provision of financial services related to an issuer's offer and/or sale of virtual assets.

## 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 MiCAR enters into force.

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

## Pending legislation or imminent regulatory announcements

- Implementation of MiCAR and the proposed new AML/CFT legislative package with other EU Member States upon their entry into force.
- Implementation of the Transfer of Funds Regulation (TFR).

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# Malta

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

As part of its financial services sector strategy, Malta has looked to promote itself as a hub for digital innovation looking to enable an AI-powered and data-driven finance sector. Malta was one of the first movers in implementing a regulatory framework for crypto assets, since the industry's rapid growth in the late 2010's and early 2020's.

A legislative framework was launched in 2018, which, similar to MiCAR, is modelled on the legislative approach taken by the EU Markets in Financial Instruments Directive (MiFID) and based upon the principles of investor protection, financial market integrity and stability. This Virtual Financial Asset (VFA) framework included three legislative acts, looking to set out a robust framework for the regulation and supervision of DLT services and offerings, as well as introducing licensing regimes for VFA service providers providing services in and from Malta.

In 2020, the Malta Financial Services Authority built on this initiative by launching a FinTech Regulatory Sandbox, a regulatory environment where fintech operators may test their innovation for a specified time within the financial services sector under certain prescribed conditions.

Looking ahead, as part of the European Union, Malta will be implementing MiCAR within the next 12 to 18 months. This is expected to replace the current regime, building on the approach taken in the said existing framework and also introducing some new concepts.

## Asset classification framework

### – Virtual assets regulation

The Maltese Virtual Financial Assets Act (Cap 590 of the Laws of Malta) (MFSA) defines a virtual financial asset as any form of digital medium recordation that is used as a digital medium of exchange unit of account, or store of value and that is not (a) electronic money; (b) a financial instrument; or (c) a virtual token.

The MFSA published a financial instruments test, essentially providing a tool to help determine whether an asset would qualify as any of the above or a virtual financial asset.

There are three legislative Acts which constitute its current VFA legislative framework being:

- The Virtual Financial Assets Act (the 'VFA Act'), providing a regulatory framework for Initial VFA Offerings and VFA service providers such as cryptocurrency exchanges, wallet providers, and crypto asset managers. The VFA Act also establishes rules for the operation of such service providers including requirements on transparency and governance as well as AML and CFT requirements.
- The Malta Digital Innovation Authority Act (MDIA Act), establishing the Malta Digital Innovation Authority (MDIA), which is responsible for regulating and certifying technology service providers, including blockchain-based businesses. The MDIA's role is to promote and support the development of the blockchain industry in Malta and ensure that businesses operating in the industry comply with the regulatory framework.
- The Innovative Technology Arrangements and Services Act (ITAS Act), establishing a legal framework for the registration and certification of technology service providers and creates a new category of legal entity known as the 'Technology Service Provider' (TSP).

## Stablecoins

Certain stablecoins could potentially be classified as financial instruments under MiFID II. Others could be categorised as electronic money under the Electronic Money Directive II (EMD 2). Neither e-money nor stablecoins are regulated by the VFA Framework. The regulation of stablecoins will be introduced through MiCAR.

## Central Bank Digital Currency (CBDC)

The Central Bank of Malta has not issued a CBDC, but participates in the European Central Bank's work regarding the possible issue of the digital euro.

# Malta (continued)

## Other digital assets

Other digital assets will be regulated under the VFA framework only to the extent that they fall within the definition of virtual financial assets.

## Registration/licensing regime

The VFA framework establishes three registration/authorisation regimes, being (i) registration of VFA Agents, (ii) registration of White Papers relating to initial offerings, and (iii) applications for authorisation of VFA Services Providers.

All licensing applications need to be made through a VFA agent who acts as a competent intermediary between the authority and the applicant. A license will only be granted upon the satisfaction of a number of cumulative conditions, which must be continuously satisfied on an ongoing basis. Requirements relating to governance/other organisational requirements, risk management, IT audits, compliance and safeguarding of client assets are set out in the relevant rulebooks.

As regards initial offerings, any person wishing to issue a VFA to the public in or from within Malta is required to draw up a white paper including specified information listed in the First Schedule of the VFA Act and register said whitepaper with the MFSA.

## Financial crime

The VFA Framework sets out numerous requirements with the goal of ensuring compliance with both prudential requirements and AML/CFT matters. Additionally, amendments have been made to the Maltese Prevention of Money Laundering and Funding of Terrorism Regulations (Subsidiary Legislation 373.01) to include the VFA agents, issuers and service providers within the definition of 'subject persons'.

The VFA framework is structured in a manner which allows for multiple lines of defence in terms of AML/CFT. This includes, requirements on VFA issuers to draw up a compliance certificate on an annual basis, which must be reviewed by the VFA Agent; and to engage an independent auditor on an annual basis to draw up a report confirming that all AML/CFT/KYC systems and including a review of the operations of the VFA Issuer from an AML/CFT perspective.

VFA service providers also have to adhere to various AML/CFT requirements, including the need to appoint a Money Laundering Reporting Officer (MLRO) and to have the appropriate systems in place to satisfy AML/CFT related legal requirements.

## Sales and Promotion

In order to ensure transparency and accuracy in VFA-related promotion, any advertisements of VFA offerings and VFA exchange admissions must necessarily follow a number of requirements. Advertisements must be clearly identifiable as such and must contain information which is accurate and consistent with that included in the whitepaper. Moreover, the advertisement must state that such whitepaper has or will be published, along with details on access to such whitepaper by the public. Furthermore, the placing of virtual financial assets is regulated as a VFA service. This involves the marketing of newly-issued virtual financial assets or of virtual financial assets which are already in issue but not admitted to trading on an exchange, to specified persons and which does not involve an offer to the public or to existing holders of the issuer's virtual financial assets.

## Pending legislation or imminent regulatory announcements

In preparation for the entry into force of MiCAR and in order to ensure a smooth transition for Maltese VFA Service Providers, the Maltese authorities are taking steps to align the VFA framework to MiCAR by issuing a draft updated version of the VFA Rulebook. A consultation on the draft closed in September 2023.

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# Mauritius

## Government outlook

Mauritius is one of the early adopters of regulatory frameworks for virtual assets. In 2018, the Financial Services Commission (FSC) issued a guidance report on Recognition of Digital Assets as an asset-class for investment by Sophisticated and Expert Investors. In the report, the definitions of 'digital assets' and 'cryptocurrency' were aligned with those provided by the Financial Action Task Force (FATF).

With the Financial Services (Custodian services (digital asset)) Rules 2019, Mauritius became one of the first jurisdictions to offer a regulated landscape to supervise the general safekeeping of digital assets. Following the enactment of the Virtual Asset and Initial Token Offering Services Act 2021, custodian services are regulated by the legislation.

In 2019, the FSC issued guidance notes to set the approach for regulating security token offerings. In 2020, a third guidance note was issued by the FSC outlining a common set of standards for security token offerings and the licensing of security token trading systems.

In 2021, the Parliament passed the Virtual Asset and Initial Token Offering Services Act 2021 (VAITOS Act). It provides a comprehensive legislative framework for the regulation of virtual asset service providers (VASP) and issuers of initial token offerings (ITO), in line with the international standards of FATF.

