

'It's a massive ask': is Binance capable of being regulated?

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Author: Dan Milmo

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In 2021, the Financial Conduct Authority was adamant: Binance is not capable of being regulated in the UK. Executives at the world's largest cryptocurrency exchange are not taking no for an answer. This month, Binance vowed to do "everything" it possibly could to change the City regulator's mind, against a backdrop of deepening scepticism about digital assets. The collapse last year of one of Binance's biggest rivals, FTX, and the criminal proceedings that have followed, tarnished the sector. Those concerns were underlined by parliament's cross-party Treasury committee this month, which said UK authorities should regulate cryptocurrency trading as a form of gambling – adding that digital assets such as bitcoin have "no intrinsic value". The global markets watchdog, the International Organization of Securities Commissions (Iosco), called for a different approach this week and said cryptocurrencies should be regulated in the same way as traditional assets such as stocks and bonds. There is also evidence elsewhere that tech firms face a scrupulous regulatory environment in the UK. Reports suggest Revolut, Britain's most valuable fintech firm, could have its application for a banking licence rejected by the Bank of England after the company's auditor, BDO, raised concerns about the balance sheet. Binance, which handles \$65bn (£53bn) in daily trades and has no global headquarters, has been accepted by some oversight regimes but has been rejected by others. In the case of the US, the business is firmly in the sights of the authorities. On 10 May, the company's chief strategy officer, Patrick Hillman, bemoaned a crackdown in the US that he said had made it "very difficult" to do business in a key market. Recruited to the company in 2021, Hillman is familiar with the regulatory environment in Europe. He was formerly a senior figure at public relations firm Edelman where his specialisms included crisis management, and before that held a consultant role for the European Commission. He said Binance was going to do everything it could to be regulated in the UK, and described the EU's recently agreed crypto-asset regulation, Mica, as a "huge step forward". As part of any UK process, Binance will need to register with the FCA, which requires crypto-exchanges to prove they have systems in place to prevent money laundering and terrorism financing. The regulator said it did not comment on specific companies but its official position on Binance had not changed since 2021, when it barred the business from regulated activity in the UK. At the time that FCA said the firm was "not capable of being effectively supervised". It appears nothing has happened yet to change that view. The regulator's 2021 supervisory notice referred to Binance's ownership structure as "complex" and with an "extensive geographical spread", factors that appeared to be "hindering the provision of adequate and reliable information to the FCA". That opacity is still an issue, according to the Commodity Futures Trading Commission, the US regulator that oversees the market for derivatives (transactions that effectively place a bet on the price of a

cryptocurrency rather than buying it directly). The CFTC sued Binance in March and described it as an “opaque web of corporate entities”. Citing an organisational chart featuring more than 120 entities incorporated in jurisdictions around the world, the regulator alleged: “Binance’s reliance on a maze of corporate entities to operate the Binance platform is deliberate; it is designed to obscure the ownership, control, and location.” At the time Binance said the complaint was “unexpected and disappointing” as it had already invested an additional \$80m in ensuring it complied with regulators around the world. Nigel Brahm, a partner at the UK law firm Collyer Bristow, said Binance had the resources to deal with the FCA’s concerns. However, Binance would need to assemble a compliance team in the UK, he said. Brahm added: “The FCA requires firms that it authorises, or even those which are only subject to its crypto registration regime, to have sufficient infrastructure on the ground in the UK. If Binance wishes to operate their trading platform out of the UK, they would need to hire locally based support functions, the core of which would need to be money laundering and compliance.” Carol Alexander, a professor of finance at the University of Sussex, said regulating Binance would be a big challenge if the company sought authorisation for its full range of activities. This was because the company was a “multifunction organisation” that offered a range of products from broking to high-frequency derivatives trading, she added. “It is a massive ask for one country to take on the regulation of Binance,” Alexander said. “Even though the government plans to make the UK a global cryptoasset technology hub, the resources currently available fall very far short of what is needed.” So far, the demise of FTX in November has not hit the price of crypto. By one rule of thumb in the investment world, recent rises in interest rates should have made unconventional assets less attractive but so far this year the value of a bitcoin, the cornerstone crypto asset, is up 60% to \$26,440 as of Friday morning. It remains far below its peak of \$69,000. Binance is licensed and registered by regulators in a number of jurisdictions including France, Italy, Spain, Australia, Abu Dhabi, Dubai and Japan. It also uses big names to push its brand, with its commercial partners including the footballer Cristiano Ronaldo, Italy’s Lazio football team and TikTok megastar Khaby Lame. The US commodities regulator’s case against Binance, which has yet to go to court, alleges the company has taken a lax approach to internal controls. In one example, Binance’s former chief compliance officer Samuel Lim is quoted by the CFTC in a 2020 chat about certain customers, including some from Russia. Lim said: “Like come on. They are here for crime.” Binance’s money-laundering reporting officer agreed, saying: “We see the bad, but we close 2 eyes.” The US in particular has become a regulatory sceptic. This month Coinbase, another crypto exchange, issued pointed praise of the regulatory regime for digital assets in the United Arab Emirates. The US financial watchdog, the Securities and Exchange Commission, warned Coinbase in March that it was considering legal action against the company over possible violations of securities laws. Last month, the SEC chair, Gary Gensler, defended the watchdog’s tough stance on crypto regulation in an appearance before Washington lawmakers. Crypto-trading platforms and exchanges should comply with the law, he said, “and until they do, we will continue to pursue them as the cop on the beat”. Since 2022 the SEC has announced more than 30 cryptocurrency-related enforcement actions. John Stark, a former SEC official and senior lecturing fellow at Duke University’s school of law, said the crackdown was driven by concerns over protecting consumers after the FTX collapse and the industry’s use of plausible investor jargon when offering services such as broking or exchanges. “Cryptocurrency is in the midst of a regulatory onslaught in the US. I have never before seen any SEC enforcement program this intense,” he said. A Binance spokesperson said the company had been “vocal” about the need for effective regulation of the industry, adding: “We strongly believe that a stable regulatory environment can support innovation and is essential to establishing trust in the industry and long-term growth. “Binance has invested heavily in a robust compliance programme that incorporates sophisticated anti-money laundering principles and tools used by traditional financial institutions to detect and address suspicious activity.” Further regulation is coming to the UK. In February, the Treasury published a consultation document on bringing crypto regulation in line with traditional assets such as stocks and bonds and that talked about balancing “risk as well as opportunity”. Any opportunity, if given, will come with enhanced scrutiny.