# TECHNICAL ASSISTANCE REPORT

# KENYA

## Crypto Regulation and Legislation

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# Acronyms and Abbreviations

| | |
|---|---|
| AML/CFT | Anti-Money Laundering/Combating the Financing of Terrorism |
| ATM | Automatic Teller Machin |
| BTC | Bitcoin |
| BUSD | Binance US Dollar |
| CBK | Central Bank of Kenya |
| CMA | Capital Markets Authority |
| CMA Act | Capital Markets Act 2022 |
| DCI | Directorate of Criminal Investigations |
| ETH | Ethereum |
| FATF | Financial Action Task Force |
| FIU | Financial Intelligence Unit |
| FRC | Financial Reporting Centre |
| FSMA | Financial Services and Markets Authority |
| ICO | Initial Coin Offering |
| IMF | International Monetary Fund |
| IOSCO | International Organization of Securities Commissions |
| JFSRF | Joint Financial Sector Regulators Forum |
| KYC | Know-Your-Customer |
| KSh | Kenyan Shilling |
| LEG | Legal Department |
| LEGFI | Legal Department Financial Integrity Divisions |
| MCM | Monetary and Capital Markets Department |
| NPSA | National Payments System Act |
| NFT | Non-Fungible Token |
| PSP | Payment Service Provider |
| P2B | Private-to-Business |
| P2P | Peer-to-Peer |
| REIT | Real Estate Investment Trust |
| SEC | Securities and Exchange Commission |
| SIA | Statutory Instruments Act |
| TOE | Traditional Obligated Entity |
| TWG | Technical Working Group |
| USDC | US Dollar Coin |
| USDT | Tether |
| VA | Virtual Asset |
| VASP | Virtual Asset Service Provider |

# Preface

At the request of the Capital Markets Authority (CMA) of Kenya, the Monetary and Capital Markets Department (MCM) and Legal Department (LEG) of the IMF visited Nairobi, Kenya to on conduct a diagnostic analysis of crypto-asset activities and the related regulatory and legal framework in Kenya during February 12-16, 2024. The mission also provided in-house lectures covering key regulatory and legal concepts, as well as lessons learned from the failure of FTX for the implementation of regulatory frameworks and the conduct of crypto asset activities supervision.

The mission held meetings with the CMA, Central Bank of Kenya (CBK), and the National Treasury and the private industry.  Additional regulatory expertise was provided by the Belgian Financial Services and Markets Authority and LEG's Financial Integrity Divisions (LEGFI) by way of interactive conference calls. The mission wishes to thank the authorities and private sector entities in Kenya for their warm hospitality, cooperation, and productive discussions.

# Executive Summary

**At the request of the Capital Markets Authority (CMA) of Kenya, the Monetary and Capital Markets Department (MCM) and Legal Department (LEG) of the IMF visited Nairobi, Kenya to support the CMA primarily on issues surrounding prudential and conduct aspects of the future regulatory framework for crypto assets.** The mission held in-person meetings with the CMA, the CBK, and the National Treasury to better understand the approach and challenges of the authorities in designing the regulatory framework. Private sector meetings were held with several market participants. The mission also provided in-house lectures covering key regulatory and legal concepts, and the conduct of crypto asset activities supervision. Regulatory issues relating to AML/CFT were not discussed in detail by the mission. An interactive conference call with LEGFI was organized by the mission, and CMA conference call participants discussed pending AML/CFT regulatory issues and next steps with LEGFI experts.

**There are currently no crypto asset specific regulations in place in Kenya.** Regulatory issues regarding crypto assets and crypto assets related activities are being dealt with based on existing regulations and in line with the existing mandates of the relevant regulatory authorities, in particular the CMA and the CBK. However, the CMA and the CBK's rulemaking in the area of crypto-assets or digital assets has thus far remained limited and no legally binding, formal instruments that would specifically or expressly cover digital assets have been issued by either institution. Under existing laws, it remains also unclear which types of assets would fall under the remit of the CMA or the CBK and, in turn, who should be the competent regulator and supervisor of those assets.

**The prevalence of crypto asset related scams and other criminal activity has prompted the authorities to issue several warnings to the Kenyan public.** In December 2015, the CBK issued a public notice informing the public of the unregulated status of Bitcoin (BTC) and other crypto assets. The CBK has since reiterated its warning on several occasions, including targeted warnings against dealing with unregulated entities such as online foreign exchange dealers. The CMA issued its first warning in 2018 and has also issued targeted warnings highlighting the potential of fraud in relation to over-the-counter crypto asset markets in the wake of the events surrounding WorldCoin. Also, the CMA had issued a targeted warning against the risks associated with initial coin offerings (ICOs). In February 2024, the Directorate of Criminal Investigations (DCI) issued an alert warning about the use of crypto asset platform for fraud schemes.

**The Kenyan government intends to regulate the crypto assets market.** In November 2023, the National Treasury and Economic Planning issued a policy guidance to the Director General of the Financial Reporting Center, Kenyan Financial Intelligence Agency, to develop a comprehensive regulatory and supervisory framework in respect to crypto assets and crypto asset service providers. The policy guidance was issued against the backdrop of continued growth in interest and adoption of crypto assets in Kenya, as well as following recommendations by the Eastern and Southern Africa Anti-Money Laundering Group in its 2022 Mutual Evaluation Report for Kenya. Based on the findings of the Virtual Asset Service Provider (VASP) Money Laundering/terrorist Financing (ML/TF) risk assessment, National Treasury has decided to develop a regulatory and monitoring framework for VAs and VASPs.

**The Kenyan authorities have initiated an inter-institutional process to define the government's general policy direction and prepare recommendations regarding the substance and regulatory structure of the envisaged crypto assets regulatory framework.** A Technical Working Group (TWG) chaired by the National Treasury and Economic Planning and including members from the CMA and the CBK has been established to this effect. The TWG is set to commence its work on 1 March 2024 and has been instructed to finalize its policy recommendations by September 2024. The regulatory framework, including the implementation of FATF Recommendation 15, is to be enacted by April 2025. The TWG has been tasked to assess the current state of crypto asset adoption in Kenya, including market size and players. In addition, the TWG is to conduct a risk assessment and to formulate an appropriate regulatory and supervisory framework for crypto assets and crypto asset service providers.

**There is currently a significant degree of uncertainty and a lack of consensus among authorities regarding the actual size, structure, and risks of the Kenyan crypto assets market.** A questionnaire survey conducted by a Technical Working Group led by the FRC to underpin the September 2023 Virtual Assets and Virtual Asset Service Providers Money Laundering and Terrorism Financing Risk Assessment Report, corroborated the widespread use of peer-to-peer (P2P) trading among Kenyans. The mission recommends a more representative analysis, not exclusively based on questionnaires and not limited to an analysis of potential AML/CFT risks, to more reliably understanding of the market and inform appropriate policy responses.

**The development of Kenya's regulatory and supervisory framework for crypto assets should be aligned with international frameworks and standards.** These should include the IMF/World Bank Bali Fintech Agenda, the IMF Policy Paper on Elements of Effective Policies for Crypto Assets, the IOSCO Policy Recommendations for Crypto and Digital Asset Markets, the FSB Global Regulatory Framework for Crypto-Asset Activities, and relevant recommendations by FATF. In developing the regulatory framework, particular emphasis should be placed on the provision of regulatory clarity allowing the domestic crypto asset sector to develop in a transparent way and enabling the effective supervision by the authorities. The relevant authorities should be equipped with the necessary resources to effectively monitor crypto asset activities and the potential build-up of risks, including risks to the functioning of the payment system and monetary transmission channels.

# Recommendations

**Table 1. Key Recommendations**

| Recommendations and Authority Responsible for Implementation | Timeline[1] | Responsible Authority |
|---|---|---|
| Conduct or commission a comprehensive empirical market analysis of the current state of the Kenyan crypto asset market as well as a comprehensive assessment of the financial sector, market, conduct, and consumer protection risks based on the market analysis. | ST | TWG |
| Agree on a cross-agency understanding of the current state of the crypto asset market and the associated risks and define an appropriate policy response based on the mutual understanding. | ST | TWG |
| Conduct a risk-based stock taking exercise of crypto assets currently traded/used in the Kenyan market as to whether these assets are already covered by existing regulations. Given the prevalence of peer-to-peer crypto asset activity, the stock taking exercise should attempt to gauge the extent and associated use cases as comprehensively as possible. | MT | CMA, CBK |
| Consider further measures to increase financial literacy among potential investors in crypto assets. | MT | JSFRF |
| Implement an effective cooperation mechanism across relevant authorities to facilitate comprehensive supervision of the entire crypto asset market. | MT | CMA, CBK |
| Clarify scope of the CMA Guidelines taking into account applicable international standards, in particular IOSCO Policy Recommendations for Crypto and Digital Asset Markets (FR11/2023). | ST | CMA |
| Ensure that adequate technical and human resources are in place to allow for the effective supervision of crypto asset activities. Supervisory staff should be regularly trained. | MT | TWG, CMA |
| Ensure legal certainty by implementing an adequate legal framework, including a clear institutional set-up and inter-agency processes to ensure a comprehensive and effective regulation and supervision of crypto asset activities. The adequacy of these processes should be regularly reviewed and assessed against developments in crypto asset market activities in Kenya and developments of international regulatory standards. | MT, LT | CMA, CBK, National Treasury |

[1] ST= *short term,* 6–12 months; MT= *medium term*, 12–24 months.

# Introduction

1. **The CMA has requested the assistance of MCM and LEG to support the CMA primarily on issues surrounding prudential and conduct aspects of the future regulatory framework for crypto assets and to strengthen their knowledge these.** MCM and LEG visited Nairobi during February 12-16, 2024, and provided in-house lectures covering key regulatory and legal concepts, as well as potential learnings from the failure of FTX for the implementation of regulatory frameworks and the conduct of crypto asset activities supervision. Additionally, in-person meetings were held with the CMA, the CBK, and the National Treasury to better understand the approach and challenges of the Authorities in designing the regulatory framework. Additional regulatory expertise was provided by the Belgian FSMA and LEGFI by way of interactive conference calls. Private sector meetings were held with representatives from the Kenya Bankers Association, a domestic crypto assets services provider, and the Kenyan Blockchain Association.

2. **This report reflects the main findings and recommendations from the February 2024 mission to Nairobi**. It is based on information the mission obtained from meetings with authorities and the private sector, as well as from reviewing available regulatory documents.

3. **In line with the CMA's TA request, the mission focused primarily on issues surrounding prudential and conduct aspects of the future regulatory framework for crypto assets.** As a consequence, regulatory issues relating to AML/CFT were not discussed in detail by the mission. An interactive conference call with LEGFI was organized by the mission, and CMA conference call participants discussed pending AML/CFT regulatory issues and next steps with LEGFI experts. In November 2023, the National Treasury and Economic Planning issued a policy guidance to the Director General of the Financial Reporting Center (FRC)[2] to develop a comprehensive regulatory and supervisory framework in respect to crypto assets and crypto asset service providers**.** The policy guidance was issued against the backdrop of continued growth in interest and adoption of crypto assets in Kenya, as well as following recommendations by the Eastern and Southern Africa Anti-Money Laundering Group in its 2022 Mutual Evaluation Report for Kenya. In addition, the policy guidance echoes recommendations made in the 2023 Virtual Assets (VA) and Virtual Assets Service Providers (VASPs) AML/CFT National Risk Assessment and the National Assembly's Ad Hoc Committee's inquiry report on Worldcoin (see also Paragraph 13). Based on the findings of the VASP ML/TF risk assessment, National Treasury has decided to develop a regulatory and monitoring framework for VAs and VASPs.

4. **Kenyan Authorities have initiated an inter-institutional process to define the government's general policy direction and prepare recommendations regarding the substance and regulatory structure of the envisaged crypto assets regulatory framework.** A Technical Working Group (TWG) chaired by the National Treasury and Economic Planning and including members from the CMA and the CBK has been established to this effect.[3] The TWG's Secretariat is the CMA. The TWG is set to

[2] FRC is a government institution whose objective is to assist in the identification of the proceeds of crime and the combating of money laundering.