Mauritius has adopted a forward looking and dynamic mindset in the ever changing landscape. In an attempt to support the VAITOS ACT, the FSC through a robust rule making process has issued the following rules: Travel Rules, Client disclosure Rules, Custody of Client Assets Rules, Cybersecurity Rules, Statutory Returns Rules, Capital and Other Financial Requirements Rules.

The FSC has further clarified regulatory stance with regard to the: regulatory treatment of NFTs, stablecoins and decentralised autonomous organisations (DAO).

Mauritius has developed a comprehensive virtual asset framework, is compliant with all the 40 recommendations of the FATF and fully compliant with the Recommendation 15, which deals with risks posed by new technologies including virtual assets and related providers.

## Asset classification framework

The VAITOS Act makes a distinction between virtual assets and virtual tokens.

A virtual asset is a digital representation of value that may be digitally traded or transferred, and may be used for payment or investment purposes. It does not include a digital representation of fiat currencies, securities and other financial assets that fall under the purview of the Securities Act.

A virtual token means any cryptographically secured digital representation of a set of rights, including smart contracts, provided on a digital platform and issued or to be issued by an issuer of initial token offerings. Under the Securities Act, the virtual token is expressly excluded from the definition of securities.

The framework also creates a different category of token, namely securities token. These are the digital representation of securities as defined in the the Securities Act. Security tokens and their issuance are governed by the security laws.

The guidance notes on NFTs provides that an NFT is a token recorded using DLT, whereby each NFT recorded is distinguishable from any other NFT. For the regulatory treatment of the NFTs, the FSC identifies scenarios which determines the regulatory regimes applicable, if any.

If the NFTs have overlapping characteristics of a digital collectibles and a transferable financial asset, it may trigger the application of security laws.

With regard to the NFTs that fall under the category of virtual assets, (that is those not being digital collectibles or securities), the provisions of the VAITOS Act are applicable.

## Stablecoins

The FSC issued a draft guidance note on stablecoins in July 2023. Stablecoins are defined as a type of virtual asset that relies on stabilisation tools to maintain a stable value relative to one or several fiat currencies or other reference asset, including virtual assets. The objective is to inform the industry stakeholders about the FSC's regulatory policy on stablecoins and should be read together with the provisions of the VAITOS Act.

# Mauritius (continued)

The draft guidance classifies stablecoins into two main categories: asset-linked stablecoins and algorithmic stablecoins.

Asset-linked stablecoins tie their value to physical or financial assets for stability, while algorithmic stablecoins use supply regulation protocols to maintain a steady value in response to demand fluctuations.

A stablecoin may be treated as a virtual asset under the VAITOS Act, if it may be digitally traded or transferred, and used for payment or investment purposes. Any business which conducts one or more of the following activities with regard to stablecoins shall come within the scope of the VAITOS Act and would be a licensed activity in Mauritius: exchange between stablecoins and fiat currencies or other forms of virtual assets, transfer of stablecoins, safekeeping or administration of stablecoins or instruments enabling control over the stablecoins, and participation in, and provision of, financial services related to an issuer's offer and/or sale of stablecoins.

Offering stablecoins to the public for fiat currency or virtual assets is considered initial token offerings (ITO), requiring registration as IITO under the VAITOS Act.

Depending upon the protocol of the stablecoins, it may be considered as securities, for instance, if it is linked to individual securities, by means of a contractual right for delivery of the individual securities to the holder of the stablecoins.

## Central Bank Digital Currency (CBDC)

In June 2023, the Bank of Mauritius (BoM) released a public consultation paper on the issuance of a CBDC, the Digital Rupee. The BoM intends to provide the public with a Digital Rupee which is safe and convenient to use in everyday life. To ensure the elaboration of the Digital Rupee in the most optimal conditions, the BoM requested technical assistance from the International Monetary Fund (IMF).

## Registration/licensing regime

Firms must hold a valid virtual asset service provider licence to carry out business. Different classes of licences apply, depending on the type of business activity, including broker dealers, wallet services, custodians, advisory services and exchanges. IITOs must be registered with the FSC before carrying out their business.

Once the licence for VASP is granted by the FSC or an application for registration of an IITO has been successfully entertained by the FSC, firms must comply with ongoing regulatory obligations and reporting mandated by the VAITOS Act.

### Financial crime

In February 2022, the FSC issued the AML/CFT Guidance Notes for VASP and IITOs. The guidance provides an outlook on the risks associated with virtual asset activities and guidelines to VASP and IITOs on their AML/CFT compliance obligations under the VAITOS Act.

### Sales and Promotion

In 2022, the FSC issued rules on the advertising and marketing of relevant products and services by VASPs, and IITOs. The rules sets out the general requirements and obligations for advertisements.

### Expected regulatory announcements

The Government is expected to provide a legislation on DAOs. In line with the Government's' strategic decision to develop Mauritius as a Fintech Hub, the following propositions are expected to be implemented in due course: development of a National FinTech Strategy, set-up of a FinTech City, development of an API to share data within and across institutions and start up, and improve access to capital for fintech startups.

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# United Arab Emirates

## Government outlook

Being one of the first jurisdictions to implement a fully-fledged virtual asset regulatory framework, the United Arab Emirates (UAE) aims to establish itself as a leading global virtual asset (VA) hub. The VA ecosystem is expanding rapidly, supported by specific Regulatory actions in different jurisdictions.

Cabinet Resolution 111 (December 2022), assigned the authority and responsibility of VA regulation to the Securities and Commodities Authority (SCA), with the exception of payment services, which was assigned to the UAE's Central Bank (CBUAE). Cabinet Resolution 112 (December 2022) subsequently delegated SCA's responsibilities in the Emirate of Dubai (excluding DIFC) to the Dubai Virtual Asset Regulatory Authority (VARA), which was formed under Dubai Law No. 4 of 2022.

In Abu Dhabi, the Abu Dhabi Global Market (ADGM) Financial Service Regulatory Authority (FSRA) has pioneered virtual assets regime in the UAE in 2018, under the Financial Services and Markets Regulations (FSMR).

## Asset classification framework

### Virtual Asset Regulatory Authority

In February 2023, VARA released a comprehensive, activity-based and product-agnostic regulatory framework to licence and supervise Virtual Asset Service Providers (VASPs).

The virtual assets and related activities regulations (the VA Regulations) go into the direction of promoting the Emirate of Dubai as a regional and international hub for VAs and related services, boost the competitive edge of the Emirate at the local and international levels, and develop the local digital economy. The VA Regulations also aim to increase awareness on investment in the VA services and products, and encourage innovation in this sector to attracting investments and encourage companies operating in the field of VAs to base their business in the Emirate.

The VA Regulations consist of 4 Compulsory Rulebooks (Company Rulebook, Compliance and Risk Management Rulebook, Technology and Information Rulebook, Market Conduct Rulebook) and 8 VA Activity- Specific Rulebooks (Advisory, Broker-Dealer, Custody, Exchange, Lending & Borrowing, Management & Investment, Transfer and Settlement), and VA Issuance. The compulsory rulebooks include

mandatory conditions and governance obligations around Entity Structure (including Group and Company Governance, related and third party outsourcing and ESG provisions), (ii) Operational Practices [including, Market and Investor Protection standards, (iii) Systems and Security related vulnerability controls and risk mitigation (including References to Technology Governance + Data Segregation + Information Security) and, (iv) Conduct and Transparency rules (including Market and Investor Protection standards, explicit Consent and Transparency requirements, FATF compliance and Cross-border risk controls, Travel Rule related restrictions).

The Activity-Specific Rulebooks include additional conditions for the individual VA activity the VASPs intend to carry out. These rules span additional governance elements (e.g., VA Custody activity segregation and Board requirements), ad-hoc rules (e.g., best execution and margin trading provisions for VA Exchanges/VA Broker-Dealers), activity-specific disclosures, client agreement provisions and service fees, additional reporting requirements, limitations and exclusions.

With regards to VA Issuance activities, VASPs may be granted either a VARA licence or a VARA approval depending on the asset category and related issuance activities as defined under the VA Issuance Rulebook. In both cases, Organisations are requested to submit a Whitepaper and demonstrate compliance with specific technology, AML/CFT, marketing and personal data provisions.

To ensure protection of all VA investors and curb illegal practices in the domestic market, VARA also requires all VASPs who were incorporated in Dubai and operational prior to February 2023 to submit an application for an operating permit whenever they are carrying out any activities in scope of the VARA Regulations as these entities fall under VARA's purview.

In addition to the VA Regulations, VARA issued the Administrative Order No. 01/2022 relating to Regulation of Marketing, Advertising and Promotions related to Virtual Assets (the Marketing Regulations). The Marketing Regulations apply to all VA marketing, promotions and advertisements carried out by domestic or foreign entities in the Emirate of Dubai. Violations will result in consequential penalties or fines as defined in VARA's Administrative Order No. 02/2022.

Sources: VARA's Virtual Assets and Related Activities Regulations 2023; VARA's Marketing Regulations 2023; ADGM's Guidance on Regulation of Virtual Asset Activities, 2022.

# United Arab Emirates (continued)

## Abu Dhabi Global Market

In 2018, the Financial Services Regulatory Authority (FSRA) of ADGM became the first jurisdiction globally to introduce and implement a comprehensive and bespoke regulatory framework to regulate VA activities. The framework is part of the Emirate's efforts to bolster the economic diversification of Abu Dhabi and the UAE through innovation and sustainable initiatives.

The framework regulates exchanges, custodians, brokers, and other intermediaries engaged in VA activities and encompasses products such as digital securities, stable tokens, and derivatives/securities.

Regulated firms within ADGM are issued a single Financial Services Permission (FSP) for the purposes of the regulated activities which can include both 'conventional' and 'virtual asset' related activities.

Both the VARA and the ADGM frameworks address the full range of VA associated risks, including market abuse and financial crime, AML/CFT, consumer protection, technology governance, custody and exchange operations. AML provisions are strictly aligned with FATF guidelines.

## Digital Oasis Free Zone

Recently (October 2023), The Emirate of Ras Al Khaimah established the RAK Digital Oasis Freezone (DAO). This free zone aims to implement minimal rules to attract companies and entrepreneurs involved in digital assets and cryptocurrencies active in emerging and innovative sectors, including metaverse, blockchain, utility tokens, virtual asset wallets, NFTs, DAOs, DApp, and other Web3-related businesses. Further developments are expected during 2024.

## Central Bank of UAE

In March 2023, the Central Bank issued Guidance for licensed financial institutions (FI) on risks related to virtual assets and virtual asset service providers. This addresses the requirements for FIs to establish relationships with VASPs, mainly related to CDD, EDD, transaction monitoring and sanctions screening.

## Stablecoins

The ADGM framework regards stablecoins as blockchain-based tokens that are valued by reference to an underlying fiat currency or basket of assets.

The envisaged stablecoin models used by VASPs include one or a combination of (i) fiat tokens; (ii) a basket of assets including VAs; (iii) a quantity of tokens whose issuance is controlled by an algorithm. The ADGM framework regards stablecoins as blockchain-based tokens that are valued by reference to an underlying fiat currency or basket of assets. The envisaged stablecoin models used by VASPs include one or a combination of (i) fiat tokens; (ii) a basket of assets including VAs; (iii) a quantity of tokens whose issuance is controlled by an algorithm.

## Central Bank Digital Currency (CBDC)

The CBUAE has defined the Central Bank Digital Currency Strategy to launch the Digital Dirham. This involves the soft launch of mBridge to facilitate real value cross-border CBDC transactions for international trade settlement, and providing the proof of concept work for bilateral CBDC bridges with India and for domestic CBDC issuance covering wholesale and retail usage. The project was announced in May 2023, with the first phase expected to be completed around mid 2024.

## Other Digital Assets

The current VA issuance regime defined by VARA prohibits the issuance of anonymity-enhanced cryptocurrencies and all VA activities related to them. The ADGM regime does not regulate utility tokens which do not exhibit the features and characteristics of a regulated investment/instrument under FSMR.

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# 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 response to the inquiry, the Finance and Expenditure Committee released its final report on cryptocurrencies in August 2023 (Cryptocurrencies Report). The Cryptocurrencies Report indicates that while there is a greater need for consistency in the regulation of cryptocurrency and digital assets, it does not advise any immediate regulatory framework to be implemented. Instead, the Cryptocurrencies Report recommends that the Government implements policies and regulations which promote the growth of cryptocurrency and blockchain in New Zealand. The recommendations recognise that the industry is in its early stages and states that the focus should be on implementing adaptable regulations which align with industry growth and global practices.

In 2021, the Ministry of Justice also 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 (VASP) 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 thresholds for occasional transactions for VASPs should apply.

## Asset classification framework

New Zealand legislation defines crypto-assets for the purposes of the Income Tax Act 2007 and the Goods and Services Tax Act 1985 only, a fungible digital representation of value that exists in a database that is secured

cryptographically and contains ledgers which record transactions, that are maintained in a decentralised form and shared with others or another fungible application from the same technology performing an equivalent function. New Zealand legislation has not adopted a national classification framework.

## 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 asset, 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 are 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.

## Stablecoins

While no regulatory framework is adopted for stablecoins, the RBNZ has recognised the need for closer monitoring. Currently, 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.

# New Zealand (continued)

## Central Bank Digital Currency (CBDC)

The RBNZ has commenced a multi-stage, multi-year proof-of-concept design project for a potential CBDC. Phase 1 has now been completed and involved an assessment of the public policy case for the introduction of CBDC. Phase 2 is currently underway and an assessment of the high-level designs and cost-benefit analysis of CBDC is being conducted, with the expected completion date of late 2023 or early 2024. Following this, phase 3 will involve the collaboration of the Government and major stakeholders to perform a comprehensive design assessment, potentially paving the way for the introduction of a CBDC in New Zealand as part of phase 4.

## Registration/licensing regime

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 (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 NZ\$10,000 for cash transactions and NZ\$1,000 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 other virtual asset transfers.

## 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.

## Pending legislation or imminent regulatory announcements

There are no pending legislation or imminent regulatory announcements due to be released in New Zealand. Hopefully, by the time this report has been published, the Government should have responded to the recommendations in the Cryptocurrencies Report. However, with a recent change of Government, there could well be delays with obtaining clarity as to the future of cryptocurrency and digital asset regulation in New Zealand.

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# Norway

## Government outlook

According to the Norway's Financial Supervisory Authority (FSA), cryptocurrencies are largely unregulated and consumer protections are needed. In contrast to regulated savings and investment products, there is no statutory consumer protection for buyers of cryptocurrency.