[3] Other members include Office of the Attorney General and Department of Justice, ICT and Digital Economy, National Intelligence Service, Retirements Benefits Authority, Insurance Regulatory Authority, Sacco Societies Regulatory Authority, Kenya Revenue Authority and Financial Reporting Centre.

commence its work on 1 March 2024 and has been instructed to finalize its policy recommendations by September 2024. The regulatory framework, including the implementation of FATF Recommendation 15, is to be enacted by April 2025. The TWG has been tasked to assess the current state of crypto asset adoption in Kenya, including market size and players. In addition, the TWG is to conduct a risk assessment and to formulate an appropriate regulatory and supervisory framework for crypto assets and crypto asset service providers. Other responsibilities of the TWG include the conduct of extensive stakeholder engagement, the collection of international best practices, and benchmarking visits in countries that have made progress in the regulation of crypto assets.

5. **In November 2023, the Blockchain Association of Kenya[4] announced that it had been instructed by the National Assembly's Departmental Committee on Finance and National Planning to prepare a draft for a VASP bill.** The draft bill is expected to contain proposals regarding a licensing regime for crypto asset exchanges, custodians, issuers, and fiat on-/off-ramp providers. Also, proposals pertaining to customer protection, AML/CFT guidelines, as well as a proposal for a cross-sectoral regulatory sandbox for crypto asset activities are expected to be included in the draft. It is important that public sector authorities—in particular the Ministry of Finance (National Treasury) together with the CBK, the CMA, and other relevant stakeholders such as the revenue authority—are sufficiently involved in any legislative activity.

6. **There is a significant degree of uncertainty accompanied by a lack of consensus among authorities regarding the actual size, structure, and risks of the Kenyan crypto assets market which hamper the Authorities' ability to design an effective policy response.** The lack of reliable empirical data is a concern shared by regulators globally, and only a few cursory studies on the Kenyan crypto asset market appear to have been undertaken so far. A 2017 Citi research note cited in the CMA's March 2023 "Draft Policy Framework on Crypto Assets and Crypto-Service Providers Oversight" estimates the volume of bitcoin holdings in Kenya to amount approximately 2.3 per cent of GDP in 2016. Another 2020 research report, also cited in the CMA's policy paper, suggests that Kenya was second in Africa after Nigeria in Peer-to-Peer (P2P) bitcoin trades accounting for over 12 percent of Africa's P2P bitcoin trades. A more recent publication by crypto market analysis firm Chainalysis ranks Kenya on place 21 out of a total of 155 countries in terms of the Chainalysis Global Crypto Adoption Index and ranks Kenya third overall in terms of P2P exchange trade volume.[5]

7. **The use of crypto assets for payments for domestic non-financial assets and services seems to be very limited, and no crypto asset ATMs are known to be operating in Kenya**. A questionnaire survey conducted by a Technical Working Group led by the FRC to underpin the September 2023 Virtual Assets and Virtual Asset Service Providers Money Laundering and Terrorism Financing Risk Assessment Report, corroborated the widespread use of P2P trading among Kenyans against the backdrop of the CBK's cautioning financial institutions against dealing in crypto assets or transacting with entities that are engaged in crypto assets. The survey data was collected by the Technical Working Group from open-source intelligence, as well as survey questionnaires disseminated

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[4] It is a private institution which defines itself as a "key stakeholder in the digital space that has been closely monitoring the increasing policy and regulatory interest surrounding cryptocurrencies in Kenya."

[5] Chainalysis, "The 2023 Geography of Cryptocurrency Report", October 2023.

to the public, reporting institutions, regulators, law enforcement agencies, Virtual Asset Service Providers, and members of the Technical Working Group.[6]

**8. The survey identified four types of VASPs, six types of VASPs services, and eleven activities/channels associated with the identified services.[7]** The survey found the typical user of crypto asset services to be under 40 years of age; to be primarily engaged in investment activities relating to BTC, ETH, or USDT; to have invested funds not exceeding Ksh 100,000 (around 635 USD); and to be funding these investments with own income or savings. At the time of the survey, the top stablecoins used by Kenyans were USDT (49 percent of all stablecoins used), USDC (31 percent), and BUSD (9 percent). Despite the position taken by most Traditionally Obligated Entities (TOEs) of not allowing crypto asset transactions following the cautionary statements by the CBK and other Authorities, the survey suggests that it is possible to convert fiat to crypto assets et vice versa through P2P mechanisms, e-wallet intermediaries, brokers, and card schemes. The survey also notes that crypto assets are used as a hedge against the depreciation of the Ksh, 27 percent of the respondents are utilizing NFTs for art or collectible acquisitions, and 26 percent of the respondents confirmed that they had traded or invested in the metaverse. 38 percent of the respondents confirmed that they know someone who has been subject to crypto asset scams, and 62 percent of the respondents affirmed that crypto assets presented a potential risk for facilitating money laundering. It is recommended that a more representative analysis be conducted, not exclusively based on questionnaires and not limited to an analysis of potential AML/CFT risks, to more reliably understand the market and inform appropriate policy responses.

**9. Following the publication of the CBK's circulars[8] warning the Kenyan public and financial institutions about the risks relating to crypto assets, there appears to be some uncertainty regarding the permissiveness of crypto asset business activities**. On December 18, 2015, the CBK issued Banking Circular No 14 of 2015 addressed to all chief executives of commercial banks, mortgage finance companies, and microfinance banks. Highlighting the unregulated status of BTC and other crypto assets, the CBK cautioned all financial institutions against dealing in crypto assets or transacting with entities that are engaged in crypto asset activities. The Circular further expressly advises financial institutions not to open accounts for any person dealing in crypto assets. On September 1, 2020, the CBK issued National Payments System Circular No 3 of 2020 addressed to all chief executives of payment service providers (PSP), asking all PSPs to conduct a review of all customer files and to submit to the CBK details of customers found to be carrying out unlicensed activities referred to in this Circular and the joint Public Notice of August 25, 2020[9]. Although banks and payment service providers are committed to complying with CBK's Circulars, they may still be used by their customers for crypto asset related fiat transactions, since costumers engaged in crypto asset activities are unlikely to disclose that some of their transactions are in fact payments for crypto-asset trading (as explained in paragraph 11). In fact, private

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[6] https://www.frc.go.ke/wp-content/uploads/2024/02/VAs-and-VASPs-ML_TF-Risk-Assessment-Report-1.pdf

[7] Respondents, a total of 341 responses from public and private sector entities, included Virtual Asset Service Providers (VASPs), Traditional Obligated Entities (TOEs), and members of the public. Identified VASPs are wallet providers, exchanges, broking/payment processing, investment providers. VASP services range from custodial to payment gateway services. Identifies services include Non-Fungible Token (NFT) and stablecoin trading, P2P and peer-to-business (P2B) transfer services, or fiat to crypto asset conversion services.

[8] Please also refer to the Legislative Review Section for further discussion of the circulars.

[9] https://www.centralbank.go.ke/uploads/press_releases/1843446732_Joint%20Press%20Release%20-%20Public%20Notice%20on%20Fraudulent%20and%20Unlicensed%20Financial%20Schemes.pdf

actors have indicated that the circumvention of the CBK's soft ban on the provision of fiat payment rails for crypto asset sector actors could be rather widespread.

**10. According to the private sector, the current, informal structure of the Kenyan crypto asset market significantly inhibits the development of a domestic market infrastructure in line with international best practices in terms of e.g., market integrity and consumer protection.** One international crypto exchange raised concerns over the rejection of its application as an AML/CFT reporting entity by the FRC. Other private sector actors have highlighted the risks with respect to consumer protection. Absent a domestic licensing and regulatory framework for crypto asset service providers, Kenyans tend to resort to P2P transactions with unknown counterparties by means of, e.g., dedicated chat groups on social media such as WhatsApp or Telegram. With the terms of trade agreed off-chain in these chatgroups, the corresponding on-chain P2P transactions are then being settled on international platforms such as Binance; or by the interposition of unregulated crypto asset escrow agents that serve as intermediaries to ensure a concurrent fulfillment of the transaction for the two parties of the underlying trade. The actors behind these escrow agents are typically unknown and the escrow agents do not require KYC information from their customers. In the event of fraudulent behavior by any of the parties involved, given the anonymity of the actors and the lack of legal clarity of crypto asset transactions more generally, formal legal recourse is usually not seen as a viable option for the aggrieved party. Private sector actors have also highlighted the fragmented regulatory structure that, in their view, further aggravates the ambiguity of the current regulatory environment. Absent a clear delineation of explicit regulatory powers and effective inter-agency cooperation frameworks, market participants have said to have found it difficult to merge the information received by the CMA, the CBK, and the FRC into a coherent guidance for the conduct of their business operations.

**11. The informal state of the Kenyan crypto asset market poses material challenges for the authorities in terms of assessing the actual use and risks of crypto assets in the Kenyan market**. Anecdotal evidence suggests that the use of crypto assets in Kenya could be more widespread and differentiated than indicated by the available market analyses and surveys: Domestic companies are said to be making regular use of stablecoins such as USDT as a means of payment to settle contracts with foreign suppliers, in particular in times of domestic USD shortages. In addition, private sector actors mentioned that they have seen the use of stablecoins as a store of value and hedge against the depreciation of the KSh as a rather common driver for crypto asset adoption among Kenyan citizens. Given the current lack of regulatory reporting requirements for VASPs and the informal nature of the crypto asset market more generally, authorities have said to have so far been unable to ascertain empirically the breadth and depth of the crypto asset market.

**12. Resource constraints may inhibit the effective supervision of crypto asset activities**. Staffing and monetary constraints may make it difficult for the CMA to effectively supervise domestic crypto asset activities, in particular with respect to the monitoring of market developments to stay abreast of new players and product offerings as well as transaction monitoring to detect abusive market behavior.

**13. In addition, the events surrounding the collection of biometric data by the crypto project Worldcoin in August 2023, has highlighted the need for increased awareness and financial literacy regarding the nature and risks of crypto assets for the public at large.** Led to believe they would receive money in exchange for scanning their eyeballs, a considerable number of Kenyans lined up in

Nairobi only to find out that they would be compensated in the Worldcoin token. In response, the CMA issued a cautionary statement informing the public of the unregulated status of Worldcoin and warned about the risk of fraud in the over-the-counter token market.[10] Furthermore, the National Assembly established an Ad Hoc Committee to examine Worldcoin's operations in Kenya, recommending inter alia a ban for Worldcoin's activities in the country and the development of a regulatory framework for crypto assets.[11][12] In designing the appropriate regulatory response, Authorities should consider putting a particular emphasis on requiring effective pre-trade disclosure requirements and other consumer protection measures such as withdrawal rights.

**14. The prevalence of crypto asset related scams and other criminal activity has prompted Authorities to issue several warnings to the Kenyan public.** In December 2015, the CBK issued a public notice informing the public of the unregulated status of BTC and other crypto assets.[13] The notice also included a warning with respect to the potential use of crypto assets by criminals for the purpose of money laundering and the financing of terrorism. The CBK has since reiterated its warning on several occasions, including targeted warnings against dealing with unregulated entities such as online foreign exchange dealers. The CMA issued its first warning in 2018 and has also issued targeted warnings highlighting the potential of fraud in relation to over-the-counter crypto asset markets in the wake of the events surrounding WorldCoin.[14] 1n 2019, following the KeniCoin ICO, the CMA had issued a targeted warning against the risks associated with ICOs.[15] As outlined in more detail in paragraph 36, the CMA used its existing regulatory powers to enforce a cease and desist order against the issuer of KeniCoin. In cases where the CMA is made aware of alleged criminal activity that falls outside its regulatory powers, the CMA is informing the relevant Authorities of these allegations. Notably, the CMA has so far received a number of investor complaints related to alleged fraud in connection with crypto assets and has transferred the complaints to the Kenyan Directorate of Criminal Investigations (DCI). In February 2024, the DCI issued an alert warning about the use of crypto asset platform for fraud schemes.[16]

**15. The lack of a registration or licensing regime for crypto asset service providers further aggravates the difficulty for users to distinguish between legitimate and illegitimate providers.** Given the prevalence of frauds and other criminal activity in the crypto asset ecosystem, retail users with a low degree of crypto asset literacy are especially vulnerable to being victimized, as evidenced by the VASP National Risk Assessment. Although no panacea to preventing criminal activity (or mitigating ML/TF risks), both public and private sector stakeholders have said that a registration or licensing regime would be very useful for users to be help them to distinguish between legitimate and illegitimate actors in this space. As registered or licensed entities, VASPs would arguably also find it easier to establish domestic banking relationships, reducing the incentive for retail users to use unregulated payment rails and P2P networks.