The Norwegian Anti Money laundering (AML) regulations cover cryptocurrency exchanges and wallet providers. Crypto assets might be considered a financial instrument and therefore regulated by the Securities Trading Act.

The regulatory regime will change with Norwegian implementation of MiCAR, which will lead to more extensive regulation of crypto assets. Although Norway is not a part of the EU, MiCAR is considered EEA-relevant and will almost certainly be incorporated in the EEA Agreement. Uncertainty remains regarding when the regulation will be implemented in Norwegian law. MiCAR could be implemented later than in the EU countries, meaning that for a period of time, Norwegian crypto-exchanges could be barred from passporting out of Norway and vice versa.

## Asset classification framework

There is no asset classification framework in place. This will change with the implementation of MiCAR.

## Crypto asset regulation

Crypto assets which fulfill the requirements of a financial instrument according to the Norwegian implementation of MiFID II, are regulated by the Securities Trading Act, while the AML regulations cover cryptocurrency exchanges and wallet providers. For a crypto asset to be covered by the AML act, it must meet the definition of 'virtual currency'.

Virtual currency is defined in section 1-3 in the AML regulations as 'a digital expression of value, which is not issued by a central bank or public authority, which is not necessarily linked to an official currency, and which does not have the legal status of currency or money, but which is accepted as a means of payment, and which can be transferred, stored or traded electronically'.

When a crypto assets are covered by the definition of virtual currency, and the provider is registered as a company in Norway, operate from Norway, or target the Norwegian market, the providers are obliged to register with the FSA and report under the AML act.

## Stablecoins

According to the Central Bank of Norway (Norges Bank), stablecoins intended for the general public are covered by the definition of e-money in the Financial Institutions Act article 2-4.

## Central Bank Digital Currency (CBDC)

The Central Bank of Norway continues to investigate a potential CBDC, but has not yet concluded whether to recommend the implementation.

## Registration/licensing regime

Crypto asset exchanges and wallet providers must register with the Norwegian FSA, cf. Article 1-3 in the Norwegian AML Act. Companies which conduct non-custodial wallet services are not eligible for registration. All service providers which promote their services for the Norwegian market, are required to register.

## Financial crime

Crypto asset exchanges and wallet providers are covered by the Norwegian AML Act and have a duty to assess money laundering and terrorist financing related risks. The AML Act requires that the provider must have updated processes to ensure that the business handles identified risks and fulfills duties, according to provisions given in or pursuant to the Act.

## Sales and Promotion

Sales and promotion of crypto assets must meet the regulatory requirements in the Consumer Purchases Act and the Marketing Control Act.

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# Poland

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

Poland does not have specific regulatory framework for crypto assets. As the industry is not yet considered as part of the financial market, it is not subject to the supervision exercised by the Polish Financial Supervision Authority (KNF). To reduce the lack of standardisation and legal uncertainty, the KNF issued its positions on the issuance and trading of crypto-assets. The positions refers only to selected legal and regulatory issues, related to the financial market.

To prevent the usage of virtual assets for criminal activities, the Polish government amended the anti-money laundering law. Entities providing fiat-to-crypto currency exchanges, crypto-to-crypto currency exchanges or electronic accounts enabling the use of virtual currency units, including exchange transactions, are obliged to apply AML/CFT regulations.

The AML/CFT act provides that legal entities engaged in such activities must go through the registration process in the register of cryptocurrency enterprises. To do this, obliged entities need to comply with certain formal requirements. However, entry in this register should not be confused with the authorisation granted by the KNF to traditional financial institutions followed by a licensing regime.

## Asset classification framework

The classification of crypto assets has not yet been regulated. KNF indicates the following classification:

1. currency type tokens/exchange tokens,
2. utility tokens,
3. investment/security tokens (e.g. tokens which incorporate rights identical to those incorporated in securities or tokens which, due to the rights incorporated in them, fully or partially correspond to the titles (rights) of participation in collective investment undertakings (investment fund, alternative investment company)).

The legal classification of crypto assets lies in the jurisdiction of common courts, authorised to interpret generally applicable law in relation to specific facts which are the subject of the dispute.

## Crypto asset regulation

Since there is no specific crypto asset regulation in Poland, VASPs and intermediaries in crypto assets trading should carefully analyse the current legal environment before commencing planned activities.

In some cases VASPs can fall under payment institutions regulation (act on payment services), AML/CFT regulation or be qualified as an investment firm, depending on the type of services provided and assets traded.

## Stablecoins

If a stablecoin takes the form of electronic money, the issuer should have the appropriate authority to provide such services (e.g. as an electronic money institution or a national payment institution). Detailed conditions for this type of activity are regulated in the Polish Act of 19 August 2011 on payment services (implementing the provisions of PSD2 into the Polish legal order). The issuance of electronic money and the provision of payment services as a national electronic money institution or a national payment institution requires the authorization of the Polish Financial Supervision Authority. If a stablecoin meets the conditions to be considered a virtual currency, the issuer of such a crypto asset should only ensure compliance with the AML/CFT regulations, which are indicated above.

## Central Bank Digital Currency (CBDC)

The Polish National Bank (NBP) has been monitoring activities and discussions carried out in the field of CBDC emissions. So far, NBP indicates the lack of clear benefits from the introduction of Digital Zloty in relation to the risk associated with such emission.

## Registration/licensing regime

Activities in the field of crypto assets may be performed after obtaining an entry in the Register of cryptocurrency enterprises. The conditions for conducting such activities include the requirement of no clear criminal record, having appropriate knowledge or experience related to activities in the field of virtual currencies by persons managing the VASP. The entry in the register takes place on the basis of the entrepreneur's application submitted in electronic form. Entry in the register should be done within 14 days from the date of receipt of the application by the competent authority (Director of the Chamber of Tax Administration in Katowice).

# Poland (continued)

## Financial crime

There are no specific criminal provisions in Poland that would be aimed specifically at counteracting crimes related to crypto assets. Polish authorities warn that crypto assets can be used for money laundering or sanctions evasion, which has become particularly typical in connection with the outbreak of war in Ukraine. Regarding the AML regulations, conducting activities in the field of virtual currencies without obtaining an entry in the above mentioned register is a crime and is subject to a fine.

## Sales and Promotion

The sale and promotion of virtual asset services in Poland should comply with general consumer protection regulations and may not be conducted in a manner that constitutes unfair market practices.

## Pending legislation or imminent regulatory announcements

Polish authorities have stated that MiCAR will take effect, with some exceptions, on 30 December 2024. However, there may be a transitional period until 1 July 2026, during which Crypto-Asset Service Providers (CASP) will be able to continue to provide services in an unregulated manner. The transitional period will be available to CASPs who started their activities before 30 December 2024.

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# Portugal

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

Portugal does not provide for a legal framework for crypto assets. The Portuguese crypto ecosystem is limited to AML/CFT requirements and a tax framework covering personal income tax.

Portugal follows EU regulation in relation to crypto assets. MiCAR will be directly applied in Portugal when in force, which will determine asset classification framework, crypto asset regulation, stablecoins regulation and provisions for other digital assets.

In addition, the DLT Pilot Regime will entail new market opportunities for the trading and post-trading process, in particular to the digital representation of financial instruments on DLT. This EU regime was transposed to the Portuguese legal environment by the Decree-Law no. 66/2023, of 8 August 2023.

Directive (EU) 2018/843 of the European Parliament and of the Council, of 30 May 2018, which was adopted by the Law no. 58/2020, of 31 August is already reflected in this regime.

Crypto asset activities comprise not only crypto asset exchanges but also wallet and administration activities. For such purposes, Law 83/2017, together with Notice of Banco de Portugal no. 3/2021, of 23 April, sets out mandatory registration for entities intending to act as virtual assets service providers. Law 83/2017 further establishes the duties the entities shall comply with. Among those, there are duties of identification and diligence (which, in case of crypto assets, shall be complied by the entities when those transfer funds or perform transactions within the scope of activity of virtual assets that exceed 1,000 euros), to communicate, of collaboration, and of non-disclosure. As to the duty of control, obligated entities are required to define and ensure the effective application of policies, procedures and controls and also to appoint one element of their governance structure to ensure the compliance control.

## Asset classification framework

The asset classification framework provided in MiCAR will apply in Portugal.

## Registration/licensing regime

The regulation for crypto assets and stablecoins will apply in Portugal.

Entities intending to act as virtual asset service providers are required to register before Banco de Portugal (BdP) as the competent authority responsible for both conducting the registration procedure and verifying compliance with the legal and regulatory provisions governing the prevention of money laundering and terrorist financing (AML/CFT).

## Central Bank Digital Currency (CBDC)

Banco de Portugal (BdP) participates in the work carried out by the European Central Bank (ECB) for the possible issuance of the digital euro.

## Financial crime

Entities intending to act as virtual asset service providers are required to register before BdP as the competent authority responsible for both conducting the registration procedure and verifying compliance with the legal and regulatory provisions governing the prevention of AML/CFT.

Crypto asset activities are covered by Law no. 8 3/2017 which establishes measures to combat money laundering and terrorist financing (Law 83/2017).

## Financial crime

Crypto asset activities are covered by Law no. 83/2017, of 18 August which establishes measures to combat money laundering and terrorist financing (Law 83/2017).

Directive (EU) 2018/843 of the European Parliament and of the Council, which was adopted by the Law no. 58/2020 is already reflected in this regime.

Crypto asset activities comprise not only crypto asset exchanges but also wallet and administration activities. For such purposes, Law 83/2017, together with Notice of Banco de Portugal no. 3/2021, sets out mandatory registration for entities intending to act as virtual assets service providers.

# Portugal (continued)

Law 83/2017 further establishes the duties the entities shall comply with. Among those, there are duties of identification and diligence (which, in case of crypto assets, shall be complied by the entities when those transfer funds or perform transactions within the scope of activity of virtual assets that exceed 1,000 euros), to communicate, of collaboration, and of non-disclosure. As to the duty of control, obligated entities are required to define and ensure the effective application of policies, procedures and controls and also to appoint one element of their governance structure to ensure the compliance control.

## Sales and Promotion

Portugal does not provide for specific national regulation for the sale and promotion of crypto assets. Therefore, sale and promotion should follow the general law requirements derived from the Portuguese Securities Code and MiFID II requirements which are, under Portuguese law, adopted by Law no. 35/2018, of 20 July.

MiCAR requirements will be directly applicable in Portugal after 30 December 2024.

## Pending legislation or imminent regulatory announcements

Portugal will execute MiCAR and regulate the Member State National Competent Authority.

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# Qatar

## Government outlook

In 2020, the Qatar Financial Centre Regulatory Authority (QFCRA) declared that all virtual asset services are banned in the Qatar Financial Centre (QFC), except for services concerning token securities. Since then, the authorities have made steps to develop a new regulatory framework for digital assets.

## Crypto asset regulation

In October 2023, the QFCRA and the Qatar Financial Centre Authority (QFC Authority) issued a consultation on a digital assets framework.

The proposed framework addresses issues including asset ownership, custody, transfers, trading, and smart contracts, while promoting trust through robust technology standards and enhancing confidence in the digital asset market and service providers.

The development of the digital assets regulation is taking place in phases: phase one focuses on creating the necessary legislation to establish the QFC tokenization framework.

Subsequent phases will expand on this foundation by building a more detailed regulatory framework for specific digital asset activities and products.

To implement this framework effectively, the Regulatory Authority and the QFC Authority have prepared a series of draft Rulebooks:

### Under the QFCRA jurisdiction:

- **Investment Token Rules 2023:** these rules primarily address tokens known as 'investment tokens', which represent underlying assets categorized as Specified Products under the QFC Financial Services Regulations (FSR).
- **Investment Tokens Miscellaneous Amendments Rules 2023:** These rules make amendments to six existing sets of Regulatory Rules to accommodate the introduction of investment tokens.

### Under the QFCA jurisdiction:

- **Digital Asset Regulations 2023:** These regulations define the concept of tokens and outline the criteria for tokens that are permitted within the framework. They also include provisions related to token transfers, ownership rights of tokens, and various definitions for different types of token service providers that will be subject to the proposed licensing framework within the QFC.
- **Digital Asset (Companies Regulations and Special Company Regulations) Amendment Regulations 2023:** These regulations amend the Companies Regulations and Special Company Regulations to facilitate the tokenization of shares and related modifications.
- **Digital Asset (QFCA Rules and Non-Regulated Activities Rules) Amendment Rules 2023:** These rules amend the QFC Authority Rules and Non-Regulated Activities Rules. They establish the framework for licensing token service providers, including the formulation of a code of practice for these providers, and outline the activities that may be conducted in the QFC.

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# 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.

## Asset classification framework

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 classification of such digital asset and accordingly which regulatory framework and requirements apply to such digital asset.

## Crypto asset regulation

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 and 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 SFA or PSA respectively. The scope of regulated digital token services will be further expanded under the Financial Services and Markets Act 2022 (FSMA) to align with the FATF Standards. The FSMA 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). **[As of the date of this publication, the relevant provisions of the FSMA, which deal with regulation of digital token services, have yet to come into effect.] [KIV, to be reviewed just prior to publication]**

## Stablecoins

Generally, stablecoins are treated as DPTs and regulated under the PSA today. In October 2022, MAS published a consultation paper proposing to set out a specific regulatory regime for issuers and intermediaries of single-currency stablecoins (SCS) issued in Singapore and meeting certain criteria. In August 2023, MAS published its response to the said consultation paper which sets out its finalised regulatory approach for stablecoins. Amongst others:

- 'stablecoin issuance service' will be introduced as an additional regulated activity under the PSA;
- only SCS pegged to the Singapore dollar or Group of Ten (G10) currencies may fall within the proposed SCS framework. Other types of stablecoins will continue to be subject to the existing DPT regulatory regime;
- SCS issuers subject to the SCS framework will be required to a) maintain a portfolio of reserve assets with very low risk, which is held in segregated accounts separate from its own assets, and b) meet specified prudential requirements including base capital requirements, solvency requirements and business restrictions.

## Central Bank Digital Currency (CBDC)

MAS has confirmed that there is a strong case for a wholesale CBDCs, especially for cross-border payments and settlements, and participates in multi-year, global testing and pilot projects. MAS also continues to develop its retail CBDC project, although acknowledging that there is no need to issue a retail CBDC at this stage.