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[10] https://twitter.com/CMAKenya/status/1686671144504406016

[11] http://www.parliament.go.ke/node/20618

[12] https://nairobilawmonthly.com/parliament-urges-government-to-shut-down-worldcoin-operations-in-kenya/

[13] https://www.centralbank.go.ke/images/docs/media/Public_Notice_on_virtual_currencies_such_as_Bitcoin.pdf

[14] https://twitter.com/CMAKenya/status/1686671144504406016

[15] CMA Cautionary Statement on Initial Coin Offerings

[16] Directorate of Criminal Investigations Kenya - Statement on Scam Alerts relating to Cryptocurrency Investment

# I. Areas of Focus

## A. Legislative review of crypto asset frameworks in Kenya

**16. The legal framework underpinning the regulation and supervision of crypto assets currently rests upon existing laws, notably the Capital Markets Act 2022 (CMA Act), the National Payment Systems Act (NPSA), and the Central Bank of Kenya Act (CBK Act).** Next to those provisions, additional rules from the Kenya Information and Communication Act or the Banking Act could incidentally be relevant for the regulation of crypto assets.[17] These existing pieces of legislation govern, inter alia, the Kenyan capital market, the establishment, organization, powers, and mandates of the CMA and the CBK, the Kenyan payment system and certain other aspects potentially relevant to the crypto markets.

**17. The CMA Act regulates, among other things, the issuance, offer to the public or admission to trading of securities and certain other financial instruments and provides for a licensing regime alongside substantial obligations in areas such as governance, risk management etc., for securities exchanges.** The CMA Act also contains rules pertaining to the provision of certain services related to the securities industry and to upholding market integrity. It confers upon the CMA regulatory, supervisory, investigatory and enforcement powers with respect to the rules and obligations enshrined in the CMA Act. The CMA Act also serves as a legal basis for a number of regulations issued by the CMA that might be of relevance to the crypto asset markets. Those include the Regulatory Sandbox Policy Guidance Note 2019, the Capital Markets Collective Investment Schemes Regulation 2023 and the Capital Markets Investment Based Crowdfunding Regulations 2021. However, as outlined, no specific rules or regulations targeting crypto assert activities in Kenya have been issued to date, nor have existing regulations been amended in a targeted manner to ensure that the rules therein would be commensurate with specific risks or functionalities that might arise from activities in the crypto-asset sector.

**18. The CBK Act governs the establishment of the Central Bank of Kenya, sets out its mandates and powers, regulates the legal tender status of the Kenyan Schilling etc**. In particular, it contains the mandate for the CBK to elaborate and implement policies to promote the establishment, regulation and supervision of efficient and effective payment, clearing and settlement systems; to (solely) issue currency notes and coins, and to license and supervise authorized dealers. It also contains rules related to the regulation and supervision of currency remittances which are relevant for the crypto-asset markets. The CBK has issued a number of regulations that might be relevant for crypto assets, including the Money Remittance Regulation of 2013 which requires a license for the provision of money remittance services in Kenya. This regulation was used as a legal basis for a circular of the CBK that outlined that “no entity is currently licensed to offer money remittance services and products in Kenya using virtual currency such as Bitcoin". In relation to this, it is worth mentioning that the Kenyan High Court, in *Lipisha Consortium Limited & another v Safaricom Limited* found it legal for Safaricom, Kenya’s largest cell phone operator also offering the e-money service M-PESA, to terminate a contract with a virtual asset service

[17] The information and Communication Act regulates, among other things, telecommunication services and e-commerce. As for telecommunication services, this is relevant since the largest providers of e-money services in Kenya are telecommunication service providers. As for the banking act, it would entail relevant provisions for the tokenization of real-world assets, notably bank deposits, or in cases where the collection of funds from the public via digital assets would amount to deposit taking activities.

provider since, in view of Safaricom, the provider engaged in money remittance business without the appropriate CBK license. The court upheld this decision of Safaricom arguing that it could not force a company to uphold a contract with an unlicensed entity.

**19. The NPSA, in turn, regulates the payments sector in Kenya.** As such, it grants the CBK powers to designate, authorize and regulate payment systems, payment instruments and payment service providers; contains certain substantial obligations for the activities and entities regulated by the NPSA; lays out rules regarding settlement, clearing or netting; and confers broad powers to the CBK, amongst which powers to prohibit the issuance of payment instruments, powers to conduct audits or inspections as well as regulatory powers are to be mentioned.

**20. The legal acts confer limited rulemaking powers to the CMA and the CBK respectively.** This means that both the CMA and the CBK are mandated (and obliged) to issue regulations, guidelines, or other instruments with legally binding effects to further specify and detail the rules of the CMA Act and the NPSA, even though such rulemaking powers are subject to a parliamentary scrutiny procedure (see below).

**21. As a result, currently and absent any legislative change, any crypto asset or related activity would have to fall within the scope of existing instruments for it to be regulated.** Since the acts mentioned provide for a certain degree of discretion and room for interpretation, it is possible (and has been the case) that certain crypto assets would be considered to fall within the definition of a security, payments instrument etc. In turn, it would however also be necessary that existing rules are fit for purpose with regards to the specific risks and challenges posed by crypto assets. Otherwise, the consequences of a classification of an asset as security or another regulated instrument are difficult to foresee. This contributes to uncertainty and regulatory and supervisory forbearance.

**22. Any regulation, guideline, or other instrument of the CMA or CBK must be in concordance with higher ranking laws and provisions.** Hence, to activate regulatory powers in relation to crypto assets or activities, those powers too would need to be justified by determining that a certain crypto asset (or activity related thereto) would, from a legal perspective, be classified as a security, payments instrument or another already regulated instrument (or service related thereto) under Kenyan law. Given that existing laws and regulations have, at the time, been drafted without specific recourse to crypto assets or markets, the correct classification of the assets, as well as the determination of the applicable rules, proves difficult in practice. Enforcement actions have been taken in isolated cases only and regulatory efforts are so far constrained to warnings or circulars with a very specific content. Also, there have been no admissions to the regulatory sandbox for entities engaged in crypto-asset activities.

**23. The regulatory activities of public authorities in Kenya are governed by the Statutory Instruments Act (SIA).** The SIA provides that, as a matter of principle, any act pertaining to the force of law is subject to parliamentary scrutiny and approval. The aim of such scrutiny (via a dedicated parliamentary sub-committee) is to ensure that any delegated law-making powers are executed in line with the Kenyan constitution, the SIA, other relevant laws and in particular the “parent law” (i.e., the piece of parliamentary legislation that entails the mandate and empowerment for a certain authority to bring forward regulations). Under this process, the Kenyan Parliament thus has the power to reject a given act or to subsequently annul it where it finds that such an act is not in line with any of the aforementioned,

higher-ranking laws. The rulemaking powers of the CMA and CBK are to be conducted in line with the SIA process outlined above.

**24. In view of the lack of specific rules on crypto assets in parent laws – which is reflective of a lack of an overall political stance on crypto assets – the CMA and the CBK's rulemaking in the area of crypto assets has thus far remained limited and no legally binding, formal instruments that would specifically or expressly cover crypto assets have been issued by either institution.** Rather, both the CMA and the CBK have issued a number of warnings or circulars related to the risks of investments in digital assets. Under existing laws, it also remains unclear which types of assets would fall under the remit of the CMA or the CBK and, in turn, who should be the competent regulator and supervisor of those assets.

**25. Despite the absence of an overall framework, CBK circular No: 14 of 2015 outlines that crypto assets do not qualify as legal tender within Kenya.** This is in and of itself not surprising given that legal tender status needs to be designated as such by a legislative act which has not happened in Kenya with respect to any form of crypto asset. Rather, Article 22 of the Kenyan Central Bank Act provides that only coins and notes issued by the CBK enjoy legal tender status in Kenya and are, as such, currency and official means of payment within Kenya. The CBK enjoys the sole right to issue such coins and notes. Against this backdrop, under existing Kenyan laws a crypto asset cannot enjoy legal tender status: first, a privately issued crypto asset would contradict the CBK's monopoly to issue currency; and second, a crypto asset would not easily fall within the categories of coins or notes, which are physical assets. Taking this into account, the circular does not contain any novel legal aspects, but merely describes and reiterates, with a focus on crypto assets, what is already clearly laid out and entailed in the Kenyan Central Bank Act.

**26. The circular goes on, however, to outline the expectation of the CBK that financial institutions regulated and supervised by the CBK should not facilitate any activities related to the crypto assets.** Despite the non-binding nature of the circular, the factual effects seem, to a meaningful extent, cut-off digital assets activities from the regulated financial sector. Hence, the circular can be considered as a de-facto ban of directly investing in digital assets or facilitating activities in digital asset markets. However, the ban appears to be ineffective in the sense that transactions which are not clearly and evidently linked to crypto-related activities remain possible.

**27. This is problematic since it further obfuscates the already untransparent situation related to the crypto assets market in Kenya due to the fact that the regulated part of the financial sector officially cannot engage in (and hence be used to report on) the crypto markets**. In turn, banks are however used unofficially to transact in those markets. Lastly, this situation also makes it easier for illicit actors to deploy fraudulent schemes: there have been reports of P2P agreements where effectively consumers have been driven to effectuate payments linked to digital assets, without ever receiving any such assets. Claiming the money back is difficult in such instances since it would expose the payee of having engaged in crypto asset transactions.

**28. Thus, under the current legal framework, the holding of, or the engaging in, crypto-asset activities in Kenya is not illegal or officially banned.** However, the activity is driven out of the otherwise regulated financial sector by means of effective soft-law guidance, leading to opaque company and transaction structures, limited data and a high amount of legal uncertainty. This issue is exacerbated

by the fact that the CMA has, despite applications, thus far refrained from granting digital assets firms access to its sandbox or from licensing such firms under the CMA Act. The reason for this is, again, legal, regulatory and political uncertainty surrounding the treatment of digital assets and related service providers.

**29. From a legal enforcement perspective, uncertainties exist regarding the treatment of foreign service providers that offer (mainly exchange) crypto asset services online and from foreign, often offshore, jurisdictions**. While this issue is not specific to the crypto asset sector, the fact that crypto assets and related services are digital and as such easily offered across borders exacerbates the problem. Even though no easy solution exists due to jurisdictional constraints for Kenyan authorities trying to regulate and enforce foreign players, the authorities should nonetheless seek to expand their regulatory reach. This could be done by robust cooperation agreements, including arrangements for information exchange (taking into account professional secrecy requirements) with foreign authorities. But they could also seek to "onshore" certain service providers, especially if such providers have a relevant footprint within Kenya. This could be achieved by requiring a Kenyan license to conduct services. As a precondition for such a license, service providers of a certain size could be required to legally incorporate themselves within Kenya.

**30. There is also legal uncertainty in the area of private law as to date, no dedicated private law framework for digital assets exists in Kenya.** According to the authorities, traditional instruments of Kenyan private law would not provide a sufficient amount of clarity in areas such as tokenization (particularly of real-world assets) or custodial arrangements surrounding digital assets themselves (e.g., wallets), but also the taking in custody of real-world assets that would collateralize the tokenization. Absent any specific private law rules, transactions in crypto assets will primarily be governed by the contracts between parties. Against this backdrop, transparency for investors and clear contractual frameworks that entail clear rules with respect to the rights of the holders, transfer mechanisms, the status of an asset in the insolvency of a custodian as well as on the nature of the services provided in general is of utmost importance.