## Other digital assets

While there may not be any specific Singapore laws to regulate NFTs, the features and characteristics of each NFT have to be carefully considered in order to determine whether any specific regulatory framework and/or requirement applies.

# Singapore (continued)

## Registration/licensing regime

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/CFT risks due to their anonymity and speed. This is the key risk which MAS' regulations seek to address. 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, including the reporting of suspicious transactions.

## 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.

Pending legislation or imminent regulatory announcements:

- Relevant provisions of the FSMA, which deal with regulation of digital token services, which have yet to come into effect.
- Amendments to the Payment Services Regulations 2019 as well as the issuance of guidelines applicable to DPTSPs in relation to regulatory measures on segregation and custody of customers' assets by DPTSPs
- Amendments to the PSA in connection with the MAS' proposed SCS framework.

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# Slovakia

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

There is no comprehensive regulation for crypto assets and related services in Slovakia. The regulatory bodies are anticipating MiCAR's entry into force in December 2024.

The existing regulations address only certain aspects, including licensing some crypto asset related activities, AML obligations and taxation.

## Asset classification framework

Slovak law currently relies exclusively on the term 'virtual currency', defining it in the Slovak AML Act as 'a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored, and traded electronically'.

The crypto asset classification and definition will be superseded by MiCAR. Until then, other types of digital assets and tokens, will in general remain outside the scope of regulation.

## Crypto asset regulation

The National Bank of Slovakia (NBS) does not recognise virtual or crypto currencies as financial instruments under MiFID II and/or securities, and as such does not consider related services to fall under the scope of its regulatory powers.

The NBS acknowledges that such assets/related services may be considered to fall under the EU regime in the home Member State(s) of their providers and may exercise its competence if mandated under the EU passporting regime.

Crypto assets falling under the definition of 'virtual currencies' and selected related services are subject to partial regulation in the areas of AML, licensing regime and taxation.

The provision of services of exchanging virtual currencies for fiat currencies and vice versa, and services of virtual currency wallets securely managing customers' private cryptographic keys for holding, storing, and transferring virtual currencies, are governed by the Slovak AML Act (i.e. providers of such services are classified as 'obliged entities' and must adhere to the corresponding AML requirements) and require a regulated trade license.

## Stablecoins

No regulatory framework is adopted for crypto assets. This will be defined with the adoption of MiCAR at the EU-level.

## Central Bank Digital Currency (CBDC)

The NBS cooperates with the European Central Bank and its activities related to the development of the digital euro.

## Registration/licensing regime

Engaging in services of virtual currency exchanges and virtual currency wallet services, fall under the regulated trade regime in Slovakia.

Until MiCAR enters into force, there is no obligation to obtain a financial service license or any other specialised license for activities like buying, selling or exchanging crypto assets (excluding for fiat currencies). If the service in question qualifies as a financial service, falling under the EU passporting regime in the home Member State, the passporting regime will be recognised in Slovakia.

## Sales and Promotion

There are no specific sales and promotion regulations in place for crypto assets. General requirements and limitations on advertising apply.

## Imminent regulatory announcements

Although some legislative changes may be expected following the applicability of MiCAR, such as necessary amendments to the existing AML and trade licensing legislation, no specific legislative action has been announced as of yet. The NBS will be designated as the main regulator of crypto assets and related services, following the entry into force of MiCAR. Amendments to the Act on Banks and Act on Financial Supervision are expected.

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# South Africa

## Government outlook

In the wake of increased crypto adoption, the South African regulatory authorities have taken proactive steps 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 led to a number of regulatory changes in the course of 2022 and 2023.

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 November 2022, the definition of an 'Accountable Institution' in the Financial Intelligence Centre Act of 2001 (FICA) was amended to include persons who carry on the business of exchanging 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.

The latter regulation, which came into effect in December 2022, requires 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.

## Asset classification framework

'Crypto assets' are defined as a digital representation of perceived value that can be traded or transferred electronically within a community of users of the internet who consider it as a medium of exchange, unit of account or store of value and use it for payment or investment purposes, but does not include a digital representation of a fiat currency or a security as defined in the Financial Markets Act, 2012 (Act 19 of 2012).

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 (FAIS).

## Stablecoins

Stablecoins and NFTs are considered crypto assets for purposes of the Financial Intelligence Centre Act, 38 of 2001 ('FICA').

From a South African perspective, the risks linked to the fundamental design characteristics of stablecoins is seen as exacerbated in the absence of domestic authorities having regulatory influence over the issuer and is viewed as posing a spillover risk from the crypto asset ecosystem to the traditional financial system, particularly if authorities are unable to impose prudential requirements on stablecoin issuers to guarantee redeemability at par during a run on the stablecoin. Whilst stablecoins are not seen as currently posing a systemic risk to South Africa, this is an evolving environment and as such the intention remains to introduce a regulatory framework around stablecoins including aspects such as regulations governing the weighting and capital treatment of crypto assets and tokenised deposits are indicated as intended to come into effect in 2025.

## 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 tokenized money.

## Registration/licensing regime

The inclusion of crypto assets in the definition of financial products under FAIS means that any person who offers advisory or intermediary services in relation to crypto assets have been required to apply for a license under the Act since the end of November 2023.

Since December 2022, CASPs fall within the definition of Accountable Institutions under FICA, requiring them to comply with additional governance, risk and compliance requirements under the Act, including specific obligations in relation to AML, CFT and sanctions controls, as well as to register with the Financial Intelligence Centre as an Accountable Institution.

# South Africa (continued)

## Sales and Promotion

Crypto asset advertisements are regulated in South Africa. The South African Advertising Regulatory Board's Code of Advertising Practice was amended to include new requirements for crypto assets in January 2023. Such requirements demand that advertisements for crypto assets in South Africa clearly state that investing in crypto assets may result in capital loss. Advertisements must also be easily understandable for their audience and provide a clear message.

'Influencers' or 'ambassadors' who are prominent professional figures in the cryptocurrency social media space must also comply with the regulations in the Social Media Code to avoid circulating misleading messages.

The provision of advice or any intermediary services in relation to crypto assets is also now governed by the FAS Act as detailed above which imposes additional obligations in respect of advertising and marketing of such services.

## Expected regulatory announcements

Further regulatory requirements relative to the broad regulatory framework for crypto assets in South Africa, through enactment of legislative changes to manage different aspects of crypto assets (such as the 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.

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# Spain

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

The Spanish Government will bring the MiCAR implementation date forward from of the MiCAR by six months from June 2026 to December 2025.

## Crypto asset regulation

The crypto asset regulation provided in MiCAR shall apply in Spain. Spain also applies the Securities Market Law, Circular Comisión Nacional del Mercado de Valores (CNMV) 1/2022, on the advertising of crypto-assets, and draft Royal Decree on financial instruments, admission to trading, registration of marketable securities and market infrastructures.

## Registration/licensing regime

In accordance with AML/CFT Law 10/2010, the Banco de España (BdE) is responsible for registering natural and legal persons offering or providing in Spain virtual currency exchange services for fiat currency and electronic wallet custody services, natural persons whose base, management or direction of these activities is in Spain, and legal persons established in Spain that provide these services.

In agreement with the Law 6/2023, of March 17, on Securities Markets and Investment Services, CNMV is the competent authority for the supervision of the issuance, offer and admission to trading of certain crypto-assets that are not financial instruments.

## Central Bank Digital Currency (CBDC)

The BdE participates in the research and development of the potential issuance of the digital euro.

## Financial crime

The lack of regulation in the cryptocurrency sector has attracted large capital from illegal activities. In view of this situation, the Spanish government approved Royal Decree-Law 7/2021, of April 27, modifying Law 10/2010, of April 28, on the prevention of money laundering and the financing of terrorism.

This modification introduced as obligated subjects providers of virtual currency exchange for fiat currency and electronic wallet custody services.

Furthermore, these obligated subjects must register in Registration of service providers for exchanging virtual currency for fiduciary currency and custody of electronic wallets, which depends on Bank of Spain.

In order to register, it would be necessary a money laundering and terrorist financing Prevention Manual, as well as a risk analysis document.

## Sales and Promotion

Article 240 bis of the Spanish Securities Market Act (SMA) reinforce the legal framework protecting consumers and investors with regard to the advertising of new financial assets and instruments in the digital sphere.

By means of this authorisation, the CNMV prepared the Circular 1/2022 to develop the standards, principles and rules to which the promotional activity related to crypto-assets must be subjected, and in particular, to define the objective and subjective scope, to specify the advertising activity that must be subjected to a pre-communication regime and to establish the tools and procedures to be used to supervise the promotional activity of crypto-assets.

## Pending legislation or imminent regulatory announcements

The Spanish Government will advance the application of MiCAR implementation to December 2025, in order to create a stable regulatory and supervisory framework, providing legal certainty to investors.

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# Sweden

MiCAR entered into force in June 2023. The rules on stablecoins come into effect in mid-2024. All other MiCAR provisions will apply on the 30th of December 2024.

## Government outlook

There is no current clear and comprehensive regulation concerning crypto assets, tokens, blockchain-solutions and more. Governmental entities and regulators are awaiting the arrival of MiCAR by the end of 2024.

Regulatory requirements are fragmented and focus on crypto assets usages in different areas. For the financial sector, the key areas are AML and preventing the financing of terrorism, tax issues and sustainability.

The overall Governmental outlook and perspective has been cautious and sceptical. The Swedish FSA ('Finansinspektionen') has the viewpoint that crypto assets are in, most cases, unsuitable for consumers. The regulator considers crypto assets as difficult or impossible to value reliably and that the risk of losing any invested money very high.

The Government has an overall positive view on innovation within the financial markets and the opportunities it brings. It supports the work to drive digital transformation of financial services in the EU market.

The Government is positive on the European Commission's work in creating uniform regulation through MiCAR, in a previously unregulated part of the financial markets. It welcomes regulation which promotes responsible innovation, development and competition and facilitates the opportunities for small and medium-sized companies to find financing and to grow. The Government has, however, stated that any such regulation must take into account financial stability, consumer and investor protection and risks of regulatory arbitrage that may arise.

## Asset classification framework

There is no specific framework at the national level classifying crypto assets. Definitions used for crypto assets, cryptocurrencies and electronic money are technical, focussing on the practical use of each asset. If applicable, a specific asset could fall into asset definitions, as per specific EU regulations.

## Stablecoins

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

## Central Bank Digital Currency (CBDC)

The Swedish Central Bank (SCB) have an initiative to investigate whether it is possible to issue a digital supplement to cash, e-krona. The e-krona would, just like cash, be issued by the SCB. At this point, no formal decision regarding an e-krona has been made.

## Registration/licensing regime

Exchange and transfer providers, eWallet providers and issuers of virtual currencies must register with the Swedish FSA, principally to meet AML requirements. Any firm in this sphere has to meet deemed relevant national regulations, especially those regulating AML.

## Financial crime

There are no criminal provisions in Sweden which would be aimed specifically at counteracting crimes related to crypto assets. However, Swedish authorities warn that crypto-assets can be used for money laundering or sanctions evasion. The Swedish FSA has expressed the need for financial institutions trading in digital currencies to take particularly strong measures to manage the AML-risks. The travel rule is yet to be implemented.

## Sales and Promotion

There is no specific guidance in place for the sale and promotion of crypto assets. Changes are likely to occur, with the implementation of MiCAR at the EU-level.

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# Switzerland

## Government outlook

The Government and Financial Market Supervisory Authority (FINMA) have shown a positive stance towards blockchain technologies and digital assets. Switzerland was one of the first countries to adopt a specific set of regulation applicable to decentralised technologies and adapted its legal Framework in 2020. FINMA applies the 'same risk, same rules' approach and has a technologically neutral view on the regulation of financial market activities.

FINMA can issue declaratory rulings (similar to 'no-action letters' known in other jurisdictions) which allow for the regulatory treatment to be clarified upfront, in order to enhance legal certainty for the market participants.

Over the course of 2023, FINMA responded to requests enabling to specify the standards and practices applicable to the Swiss market players and reinforced the well-known stability of its regulatory environment.

## Asset classification framework

FINMA was one of the first financial authorities to publicly issue guidance on how to classify digital assets and to allocate these into one of three categories. Depending on the classification of a digital asset, different financial market laws apply:

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 typically triggers the application of the AMLA regime.

Security tokens 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 license requirement.

Utility tokens provide access to an application or service by mean of a blockchain-based infrastructure. A qualification as pure utility token usually does not trigger regulatory requirements.

In addition to these, hybrid forms are also possible, i.e. token classifications are not mutually exclusive. A token may qualify as a payment token even though it has other additional functions, such as those of an utility token or a security token.

## Stablecoins

In 2018, FINMA issued guidelines for stablecoins, which have to be classified like other fungible tokens and in line with their economic function. The treatment may differ, depending on the type of underlying assets and the rights attributed to the token holder. As for other digital assets, different regulatory requirements may apply depending on the token qualification.

## Central Bank Digital Currency (CBDC)

The Swiss National Bank (SNB) plans to issue a wholesale CBDC to be deployed on a national digital exchange. This is an evolution building on the results of pilot tests conducted in 2022 with five different banks, testing the settlement of interbank, cross-border and monetary policy transactions.

## Other digital assets

Due to their non-fungible nature, NFTs generally do not qualify neither security nor payment token and may not to be in scope of financial market regulation. However, KYC and further AML duties may apply to certain NFT activities.

## Registration/licensing regime

Switzerland has not implemented a specific status for virtual asset service providers (VASPs). Financial market participants which deal in crypto may need to obtain a license from FINMA or affiliate as a financial intermediary to a self-regulatory organisation for AML purposes. Which registration or licensing requirement applies, depends on the classification of the digital asset and on the type of activity conducted in relation to the digital asset.

## Financial crime

Financial intermediaries are subject to the Anti-Money Laundering Act (AMLA) and the complementary ordinance (AMLO), which include the duty to identify the contracting party, the beneficial owner, the source of funds as well as the Travel Rule. These regulations apply in any case to the issuers of digital assets if these qualify as payment tokens.

Sources: 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)

## Sales and Promotion

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

- a prospectus requirement for security tokens and further regulations in connection with financial services under the Financial Services Act (FINSA); and/or
- AML requirements for activities related to payment tokens, including KYC obligations and registration with a self-regulatory organisation according to the AMLA.

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.