**31. Although private law matters are not within the mandate of the CMA, from an investor and consumer protection perspective ensuring clarity in the legal relationship between asset holders and their service providers is an essential ingredient for a robust framework.** Against this backdrop, the CMA (and other regulators) should actively engage in discussions to foster an appropriate private law framework. From a regulatory perspective, the authorities could require their supervised entities to have in place clear and transparent terms and conditions for their customers, to ensure that they are appropriately informed, educated and aware of their rights under a given contract and that contracts must fulfil certain minimum requirements stipulated by the regulator (e.g. in terms of protection of customer funds and assets in and outside the insolvency of a service provider, for example via segregation and safekeeping). While the regulators would not be entitled to directly intervene in contracts between citizens, they could nonetheless try to shape the content of such contracts in a manner that is commensurate with their consumer protection mandates.

**32. Some progress can be observed in tax law, but uncertainties remain due to pending High Court decisions.** The Finance Act 2023 introduces a "digital asset tax" payable by a person on income derived from the transfer or exchange of digital assets. The tax is charged at a flat rate of 3% of the gross

value and is collected as a withholding tax by the owner of a platform or the person who facilitates the exchange or transfer of the asset. The amendment includes a definition of digital assets which includes (i) anything of value that is not tangible and cryptocurrencies, token code, number held in digital form and generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration that can be transferred, stored or exchanged electronically; and (ii) a non-fungible token or any other token of similar nature, by whatever name called. However, Press reports indicate that a petition was filed before the High Court blocking the implementation of the digital asset tax and it is therefore not yet in force[18]. The VAT (Electronic, Internet, and Digital Marketplace Supply) Regulations, 2023 provides that the "facilitation of online payment for, exchange or transfer of digital assets" shall be considered a taxable supply subject to VAT. This only imposes tax on the facilitation service rather than the transfer of the digital asset itself.

**33. While the tax law entails specific provisions on crypto assets, the definition is not suitable for financial regulation due to the different objectives of the law. Moreover, there is also a lack of clarity with regard to the fate of the tax provisions in view of the pending court case**. It is important to note that the tax law is aiming at capturing a wide range of digital assets without the need to differentiate among them in order to ensure broad taxability of all types of digital assets irrespective of their specific economic functions or use cases. On the contrary, a single treatment of all crypto assets under financial law would not be in line with international best practice, and certain types of crypto assets that would be captured under the tax law definition might not warrant financial regulation at all (for example, it is not clear whether true non-fungible tokens, or the tokenization of unique real world assets would warrant being captured under financial regulation, while such a differentiation might not be necessary regarding the collection of taxes related to them).

**34. In sum, the legislative framework for crypto assets is thus far governed by rules that are not specifically tailored to the nature and type of those assets.** While private law is characterized by a complete absence of any specific rules for digital assets, the tax regime is trying to capture digital assets, but so far with limited success.

**35. From a public law perspective, legal hooks to regulate and supervise crypto assets and service providers exist in principle.** However, the activation of those powers hinges upon classifying relevant assets (or services related thereto) as securities, securities exchanges, payment instruments or payment service providers (or, depending of the design of a crypto-asset, other regulated activities). In view of the heterogeneity of digital assets, their different functions and design features as well as a lack of common understanding between the different authorities, neither the CMA nor the CBK have thus far taken the initiative to make use of their respective powers in a consistent and all-encompassing manner that would provide regulatory clarity and legal certainty beyond specific issues such as the lack of legal tender status for crypto-assets or the application of securities laws in isolated incidents. One such incident – the KeniCoin case – will be described in greater detail below, to illustrate the scope of the current legislative framework absent specific definitions or a classification system for digital assets.

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[18] See Blockchain Association of Kenya sues government over crypto tax (mariblock.com) and BAK moves to court to block taxes on crypto in Kenya (techcabal.com)

## B. Scope of current legislation: Definitions and classification of crypto assets

**36. There is currently no legal definition of crypto assets under Kenyan law.** The CMA Act is the law underpinning the legal framework for securities in Kenya. Section 2 of the CMA Act defines a security to include shares, debentures, bonds, commercial paper, or notes issued or proposed to be issued by the a corporate body, debentures or bonds issued or proposed to be issued by a government; derivatives including futures contracts and options contracts; any unit, interest or share offered under a collective investment scheme or other similar vehicle, interests, rights or property whether in the form of an instrument of otherwise, commonly known as securities; asset-based securities; and any other instrument prescribed by the CMA to be a security for the purposes of the Act. The definition under the act appears to be narrow, in the sense that it excludes securities not issued by a corporate or government entity from the definition. As a result, it might be difficult, for crypto assets that are issued in a decentralized manner or by individuals or entities other than corporates, to establish their status as a security under the CMA Act. Furthermore, the definition does not explicitly contemplate the concept of a "digital security" or a "digital asset". However, regardless of the technology or terminology used, the economic function or reality of a given digital asset or token may lead to its classification as a security.

**37. The Kenyan courts have considered the classification of the offer, issuance, and trading of a digital token, by a private actor in the case of the purported "KeniCoin" digital token[19]**. In 2019, Wiseman Talent Ventures attempted to conduct an initial coin offering of its proprietary token, "KeniCoin: to the Kenyan public. In response, the CMA issued a cautionary statement warning the public that the offering amounted to an unauthorized, unapproved public offering, highlighting the lack of complete and adequate disclosures and fraud risks associated with the offer, and warned the public to exercise caution in respect to digital tokens. In addition, the CMA issued an injunction, ordering Wiseman Talent Ventures to stop its issuance and refrain from engaging in actions that would require authorization under the CMA Act. Subsequently, Wiseman Ventures filed a civil suit against the CMA to prevent further investigation of its business and of the offer, arguing that the CMA had no mandate with respect to crypto currencies, nor the mandate to regulate and supervise its offering of a digital token given that these types of assets were unregulated in Kenya.

**38. The court's consideration of an "investment contract," as defined in US case law, potentially extends the scope of the CMA Act beyond the original notion of a security enshrined in the Act.** In deciding whether the CMA had jurisdiction to investigate the KeniCoin offer under its mandate as a securities regulator, the court was persuaded by the US case law definition of an "investment contract" in classifying the offer and trading of KeniCoin. Noting that the US case was not binding within Kenyan jurisprudence, but persuasive for the purposes of the court in this case, the court determined that the offer by Wiseman Ventures constituted an offer of an investment contract as defined in the US case, *Securities Exchange Commission (SEC) v. W.J Howey Co* (the "Howey test").[20] The Howey test defines an "investment contract" as a contract which involves the investment of money or other property, in a common enterprise, with the expectation of profit or gain based on the expertise, management of effort of others and such money or other property is subject to the risks of the common enterprise. Determining that KeniCoin met the criteria for an investment contract, the court upheld the public warning and

[19] Wiseman Talent Ventures v. Capital Markets Authority [2019] eKLR Civil Suit 08 of 2019 - Kenya Law

[20] Securities Exchange Commission (SEC) v. W.J Howey Co, 328 US 293(1946)

injunction issued by the CMA. In view of the Court, any other interpretation would not be in line with overarching policy goals to safeguard the public good by protecting consumers from engaging in unregulated capital markets activities. In order to ensure consumer protection and to ensure that the CMA can achieve its objectives and mandates, the Court stated that Section 11 of the CMA Act confers upon the CMA a sufficiently broad mandate to regulate capital markets and securities.

**39. As a result, the court considered KeniCoin to be a security under the CMA Act, and as such its issuance fell within the purview of the CMA Act and was covered under the broad regulatory and supervisory mandate of the CMA**. The court determined that the interpretation of a "cryptocurrency" as a security rests upon the following facts: it constitutes a scheme that involves an investment in a common enterprise with profits that come solely from the efforts of others as illustrated by the Howey test. Notably, the offer involved the purchase of KeniCoin via fiat currency or another crypto asset, with the promise of a 10% return monthly for a guaranteed period of three years, advertised as a "crowd sale of cloud tokens," to develop a product that would allow investors save and be entitled to substantial rewards.

**40. Furthermore, the court determined that in the absence of a specific regime, the existing rules under the Capital Markets Act is applicable to the issuance based on the evaluation, balancing and counterweighing of legal value judgements.** The court declared that as per Section 2 and Section 11 of the CMA Act, the CMA had the jurisdiction over the issuance and offer of KeniCoin in the absence of a specific legal and regulatory regime. It is noteworthy, however, that the court appears to have been informed by a balancing of competing interests, and a consideration of the consequences of a different interpretation of the merits of the case: resting on a teleological reading of the Kenyan legal system and citing obligations regarding transparency and accountability arising from the Kenyan constitution, the Court concluded that an interpretation whereby the issuance of crypto assets would remain unregulated would result in a situation that could cause great harm to the general public by channeling large amounts of money outside the regulated Kenyan capital markets, and allowing the public to invest in an unregulated and untransparent scheme without any transparency or accountability requirements being imposed on the issuer**.**

**41. The risk of circumvention and regulatory arbitrage in case of finding that the issuance of Kenicoin would in fact *not* amount to an offer to the public of a security in the sense of the CMA Act, together with a broad reading of the CMA mandate to ensure consumer protection, has guided the Court to rule in favor of the CMA.** In this regard, the Court outlined that the "decision (…) is based on where the greatest harm would be occasioned if the temporary injunction is granted or not based on the current circumstances". In this case, the greatest harm would not rest with the plaintiff seeking relief from the CMA injunction, but with the general public that might be persuaded in investing in an unregulated and untransparent investment scheme. It is important to bear in mind that this balancing act of the Court is based on broader legal deliberations and avoids a granular legal analysis of the individual elements of the Howey test or an exact determination on what constitutes a security under Kenyan law.

**42. The categorization of the KeniCoin token offering as an offer of an investment contract does not provide for a clear classification of the token itself.** Although the Howey test was applied to consider the issuance of the KeniCoin token as an investment contract and as such subject to the general

regime under existing securities law, the Court did not move on to classify the token itself, nor to outline abstract criteria based on which such a classification should be conducted to determine whether a token constitutes a security or not. In light of this, considerable legal and regulatory uncertainty persists. Moreover, it is important to distinguish an investment contract from the crypto asset. In the Howey case, it was the contracts related to the sale of land and the provision of agricultural services to tender to orange groves that was deemed an investment contract and as such subject to US securities laws. The orange groves themselves were not deemed securities. The same may apply to crypto assets under the investment contract analysis. It may not be appropriate to extend the concept and definition of a security to all crypto assets, and doing so may result in an unpredictable extension of securities laws to all crypto assets.

**43. Furthermore, the courts considered that the KeniCoin token also demonstrated features of a currency.** Importantly, the court noted that even if KeniCoin was a considered a type of currency, the regulatory and supervisory mandate of the CBK would be implicated as the CBK has the exclusive mandate on matters of currency, payment systems and payment service providers under the National Payments Systems Act. Again, this appears to be informed by the Courts' concern that absent such classification, no regulation at all would apply, leaving the greater public at risk of significant financial losses. Again, however, there is no guidance on what criteria could be used to distinguish between security and payment type tokens. Relatedly, the Court does not give any hint as to how to establish jurisdiction of the CMA versus the CBK so that, while well-intended, the judgement also risks conflicts of competences between the two regulators.

**44. The KeniCoin case establishes jurisdiction of the CMA over certain crypto assets, based on an overarching reasoning that the public should be protected from unregulated activities in financial markets matters.** It does so by considering the economic function or reality of the token, providing that existing definitions of the CMA Act can, in light of US jurisprudence, be read in a manner that allows the CMA to assume certain crypto assets under its regulatory mandate. However, the judgement falls short of delivering a precedent that would provide for a clear understanding of the concept of a security in the digital assets sphere and that would clearly delineate digital securities from digital means of payments. In turn, it also falls short drawing a clear line between the regulatory and supervisory perimeters of the CMA and the CBK.

**45. Hence, the precise scope of the CMA Act (and related to this by a lack of clear delineation, the CBK Act and the NSPA Act), which functions as a legal hook for the CMA (or the CBK, as the case may be) to regulate and supervise, remains unclear with respect to digital assets.** Since the objectives and powers of the relevant authorities are determined by the scope of a given piece of legislation, this situation exacerbates legal uncertainty.

## Box 1. Current developments de lege ferrenda

Currently, initiatives in Kenya are ongoing with a view to legislate on the crypto-asset sector. Those initiatives are driven by the private sector and policy interest groups, the result of whose efforts are unclear. These initiatives did not form an integral part of the TA mission. Rather, it is important that public sector authorities—in particular the Ministry of Finance (National Treasury) together with the CBK, the CMA and other relevant stakeholders such as the revenue authority—are sufficiently involved in any legislative activity.