## Digital Asset Resolutions Package

The Digital Asset Resolution Package (DARP) is a new requirement developed by FINMA, primarily for banks which offer services in digital assets. It is anticipated that the requirement could be extended to other financial intermediaries providing custody in digital assets.

The DARP is an instruction manual as well as an information sheet which the financial intermediary prepares in order to summarise information, responsibilities, and access possibilities in case of bankruptcy. The main objectives are to ensure the transfer of digital assets kept in custody to clients in the event of bankruptcy, as well as organising the cooperation between the financial intermediary and the bankruptcy liquidator.

## MiCAR & Switzerland

Although it is not part of the European Union, Switzerland will be impacted by the adoption of the Regulation on Markets in Crypto-Assets (MiCAR). Therefore, companies offering cross-border services from Switzerland into an EU member state must be ready to adapt their organization and operations.

The main difference between the EU and Swiss approaches is that Switzerland did not create a specific regulatory status for service providers dealing in digital assets. There is no CASP/VASP regime under Swiss law and market players are regulated - or not - depending on the activities they conduct in relation to a specific category of digital assets.

Since MiCAR does not provide any third-country regime, Swiss market participants who would fall in the definition of Crypto-Asset Service Providers (CASP) according to MiCAR will be exempt from authorization requirements if they are offering services to European clients at their exclusive initiative (in accordance with the reverse solicitation rule). Further guidance from the European Securities and Market Authority (ESMA) is to be expected on the third-country regime.

Reciprocally, European CASPs wishing to offer their services to clients in Switzerland are required to respect the Swiss regulatory framework. This may entail a registration under the Swiss rules or setting up a branch or an entity and then applying for the appropriate license in Switzerland.

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Sources: 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: 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.

In September 2023, the Financial Supervisory Commission (FSC) introduced guidelines which cover disclosure of information by virtual asset service providers (VASP), review procedure for listing of product, segregation of customer's assets, protection of consumer right, cyber security, management of hot/cold cryptocurrency wallet.

## Asset classification framework

Security firms can issue security tokens under the Taipei Exchange Rules. Certain restrictions apply, including: only professional investors are allowed to subscribe 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.

## Stablecoin

No stablecoin related regulation is in place.

## Central Bank Digital Currency (CBDC)

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

## Registration/licensing regime

No licensing regime in place, instead the FSC will push VASPs to become self-governing group.

## 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. VASPs (e.g. exchanges, wallet service providers and ATMs) need to have in place appropriate policies and procedures. These include KYC, enhanced due diligence, transaction monitoring and the Travel rule. VASPs are required to submit a declaration with the FSC to declare VASPs comply with relevant AML/CFT regulation.

## Sales and Promotion

No specific regulation are in place for Sales and Promotion. However, the guidelines for VASPs describe the general requirements for advertisements, including advertisements for relevant products which must not be false, misleading or deceptive. Also, foreign VASPs cannot promote product/service in Taiwan, before completing company registration according to Company Act and submit AML/CFT compliance declaration with FSC.

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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.

## Asset classification framework

Turkey's regulatory framework does not include a specific taxonomy of digital assets.

## 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.

## 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.

## Registration/licensing regime

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.

## 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).

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# Uganda

## Government outlook

The government of Uganda does not recognise cryptocurrency as legal tender in Uganda and has not licensed any entity or person to sell cryptocurrencies or to facilitate the trade of cryptocurrencies in Uganda.

## Asset classification framework

Cryptocurrencies are not considered assets in Uganda and entities licensed under the National Payment Systems Act 2020 are not permitted to liquidate crypto assets i.e. convert crypto assets/currencies to mobile money.

## Registration/licensing regime

There is no regime in place to license or regulate cryptocurrencies.

## Financial crime

Uganda has several laws to curb financial crime, including; the Anti Corruption Act, 2009 and the Anti-Money Laundering Act, 2013.

## Sales and Promotion

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

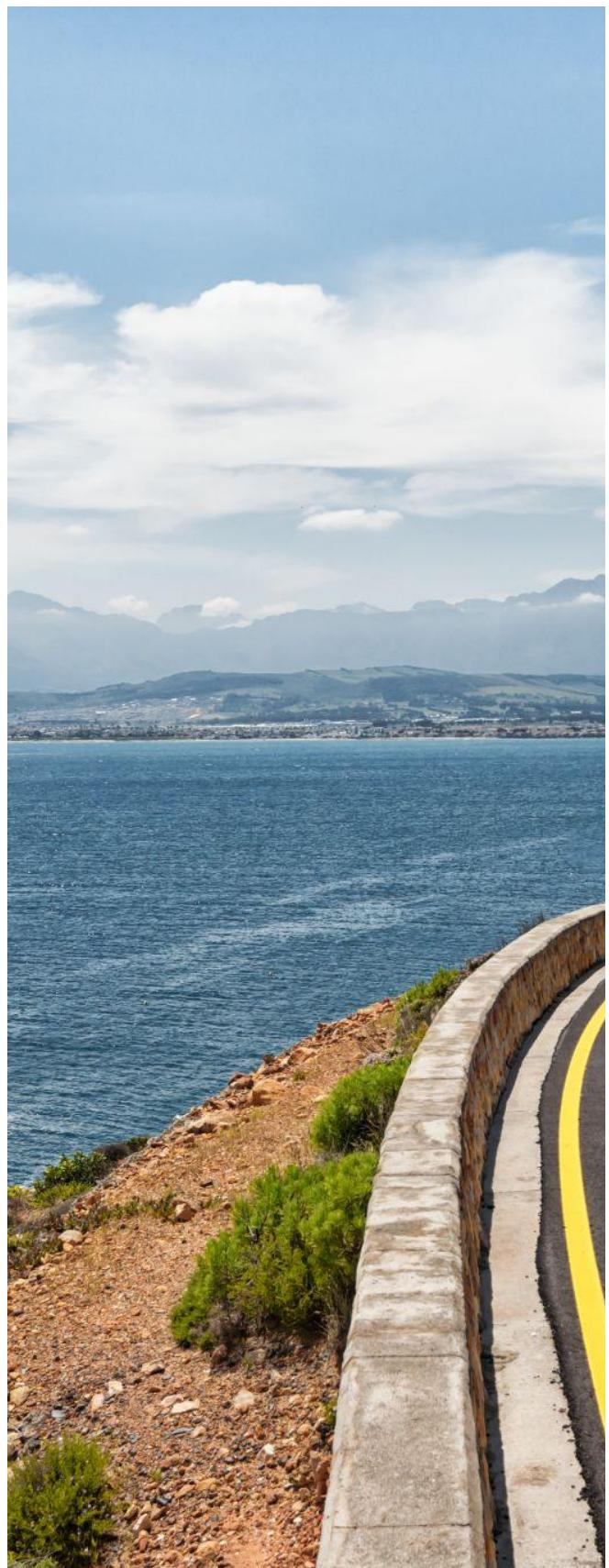
## Pending legislation or imminent regulatory announcements

Uganda is in the process of analysing digital and crypto currencies in a bid to legislate on the same. The Central Bank recently expressed its willingness to test cryptocurrency under its regulatory sandbox.

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Sources: Silver Kayondo Versus Bank of Uganda (High Court of Uganda Civil Division Miscellaneous Cause No. 109 of 2022)



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).
- Regulatory and legal support, including analysis of business plans, intended activities and/or products, filings at financial authorities and execution 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).





# Thank you

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