Private sector engagement in the regulatory process via means of, for example, stakeholder consultation is important and in line with international best practices. But the elaboration of a rulebook for crypto assets should not be left in the hands of the private sector, as this might create conflicts of interests and also ignores the specific knowledge and expertise of the public sector bodies.

**The Capital Markets (Amendment) Bill 2023**

Currently, the Capital Markets Amendment Bill 2023 contains dedicated definitions of crypto assets and aims to provide for a bespoke regulatory regime of crypto assets and related services. It also contains some tax related provisions[21] and a rather rudimentary prudential and conduct regulation framework, consisting mainly of licensing requirements.

As a general observation it is worth highlighting that the bill operates with an explicit definition of digital assets alongside with provisions that seek to ensure further differentiation of different types of crypto assets (broadly, along the lines of stablecoins and other unbacked assets). Working with explicit definitions is in line with the recommendations under this TA report, and with best international practice. In the same vein, providing for a licensing regime regarding the provision of crypto asset services and defining the types of services covered by such regime is a good starting point.

However, there are also some problematic aspects of the draft bill. On the one hand, while providing for specific definitions is positive, some details of those definitions warrant further attention. For example, legal texts should arguably refrain from defining digital assets as "digital currencies." The term "currency" has a very specific legal meaning under most jurisdictions[22] and its usage is not suitable for privately issued coins that are most often very volatile. Hence, defining a crypto asset as a digital or crypto currency not only risks instilling terminological incoherence in the laws of a country; it also gives a misleading impression of many crypto assets which do not exhibit economic and in particular legal features attached to a currency.[23] Moreover, the Capital Markets (Amendment) Bill 2023 defines digital currencies and cryptocurrencies in a different manner, while the text of the law then appears to use those notions interchangeably (and also the undefined expression of virtual currency). The added value of having explicit definitions is lost, however, if the usage of the terminology is not achieved in a consistent manner.

Moreover, it appears questionable whether it is warranted or necessary to constrain definitions to tokens or instruments that are using DLT technology. While this is most often the case and will thus capture most assets under the current situation, such an approach might not be sufficiently future proof and is also not completely technology neutral: tokens or coins using different technologies in the future might not be in scope, creating risks of loopholes.

It should be noted that next to the Capital Markets (Amendment) Bill 2023, a Virtual Assets Bill has been brought forward by private stakeholders. In light of the aforementioned shortcomings of a legislative process that is driven by private sector stakeholders, and also given the unclear fate of this initiative, the TA mission did not assess this bill in detail.[24]

## C. Choice of Legal Design

**46. Countries may choose from a number of design strategies and choices in developing a legal and regulatory regime for crypto assets and related activities**. These options include: (1) undergoing comprehensive legal reform, (2) drafting targeted legal amendments followed by regulations (3) the issuance of regulation without legislative changes, (4) the use of exemptions, (5) prohibition or bans.[25] There are pros and cons for each legal design choice:

*(a)* ***Comprehensive legal reform.*** This may result in a special regime with detailed definitions that capture novel aspects of crypto assets and specific rules to address them. Comprehensive legislation should also cover aspects of licensing, supervision, regulation, sanctions, and enforcement regimes. Comprehensive legal reform can provide clarity and to an extent, legal certainty. The role of relevant regulators, agencies and other actors can be clearly provided for. However, undergoing comprehensive legal reform may be technically challenging and time consuming and require an adequate level of institutional capacity. It may also be a less flexible approach given that amending legislation in the future may be an arduous task. Moreover, even though a comprehensive regime will ensure legal certainty within the crypto assets universe by providing comprehensive regulations those types of crypto assets, it should ensure that it is consistent with existing, traditional financial sector laws which may already cover certain types of assets within their scope. it might create some ambiguity where a certain type of asset could be considered in-scope of existing financial regulation. In light of this, any comprehensive legislation must ensure that it is consistent with existing, traditional financial sector laws.

*(b)* ***Targeted legal amendments followed by regulations.*** The option of making targeted amendments followed by regulations may provide greater flexibility vis-à-vis a dynamic crypto asset landscape. However, authorities issuing regulations must have the requisite legal authority to do so.[26] Where the legislature expressly provides for certain types of assets to be regulated and further on specifies the mandates for regulators and supervisors with respect to such assets, the framework also benefits from a certain degree of legitimacy. It can also ensure a consistent approach between different regulators and supervisors based on the overarching choices of the legislature that subsequently bind and pre-determine the regulatory and supervisory authorities in their detailed approach towards

[21] It is questionable whether the mingling of financial and tax laws in one single source of law is advisable from a systematic point of view: it risks obfuscating the objectives of the legal act and also makes it difficult to determine the interplay between different sources of law. Lastly, it also makes it more difficult to find relevant legal provisions as they are scattered across different laws with very different objectives.

[22] A currency usually enjoys legal tender status under the legal framework of a jurisdiction or under the laws of a foreign jurisdiction ("foreign currency")

[23] Crypto assets will not discharge of any obligations; are usually not widely accepted as a means of payment; will often not function as a store of value due to volatility; do not enjoy special status or protection under private or criminal law etc.

[24] In a similar vein, this report refrains from discussing the bill in further detail. Yet, technical shortcomings like the ones mentioned above can also be detected. For example, the Virtual Assets Bill defines virtual assets as well as crypto assets in a very similar manner. The draft bill also contains numerous more specific definitions, e.g. on stablecoins, real world assets etc. However, it then continues to include them all in an overarching notion of virtual assets, rendering the differentiation efforts meaningless. The draft bill also falls short of providing specific rules or obligations for specific types of assets, which would be necessary to ensure a functional and risk-based approach, and which is the reason to differentiate in the definitions section in the first place.

[25] Trinidad and Tobago TA Report Fintech Regulation and Legislation.pdf

[26] Trinidad and Tobago TA Report Fintech Regulation and Legislation.pdf

crypto assets. This approach may be quicker to implement than a full-blown, comprehensive legal framework, as the legislature will only specify definitions, mandates for supervisors and overarching principles of the regulatory approach, while leaving the specification of the more detailed framework to expert bodies. This ensures adaptability of the framework over time without the need for parliamentary review of the legislation, whilst also providing a high degree of level of legal clarity.

***(c) Issuing regulations without any legislative changes.*** This approach may be quickest to implement and my also provide the advantage of greater flexibility in an evolving crypto assets landscape. The regulator may be enabled to issues regulations under their existing legal mandate. Comprehensive regulations may also promote innovation as they provide clear rules on permitted activities. However, there must be clear legal authority to issue such regulations relating to crypto assets and services. Furthermore, this approach may not solve the problem of competing mandates and is not capable of solving conflicts of competences where certain crypto assets might be captured under different existing laws, for example payments laws versus securities laws.

***(d) The use of exemptions.*** This involves applying exceptions to certain provisions of existing laws, often securities laws, to certain crypto asset activities. The economic actor is thereby exempted from liability and enforcement action relating to the relevant provision. This approach may take account of traditional securities laws/ rules which may not apply to new business models or however will not provide a comprehensive or wholistic framework for crypto asset regulation. The ability to use this approach will depend on a legal analysis within the jurisdiction on the ability of the regulator to take such action. This approach may also not provide certainty as exceptions are often taken on a case-by-case basis, not binding on future enforcement action and does not effectively provide clear rules relating to crypto asset activities.

***(e) Prohibitions or outright bans.*** Jurisdictions may decide to ban or outlaw the ownership, use, trading, and other related crypto assets activities. Although this definitively indicates a stance on crypto assets, it stifles innovation and promotes illicit activity enabled through regulatory arbitrage and drive such activity underground. Bans may also be difficult and costly to enforce given the borderless nature of crypto assets.[27]

**47. The approach to be chosen will require a consideration of various jurisdiction specific factors.** This includes a consideration of institutional capacity constraints and resource capability within the body responsible for developing the legal and regulatory framework. The regulatory objective should also be clear in seeking to provide consumer and investment protection and ensure the integrity of financial markets and financial stability. It is also important to ascertain what is being regulated—the activity, product, services, providers, and relevant actors. Some products, for example, stablecoins, may require more detailed or tailored legal and regulatory provisions given the risks they present for the financial and monetary system. It is also important to consider the jurisdiction specific crypto asset environment and the activities occurring within that environment in deciding regulatory priorities.[28] As aforementioned, engaging industry participants to identify and predict potential risks according to

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[27] Elements of Effective Policies for Crypto Assets (imf.org)

[28] Regulation of Crypto Assets (imf.org)

observed market developments, in addition to interagency coordination of all financial sector regulators and other relevant authorities is crucial to developing an effective legal and regulatory framework.

**48. The aim is to be comprehensive and provide legal certainty.** Regardless of the approach taken, the aim should be to address potential risks posed by various crypto asset activities, from issuance, trading, custody, service provision and all other intermediary or ancillary activities. There should be a clear allocation of responsibility for the chosen regulator(s) and supervisor(s). The chosen approach should ensure investor protection, minimize potential regulatory arbitrage, provide flexibility and adaptability required in a dynamic environment such as that for crypto assets, and provide for continuous monitoring and coordination. Ultimately it is important to provide a legal landscape with greater legal certainty regarding critical aspects of fintech activities to ensure trust and reliability in financial products and services. The legal framework should also seek to address issues such as ownership and contractual relationships, data privacy and insolvency, as well as private law issues.[29] Legislation should be aligned with the guidance provided by international organizations and standard setters, including the IMF/World Bank Bali Fintech Agenda, the IMF Policy Paper on Elements of Effective Policies for Crypto Assets, the IOSCO Policy Recommendations for Crypto and Digital Asset Markets, and the FSB Global Regulatory Framework for Crypto-Asset Activities, and relevant recommendations by FATF.

## D. CMA Policy Paper

**49. The CMA has prepared a Draft Policy Framework for Crypto Assets and Crypto-Service Providers Oversight (CMA Draft Framework) outlining its capital markets policy priorities and high-level recommendations for consideration for the future crypto asset regulatory framework.** The CMA Draft Framework has not yet been approved by the CMA Board approval and has been drafted by CMA staff as a tentative, internal working draft in anticipation of the commencement of the activities of the TWG.

**50. Finalized in March 2023, the CMA Draft Framework sets out the CMA staff's initial thoughts on regulating and supervising crypto asset market activities in Kenya and as such seeks to inform the TWG's work on the broader regulatory framework for crypto assets.** As a tentative, internal working document, the Draft Framework does not intend to prejudice the policy work of the TWG and may not be taken as the official policy stance of the CMA. The Draft Framework includes, among other things: a discussion of crypto assets and the Kenyan crypto asset context; policy and regulatory considerations (including reference to relevant IOSCO Guidance and FATF Recommendations); a jurisdictional analysis of crypto asset frameworks (e.g., UK, US, South Africa, Botswana, Nigeria); a high-level risk assessment and impact analysis; as well as high-level Draft Guidelines for a potential crypto asset regulatory framework in the Annex.

**51. While the CMA Draft Framework is an early work of the CMA, it would potentially benefit from a number of refinements and additions, including:**

- The link between the CMA Draft Framework and the various key national government policy developments referred to in the CMA Draft Framework is not evident. It would be helpful to make

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[29] The Bali Fintech Agenda (imf.org)

more explicit how the CMA Draft Framework aligns with and ties into the government's key policy development objectives. It is unclear to what extent the CMA Draft Policy Framework derives its conclusions and recommendations from the actual state of the crypto asset market and the specific risks stemming from current crypto asset market activities in Kenya. An empirical market and risk analysis that attempts to capture all prevalent crypto asset market activities and associated risks (and not be limited to the assessment of AML/CFT risks as suggested in the recommendations and as has been conducted in the VASP National Risk Assessment) could be helpful to provide a more informed basis for the design of the regulatory framework. The risk assessment should put a particular focus on the extent to which risks stemming from the use of crypto assets are currently not dealt with or dealt with adequately in the existing regulatory framework.

- The Impact Analysis could benefit from a more detailed assessment of the expected risks and benefits of the proposed framework. For instance, while the Impact Analysis currently does not expect any negative impact on the financial sector regulators, a more detailed analysis might suggest that additional supervisory tasks could strain existing regulatory resources, or that a failure of a supervised crypto exchange might have a negative impact on the credibility of the supervisory authority.

- It is unclear how the analyses of other jurisdictions' regulatory approaches feed into the CMA Draft Framework's conclusions and recommended policy measures.

**52. Also, the Draft Guidelines in Appendix A of the CMA Draft Framework would potentially benefit from a number of refinements and additions, including:**

- The scope of the Draft Guidelines is somewhat vague. In particular, it is not clear if the scope of the proposed Guidelines is limited to the issuance of smaller sized debt instruments or to crypto asset related market activity more broadly. The scope of the Guidelines should be delineated clearly, and the individual regulatory requirements should be mapped to the specific activities the requirements apply to. The Draft Guidelines do not yet include all of the relevant IOSCO Policy Recommendations for Crypto and Digital Asset Markets (FR11/2023), including inter alia recommendations on custody of client monies and assets or recommendations to address abusive behaviors.

- The definitions section of the Draft Guidelines should be aligned with the terminology used in the Draft Guidelines. For instance, the definitions sections refer to "Crypto service provider", while the Draft Guidelines also uses "Crypto Asset Service Providers" and "Crypto Asset Businesses". A definition of e.g., “"stablecoins” is missing.

- It should be clarified to what extent, if any, stablecoins would fall under the regulatory perimeter of the Draft Guidelines. If the use of stablecoins as a means of exchange for trading in crypto asset should be exempt or considered an auxiliary activity, the scope and conditions of the exemption should be clarified. Given the cross-sectoral nature of crypto asset activities, the cooperation mechanism with other regulatory authorities such as the CBK should be clearly outlined.

## E. CMA Regulatory Sandbox

53. **In line with its capital markets development objective, the CMA launched a regulatory sandbox in March 2019 and admitted its first three participants in June 2019.** After initial plans for a cross-sector, inter-agency sandbox had been discontinued, the CMA decided to implement a standalone regulatory sandbox within its regulatory perimeter. The sandbox's main objectives are to ensure that the Kenyan capital markets regulatory environment is conducive for the deployment of a variety of innovative business models and emerging technologies, to deepen the capital markets, and to help review regulatory requirements that may inhibit innovation and FinTech in the capital markets.

54. **The sandbox has broad eligibility, and clear application and acceptance criteria.** The sandbox has broad eligibility criteria, allowing admission for both domestic companies and companies licensed in another IOSCO member jurisdiction. The formal application criteria are stringent and include, among other things, a comprehensive business plan, risk assessments, and a Safeguards Plan. Key function management function holders of a successful applicant are to meet the fit and proper criteria under section 24A of the Capital Markets Act and proof of sufficient financial and non-financial resources is to be submitted to the CMA. While certain regulatory relief measures may be granted, the participant is to comply with a number of minimum regulatory requirements specified by the CMA in the Safeguards Plan.

55. **The CMA Sandbox eligibility criteria do not require participants to be authorized prior to testing, potentially creating risks to customers and investors during the testing period.** The sandbox's rather broad eligibility criteria appear consistent with the CMA's market development objective and various regulatory safeguards are to be implemented by the participants pursuant to Sections 22 to 28 of the CMA's Regulatory Sandbox Policy Guidance Note. The regulatory safeguards include compliance with certain minimum requirements applicable to all capital market participants as well as additional requirements specified by the CMA on a case-by-case basis. As unauthorized entities may initially lack the regulatory knowledge and awareness necessary to independently conduct their business operations in a compliant manner, the CMA should consider additional safeguards such as continuous monitoring of the fitness and propriety of key function holders and the recruitment of experienced senior compliance managers on the part of the participant. The CMA's monitoring of the unauthorized participant should be done in a way to allow for an early detection of potential risks and the implementation of remedial actions before the materialization of the risks.

56. **The CMA Sandbox has seen five successful exits,[30] but so far, no crypto asset related applicants have been admitted to the sandbox.** Successful exits include a mobile phone based collective investment scheme solution, a screen-based securities lending and borrowing platform, and a robo-advice offering. Pending the TWG's recommendations on the future crypto asset framework, the CMA has so far refrained from approving crypto asset related applications to its sandbox. Interest for the

[30] Pursuant to the CMA Regulatory Sandbox Policy Guidance Note, the testing period shall not exceed twelve months, extendable for up to twelve months under certain circumstances. A successful test period ends with granting the participant a license or approval to operate in Kenya subject to compliance with existing legal and regulatory requirements; granting the participant permission to operate in Kenya subject to compliance with the terms of a letter of No Objection; or the adaptation of new regulations, guidelines or notices based on insights gained from the test.

admittance to the sandbox from the crypto asset sector has been especially strong with respect to blockchain based solutions pertaining to the tokenization of real economy assets, in particular real estate. While, from a regulatory standpoint, the structure of such real estate tokenization products would likely be very similar to those of traditional REITs, solutions to open legal and regulatory questions relating to the management and custody of the underlying asset, the transfer of ownership rights, and the attribution of liability could potentially be tested in the safeguarded environment of a regulatory sandbox.

**57. If the CMA should consider admitting crypto asset applicants to the CMA Sandbox in the future, appropriate resources and safeguards should be put in place before the commencement of crypto asset related Sandbox tests.** The CMA should ensure that Sandbox staff is sufficiently trained and that appropriate technological resources, e.g., to conduct transaction monitoring, are available. A cost-benefit analysis as to the expected need of supervisory resources and the expected value added of admitting crypto asset projects should be considered. Crypto asset applications should be admitted only if all acceptance criteria are met by the respective applicants. In particular, with respect to potential real estate tokenization projects, admission of applicants should only be considered if the regulatory issues brought up are significant enough to warrant sandbox testing.

# II. Recommendations

**58. The development of Kenya's regulatory and supervisory framework for crypto assets should be aligned with international frameworks and standards** including the IMF/World Bank Bali Fintech Agenda, the IMF Policy Paper on Elements of Effective Policies for Crypto Assets, the IOSCO Policy Recommendations for Crypto and Digital Asset Markets, and the FSB Global Regulatory Framework for Crypto-Asset Activities, and relevant recommendations by FATF. In developing the regulatory framework, particular emphasis should be placed on the provision of regulatory clarity allowing the domestic crypto asset sector to develop in a transparent way and enabling the effective supervision by the Authorities. The relevant Authorities should be equipped with the necessary resources to effectively monitor crypto asset activities and the potential build-up of risks, including risks to the functioning of the payment system and monetary transmission channels.

**59. The specific configuration of the regulatory and supervisory framework should be calibrated based on the current and expected risks emanating from crypto asset market activity prevalent in Kenya.** In line with Element V of the Bali Fintech Agenda, the formulation of policies should be informed by a close monitoring of market developments. The TWG should thus conduct or commission a comprehensive and robust analysis of the current state of the Kenyan crypto asset market as well as a risk assessment as a priority. The analysis should include an assessment of the use of crypto assets for domestic and international payments. The CMA should conduct a legal analysis of what, if any, crypto assets currently being used or traded in Kenya meet the qualification threshold of a security.

**60. Given the cross-sectoral nature of crypto asset activities, adequate cooperation mechanisms across relevant authorities should be implemented to allow for the effective oversight of the entire crypto asset markets.** In line with this, a clear allocation and delineation of regulatory and supervisory objectives and mandates should be put in place to ensure legal certainty and clarity for the relevant market participants and authorities. The objectives and mandates should be anchored in the relevant laws and be informed by the different types of crypto-assets and the economic functions they perform (or are intended to perform).

**61. Legal certainty as regards the regulatory treatment of crypto assets should be enhanced.** In order to achieve this, different approaches taking the form of comprehensive bespoke frameworks or of more targeted and surgical amendments to existing laws could be envisaged. In both instances, it would be crucial to put in place a clear definition of the digital assets that would be captured under the respective framework(s), a clear classification of different types of assets based on their economic functions and a set of rules that would be commensurate with the risks and functions performed by those assets. Importantly, these definitions and the classification should also be considered in relation to the objectives and mandates for the respective regulators and supervisors, as outlined in paragraph 50. In this regard, consistency of the frameworks is of critical importance to avoid the risk of regulatory arbitrage, loopholes, or supervisory forbearance due to unclear mandates and rules.

**62. Legal certainty should also be enhanced in the area of private law**. While it is acknowledged that this is not within the direct remit of the CMA, the regulatory approach of the CMA could ensure that investors and consumers receive sufficient, clear, and easily understandable information regarding their

rights under the agreement with a service provider. The CMA could further set out expectations or minimum requirements for standard terms and conditions used by crypto services providers so that costumer funds are sufficiently safeguarded from the service providers own estate.

**63. Given the cross-border nature of many crypto-asset activities, legal and regulatory arrangements that facilitate cross-border supervision and enforcement actions seem warranted.** Such arrangements should again be informed by the dedicated risks identified in the stock-taking exercise. However, because many services in Kenya are provided online by foreign service providers, cooperation arrangements with foreign jurisdictions and their supervisory authorities are an important tool to facilitate the supervision of cross-border activities. For virtual assets service providers with a strong imprint on the Kenyan market, requirements to obtain local licenses combined with a requirement to have some form of legal establishment in Kenya to ensure enforceability could be considered.

**64. Financial Literacy initiatives should be considered as an additional safeguard against crypto. asset related scams and other criminal behavior.**

# III. Next Steps

**65. The country aims to develop a comprehensive regulatory and supervisory framework in respect to crypto assets and crypto service providers.** It is important that the TWG, which is established to provide policy recommendations, first understands the current state of the Kenyan crypto asset market as well as assesses market, conduct, and consumer protection risks based on the market analysis. Once this assessment is complete, the IMF can provide technical assistance to support the Kenyan Authorities addressing risks to financial stability, markets, and consumers.

# Annex I: Legislative regimes for crypto assets in the world[31]

## A. Japan

**The regulatory framework for crypto assets in Japan stems from the Payment Services Act.** The PSA was first amended to introduce specific regulation for crypto assets in May 2016, with a reform that entered into force in April 2017. This initial framework introduced a new category of exchange operators of crypto assets to be registered as Crypto Asset Exchange Service Providers (CESP). The Act included AML/CFT measures like identity verification at the time of opening an account, record keeping requirements and reporting of suspicious transactions. Significantly, it also introduced an incipient conduct and prudential framework, which included certain disclosure requirements, rules on minimum capital and net assets, external audit of financial statements, asset segregation requirements and system security management requirements.

**A subsequent reform of the PSA in 2019 introduced a more comprehensive framework and stricter requirements for CESPs.** The requirement for crypto assets to be managed in an offline environment (cold wallet) was introduced, as well as a requirement to establish a system to prevent conflicts of interest. The activity of "management" of crypto assets (wallet services) was included within the definition of CESP (i.e. entities willing to carry out wallet services also need a CESP license). The Act further required that exchanges notify the authorities prior to adding new crypto assets for trading and introduced market integrity measures like prohibiting manipulation of prices, rumor spreading and other unfair acts. Additionally, marketing and solicitation requirements were also set. The PSA has also been amended in 2022 to introduce a regime for stablecoin issuers and exchanges. This third reform of the PSA was enacted in 2022 and entered into force in June 2023 and enables trust banks and FTSPs to issue stablecoins[32][33], and creates a separate license for stablecoin exchanges: Electronic Payment Instruments Exchange Service Providers (EPIESP). Entities with a CESP license that want to trade stablecoins will also need to apply to the FSA for a separate EPIESP license.

**The requirements for CESPs are mainly detailed in the PSA, the Cabinet Order on Crypto Asset Service Providers and further in JVCEA Guidelines**. Additionally, the FSA has issued Guidelines for Supervision of CESPs that provide more granularity on the expectations of FSA for these entities. The framework sets detailed requirements for CESPs around AML/CFT, capital requirements,

[31] In addressing the demand from the CMA this Annex provides a diverse array of examples encompassing both peer and non-peer countries. It is essential to acknowledge that certain examples may resonate more closely with the Kenyan reality than others. However, in the interest of presenting a broad spectrum of perspectives, we have included a mix of both peer countries and advanced economies.

[32] Further to the amended PSA, those stablecoins that are issued at a price linked to the value of the legal currency and that promise redemption at par have been defined as "electronic payment instruments" and can be issued and traded in Japan further to the newly introduced regulatory framework.

[33] Commercial banks are also allowed to issue stablecoins, but only in permissioned platforms and taking the form of tokenized deposits.

governance and conflict of interest and other handling and trade disclosures, Record keeping requirements Listing of assets Market integrity Custody of funds and crypto assets Use of leverage IT and operational risk and Marketing activities. The CESP Monitoring Office is in charge of the registration of CESPs. CESPs are subject to supervision by the FSA and Local Finance Bureaus. In case of infringement of laws and regulations, the FSA can also impose administrative measures.

## B. European Union (EU)

**The regulatory framework for crypto assets within the EU is provided for in a dedicated and bespoke regime under the so-called Markets in Crypto-Assets Regulation (MiCAR).** Despite this bespoke regime, other sectorial pieces of legislation remain relevant for the regulation of crypto assets in the EU. This is the case, most notably, for the Markets in Financial Instruments Directive and Regulation (MiFID/MiFIR) which lay out the regulatory framework for securities in the EU. But also, other legal acts might apply, depending on the classification of a given crypto asset.

**By means of legal design, MiCAR can be characterized as a fallback regime with specific and dedicated rules for a subset of crypto assets**: MiCAR applies to any crypto-asset – i.e. digital representation of a value/rights that is able to be transferred and stored electronically using DLT/similar technology – unless there is a specific exemption: such exemptions are in place for crypto-assets that fall within the definition of traditional financial instruments (in which case MiFID/MiFIR applies), but also for Non Fungible Tokens (NFTs) if and insofar they do not have any financial use: where the substance of an NFT brings it close to a security, it should be regulated under MiCAR despite its designation as NFT. If, however, the token is truly unique and cannot be readily exchanged on the markets for similar tokens, it is closer to unique real-world assets like art or paintings and should, as such, not be regulated under financial services law.

**MiCAR puts in place a dedicated classification system for crypto-assets and applies a “lex specialis” regime for certain types of assets:** MiCAR defines Asset Referenced Tokens (ARTs) and e-money Tokens (EMTs) as digital assets that use a stabilization mechanism: ARTs are backed by assets (financial instruments, currencies or a mix thereof) whereas EMTs are backed by the Euro (or another official currency of a EU Member State). Where a given crypto asset fulfils the definition of ART or AMT, the (stricter) rules for those types of assets under MiCAR apply. Where an asset does not fulfill those definitions but is also not exempt from MiCAR (due to its regulation under other sectorial rules, for example), it is regulated under the more general rules under MiCAR for crypto-assets other than ARTs or EMTs.

**The stricter rules for ARTs and EMTs under MiCAR are explained by their potential use as a means of exchange/payment and the particular risks arising from the stabilization mechanisms.** In this regard, MiCAR puts in place a dedicated licensing and authorization regime for ARTs and EMTs, whereas other crypto assets can be issued without a dedicated license in as long as rules on transparency and disclosure (notably the publication of a white paper and adherence to a set of marketing rules) are complied with. The issuance of EMTs is further restricted to banks and e-money institutions, whereas ARTs can also be issued by other legal entities, if they comply with a set of prudential, governance and risk management rules. For both ARTs and EMTs, statutory rights for the holders to redeem their tokens at par are in place. Their use as a store of value is limited by a statutory prohibition of

granting interest. The reserve mechanisms are protected by safeguarding, segregation, and safekeeping obligations for the reserve assets and/or the funds received in exchange for the token.

**Importantly, the European Central Bank (ECB) or national Central Banks in countries that are not yet part of the Eurosystem, have a right to limit or block the (further) issuance of ARTs or EMTs if they are widely used as a means of payment**. In the same vein, the Central Banks can block the authorization process if the authorization to issue such tokens would endanger the payment systems, monetary policy transmission etc. If the Central Banks intervene after an issuance has already been effectuated, its powers range from demanding a reduction of tokens in circulation to imposing a minimum denomination size per token, thereby effectively reducing the use-cases of a token as a payment instrument.

**For all types of tokens, the minimum requirements set out for crypto-assets other than ARTs and EMTs apply** (potentially, with small adaptions to cater for the specificities of ARTs and EMTs): issuers, offerors to the public or persons seeking admission to trading of crypto-assets must prepare a white paper with detailed minimum contents, notably risk-statements and warnings that funds are at risk of loss; the marketing materials accompanying any issuance must be fair, clear, and concise; there is a statutory liability in place for wrong, missing or misleading information provided in white papers or marketing materials.

**MiCAR also defines a set of crypto-asset services and provides a specific licensing and regulatory framework for the provision of such services**. In particular, the provision of services such as the exchange of fiat currency or crypto assets into crypto-assets, the transfer of crypto-assets, providing custody, investment advice or portfolio management for crypto-assets, the execution of orders or the placing of crypto assets as well as the setting up of a crypto-asset exchange would be qualified as services that require a license under MiCAR. The regulation than sets out general requirements in order to obtain a license, as well as obligations linked to risk management, governance, the fitness and propriety of managerial staff etc. that will need to be adhered to at all times. MiCAR also defines specific obligations depending on the type of service provided. For example, investment advice would need to be tailored to the costumer seeking advice and in the best interest of the costumer. Only products that would be commensurate with the risk appetite of the costumer, his understanding and expertise of the markets he is about to engage in and his investment aims should be offered. For the provision of exchange services, the rules of the exchange would need to ensure a non-discriminatory, objective process for all market participants. Custody services would require safeguarding, legal and operational segregation of costumer funds to ensure insolvency remoteness etc.

**MiCAR also contains market integrity rules that are in line with rules for the wider financial markets but tailored specifically to crypto-asset markets.** Rules prohibiting market manipulation and the use of insider information capturing specific risks arising from the crypto universe (egg wash trading, the use of social media as a marketing channel) have been put in place. Those rules have extra-territorial effect meaning that any market abuse would be captured under European rules. Licensed crypto exchanges are obliged to put in place systems to detect and report potential market abuse or insider dealings.

**MiCAR does not specifically govern supervisory arrangements, as the designation of the competent supervisory authority is a matter of national law in EU member states. However, MiCAR**

**does ensure the involvement of Central Banks where necessary (as outlined above), and provides for a significance regime**: under this regime, crypto-assets that are considered to be "significant" in terms of their size based on number of holders, transactions, transaction values would be subject to a more stringent ruleset, and in particular to a stricter supervisory regime whereby European Supervisors would take over a more prominent role in supervision. It is noteworthy, in this respect, that this regime pertains specifically to ARTs and EMTs, for which the European Banking Authority would be responsible in case of a designation of a specific coin as significant, due to its mandate related to payments supervision and oversight. The European Market Supervisory Authority would, in turn, be responsible for increased and enhanced coordinated for the supervision of significant crypto-asset service providers.

**Lastly, MiCAR provides for a stringent set of supervisory tools and powers, ranging from investigatory powers to supervisory measures, sanctions, and penalties (including, in certain cases, criminal penalties) that aim at the restoration of compliance with the regulatory framework and at deterring individuals from non-compliance.** In particular, certain obligations apply to both the legal entity (e.g., the crypto-asset service providers) and the natural persons in charge of it (managers, key functions holders). In the same vein, statutory civil liability for misinformation related to white papers or marketing expands to natural persons involved in the relevant crypto-asset activities.

## C. Nigeria

**There is no specific legislation on crypto assets in Nigeria.** The regulatory framework has been provided for by rules, guidelines and regulations issued by the Central Bank of Nigeria (CBN) and the Securities and Exchange Commission (SEC), often resulting in a contradictory, uncoordinated approach, without legal certainty. However, a new harmonized framework provides a licensing regime for virtual asset service providers, and guidance on the issuance of crypto assets, offering platforms, custodians and exchanges as regulated by the SEC. In conjunction, the CBN has issued guidelines and authorization requirements for banks and other financial institutions transacting with crypto asset providers under its regulatory purview.

**The CBN had previously banned banks from transacting with crypto asset service providers.** Firstly, by a circular issued in 2017[34], the CBN warned banks of the AML/CFT risks in dealing with crypto assets and crypto asset providers. In 2021, the CBN issued another circular to banks, financial institutions and all regulated entities banning them from transacting with, dealing in or facilitating crypto asset transactions, and to close down all crypto asset related accounts. The CBN also instructed banks to ensure that they do not hold or trade in any way with crypto assets. Notably, these circulars, letters or statements issued by the CBN were not binding legislation but served to effectively deter banks from transacting with crypto asset service providers.

**The SEC had also attempted to assert its jurisdiction over crypto assets in Nigeria, however its efforts were stalled as a result of uncertainty posed by the CBN's prohibitory circular.** In 2020, the SEC issued a statement on the classification and treatment of digital assets, asserting that all crypto assets, defined in the statement as "a digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/ or (2) a unit of account; and or (3) a store of value, but

[34] CBN Circular to Banks and other Financial Institutions, January 2017

does not have legal tender status in any jurisdiction," fell under its jurisdiction by virtue of the Investment and Securities Act 2007. The Statement thereby required all token offerings offered in Nigeria to be registered with the SEC. Subsequently, the SEC attempted to provide a more comprehensive regulatory framework on the issuance, offering and custody of digital assets and virtual asset service providers in 2022[35]. However, given the uncertainty pertaining to the CBN's prohibition on banks and regulated entities transacting with crypto asset service providers, this framework was ineffective.

**In 2023, the CBN issued guidelines on the operations of bank accounts for virtual asset service providers.** Overturning its 2021 ban in December 2023, the CBN issued a circular providing guidelines on the operations of bank accounts for virtual asset service providers. The guidelines rely on the Financial Action Task Force (FAFT) Recommendation 15 which requires VASPs to be regulated to prevent misuse of virtual assets for money laundering and terrorist financing, also reflected in the amended Money Laundering (Prevention and Prohibition Act), which recognizes VASPs as part of the definition of a financial institution. The guidelines also align with the previously stalled SEC Rules on Issuance, Offering and Custody of Digital Assets and VASPs, and the introduction of a capital gains tax on the disposal of digital assets introduced in the 2023 Finance Act to provide a regulatory framework for their operations in Nigeria.[36] Citing its power under the CBN Act and the Banks and other Financial Institutions Act (BOFIA), the CBN issued the Guidelines allowing banks to transact with VASPs subject to CBN authorization, providing minimum standards and requirements, and guidance on banking business relationships and account opening for VASPs in Nigeria, risk management and the effective monitoring of activities of banks and other financial institutions providing services to SEC-licensed VASPs. Modelled after the FAFT Recommendations, the guidelines differentiate between digital assets and virtual assets, defining digital assets as a digital token that represents assets such as debt or equity claim on the issuer while virtual assets are defined as a digital representation of value that can be transferred, digitally traded and can be used for payment or investment purposes. These definitions exclude digital representations of fiat currencies, securities and other financial assets already covered in FAFT recommendations.

**The SEC's Rules on Issuance, Offering and Custody of Digital Assets is now presumably reactivated, bringing the regulation of digital assets and services providers under the regulatory purview of the SEC.** With the overturning of the CBN's ban on banks transacting with VASPs, the aforementioned SEC rules address various aspects of virtual and digital assets and service providers including providing regulation on the issuance of digital assets as securities, registration requirements for digital asset offering platforms, registration requirements for digital asset custodians, including foreign custodial services providers, virtual asset service providers and rules on digital asset exchanges. In alignment with the CBN's Guidelines, the Rules define digital assets and virtual assets as aforementioned. A proposed Investment and Securities Bill, which was passed in the Senate in 2023 has also sought to expand the definition of securities to include virtual assets and provide for the regulatory mandate of the SEC in legislation. Under the SEC's Rules. VASPs include entities which provide exchange services between virtual assets and fiat currencies, the transfer of virtual assets, safekeeping, or administration of virtual assets and those which provide services related to the issue or sale of a virtual asset. All digital assets must be registered with the SEC and through an initial assessment filing, the SEC will determine if the asset qualifies as a "security" under the Investment and Securities Act. All service

[35] SEC New Rules on Issuance, Offering Platforms and Custody of Digital Assets

[36] CBN Circular to All Banks and other Financial Institutions, December 2023

providers must be registered with the SEC and must comply with specific rules relating to the service they provide whether as offering platform, custodial service, or exchange, as well as the general requirements for VASPs. Registration requirements include minimum paid up share capital, corporate governance fit and proper requirements for key officers, senior management, the issuer; operational and risk management; conflict of interest; separation of accounts and safeguarding, amongst others.

## D. Mauritius

**Mauritius has introduced bespoke legislation to govern crypto assets and crypto asset service providers.** Prior to the passing of the Act, the Financial Service Commission (FSC), the securities regulator, issued guidance on the recognition of digital assets as an asset-class for investment by sophisticated investors, as well as guidance on security token offerings. In 2019, the FSC then published rules on the provision of custodial services, in order to regulate and supervise the custody of digital assets.

**The efforts of the FSC in prescribing rules and providing guidance on crypto asset resulted in the promulgation of the Virtual Asset and Initial Token Offering Services Act (VAITOS Act).** In 2021 bespoke legislation was passed, providing a comprehensive legislative framework, authorizing the FSC to regulate and supervise virtual asset service providers and issuers of initial token offerings. The law distinguishes between “virtual assets” and “virtual tokens.” Virtual assets are defined as a digital representation of value that can be digitally traded or transferred and may be used for payment of investment purposes, excluding a digital representation of fiat currencies, digital currencies issued by the Bank of Mauritius, securities and other financial assets that fall under the purview of the Securities Act[37]. Notably, the Act declares that virtual assets are not legal tender in Mauritius. On the other hand, virtual tokens are defined as “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.” The Act defines an “initial token offering” as the offer for sale, to the public, of a virtual token in exchange for fiat currency or another virtual asset, as a means of raising funds for projects through a digital platform. In addition, the FSC has, by virtue of its powers under Section 52 of the VAITOS Act to issue guidance and rules including on client disclosure, AML/CFT requirements, custody of client assets and cybersecurity among other issues. The Act provides a licensing regime for VASPs[38] seeking to provide services in or from Mauritius, requiring them to establish physical presence in Mauritius including any foreign entities seeking to provide virtual asset services in Mauritius. Services covered under the Act which require specific licensing include virtual asset broker-dealers, wallet services, custodial services, advisory services, and the provision of an exchange platform. Depending on the service provided, VASPs are subject to prudential and market conduct requirements to maintain a high standard of professional conduct, fit and proper criteria for controllers, beneficial owners, key officers, and senior executives who are to be approved by the FSC; specific requirements for VASPs which hold client assets, financial requirements related to minimum capital to held, separate of client and business accounts, amongst other

[37] Section 2 of the VAITOS Act.

[38] The Act defines a VASP as a person, that as a business, conducts one or more of the following activities or operations for, or on behalf of another person – exchange between virtual assets 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; participation in, and provision of, financial services related to an issuer’s offer and/or sale of a virtual asset.

requirements. In compliance with international standards set by the FAFT, the Act includes provisions to mitigate AML/CFT risks. The Act also provides for a registration regime for issuers of initial token offerings. All issuers must register with the FSC, and must submit a white paper, publishing full disclosures relating to the offering. The Act also provides for the advertisement of initial coin offerings which must be accurate and not misleading. The Act also grants a 72 hour right of withdrawal to purchasers of the initial coin offering.

**The VAITOS Act excludes "securities tokens" from its scope.** Notably, under the transitional provisions of the Act, a "security" as defined under the Securities Act no longer includes a virtual token. Securities tokens are defined as digital assets which fall into the category of securities as defined under the existing Securities Act. The FSC has declared that a security token may constitute a share, where it confers or represents ownership or economic rights of the holder of the security token in a corporation; a debenture, where it constitutes or evidences the indebtedness of the issuer of the Security Token in respect of any money lent to the issuer by a holder of the Security Token; a derivative, as defined under the Securities Act; a unit in a collective investment scheme, where it represents a right or interest in a CIS including an option to acquire a right or interest in a CIS. The FSC has also declared that this list is not exhaustive and that it will look to the structure, characteristics and rights attached to a virtual token in determining if it falls under the definition of securities under the Securities Act.[39] A new framework for securities token offering is provided for in the Securities (Solicitation) Rules 2020, the Securities (Licensing) (Amendment Rules) 2020 and the Financial Services (Consolidated Licensing and Fees Amendment No. 2) Rules 2020. The FSC has also issued a series of guidance notes which provide standards for securities token offerings and the licensing of security token trading systems.

**The Act seeks to provide a comprehensive legal regime for crypto assets and VASPS and to eliminate any inconsistency.** An "inconsistency rule" under the Act provides that in the event of any inconsistency between the provisions of Act as it pertains to crypto assets and related matters, the Act will prevail over other applicable laws.

## E. United Kingdom (UK)

**There is no specific regulatory framework for crypto assets in the UK.** However, providers of crypto asset services in the UK need to be registered with the Financial Conduct Authority (FCA) under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, as amended (MLRs). The FCA clearly outlines its requirements and expectations of applicants for the registration on its website.[40] Section 22 of Part II of the Joint Money Laundering Steering Group Guidance provides detailed guidance for UK crypto asset exchange and custodian wallet providers as to how to comply with the specific requirements set out in the MLRs.[41] Annex 22-I of Part II provides additional guidance on the specific requirements relating to crypto asset transfers ("travel rule").

**The FCA considers security and e-money tokens to fall within its existing regulatory perimeter.** In its Guidance on Crypto assets (PS19/22) the FCA lays out its interpretation of its regulatory

[39] FSC Mauritius Guidance Note - Security Token Offerings and Security Trading Systems

[40] https://www.fca.org.uk/firms/cryptoassets-aml-ctf-regime/cryptoasset-registration-information-applicants

[41] https://www.jmlsg.org.uk/wp-content/uploads/2023/09/JMLSG-Guidance-Part-II_June-2023_revised-Sept-2023.pdf

perimeter as it applies to crypto assets. In doing so, the FCA classifies crypto assets into two broad categories: "unregulated tokens" ("exchange tokens" and "utility tokens") and "regulated tokens" ("security tokens" and "e-money tokens"). An "unregulated token" is a token that is not a "security token" or an "e-money token" and as such does not provide rights or obligations akin to "specified investments" within the meaning of the Financial Services and Markets Act 200 (Regulated Activities) Order 2001, as amended. Providers of crypto asset services related to unregulated tokens need to be registered with the FCA under the MLRs as outlined above. "Regulated tokens" represent "specified investments" such as shares, debt instruments, warrants or e-money. Depending on its specific configuration, a "stablecoin" might be considered a unit in a collective investment scheme, a debt security, e-money, or another type of specified investment. Providers of crypto asset services related to regulated tokens need to comply with all applicable regulations.

**The FCA has used its existing rule making powers to prohibit the marketing, distribution, and sale of some crypto asset products to retail consumers**. In January 2021, the FCA has amended its Conduct of Business Sourcebook (COBS), citing that existing regulatory requirements do not sufficiently address the harms from crypto asset derivatives. Having considered other, less restrictive policy measures (e.g., leverage limits), the FCA concluded that a prohibition is necessary to address the harm.[42] COBS 22.6.5. now specifies that the sale, distribution, and marketing of a "crypto asset derivative" or a "crypto asset exchange traded note" to a retail client is prohibited.[43]

**The extension of the Financial Promotions Regime to cover unregulated crypto assets required amendments to the underlying legislation.** Following legislative amendments, the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 (FPO) brought "qualifying crypto assets" within the scope of the UK Financial Promotions Regime, although some exceptions apply. The definition of "qualifying crypto assets" includes essentially all crypto asset tokens (including unregulated exchange tokens such as BTC) that do not already fall within the regulatory perimeter. With crypto assets being classified as a "Restricted Mass Market Investment", the promotion of unregulated crypto assets is only permissible within the limits set by the applicable rules of the FPO. The rules include the prominent display of risk warnings, a ban on incentives, a restriction of direct offer financial promotions to certain categories of investors, a 24-hour cooling off period for new customers, and the conduct of an ex-ante appropriateness assessment for customers. In November 2023, the FCA published a Guidance on Crypto asset Financial Promotions setting out the FCA's expectations for firms.[44] The FCA has also published its Guidance consultation on financial promotions on social media, which includes examples of compliant and non-compliant social media promotions.[45]

## F. United States (US)

**Absent specific crypto legislation in the US, Authorities have so far been regulating crypto asset activities by way of enforcement of existing regulations.** Both the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) have brought several cases

[42] https://www.fca.org.uk/publication/policy/ps20-10.pdf

[43] https://www.handbook.fca.org.uk/handbook/COBS/22/6.html

[44] https://www.fca.org.uk/publication/finalised-guidance/fg23-3.pdf

[45] https://www.fca.org.uk/publication/guidance-consultation/gc23-2.pdf

against various crypto asset market actors including exchanges, decentralized finance actors, and individuals.[46,47]

**In the course of its enforcement actions, the SEC has highlighted specific crypto assets deemed to meet the qualification criteria of a security in line with current US securities regulations**. In *SEC v. Binance Holdings Limited,* for instance, the SEC has singled out a number of crypto assets as being offered and sold as securities on Binance platforms.[48] including popular crypto assets such as Binance Coin (BNB), Binance USD (BUSD), Solana (SOL), and Cardano (ADA). In *SEC v. Coinbase, Inc.*[49]*,* the SEC set out its view that also certain crypto asset related services such as Coinbase's staking program are to be qualified as investment contracts under the Howey test.[50]

**Legal action taken against the SEC's decisions has re-introduced regulatory uncertainty as to the regulatory treatment of crypto assets in the US, highlighting that the regulation by enforcement approach may not be suited for jurisdictions seeking to enhance the level of regulatory certainty**. On July 13, 2023, the U.S. District Court for the Southern District of New York issued its opinion ruling on competing summary judgment motions in *SEC v. Ripple Labs, et al*. The Court issued a split decision, holding that the sale of Ripple's XRP token under certain conditions would not satisfy all criteria of the Howey tests, while under other circumstances all criteria of the Howey test would be met.

**On January 10, 2024, the SEC approved the listing and trading of a number of spots BTC Exchange Traded Products (ETP)**. The SEC's approval of the ETPs was preceded by a ruling of the U.S. Court of Appeals for the District of Columbia, in which the Court held that the SEC had failed to adequately explain its reasoning in disapproving the listing and trading of a spot BTC ETP.[51]

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[46] https://www.sec.gov/spotlight/cybersecurity-enforcement-actions

[47] https://www.cftc.gov/PressRoom/SpeechesTestimony/opamcginley1

[48] https://www.courtlistener.com/docket/67474542/1/securities-and-exchange-commission-v-binance-holdings-limited/

[49] https://www.courtlistener.com/docket/67478179/1/securities-and-exchange-commission-v-coinbase-inc/

[50] https://www.sec.gov/files/dlt-framework.pdf

[51] https://www.sec.gov/news/statement/gensler-statement-spot-bitcoin-011023#_ftn1

# Annex II: Global Overview: Choice of Legal Design for Crypto Asset Framework

| Country | Legal design/ Regulatory Approach |
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| Singapore | Targeted legal amendments, followed by the issuance of regulations:<br><br>- Amendments to the Payment Services Act to provide for crypto assets service providers.<br>- Licensing regime for service providers related to "digital payment tokens[52]" under the Monetary Authority of Singapore. |
| Mauritius | Bespoke legislation:<br><br>- Enactment of the Virtual Asset and Initial Token Offering Services Act<br>- Licensing and registration regime for virtual asset providers and issuers of initial token offerings under the Financial Services Commission. |
| Japan | Targeted legal amendments followed by targeted regulations.<br><br>- Amendment of the Payment System Act to provide for definition of crypto asset and related activities.<br>- Targeted regulations on crypto asset service provision e.g., exchange services, custody services, ICO rules etc. including licensing and registration requirements.<br>- The Financial Services Authority is responsible for the regulation and oversees of crypto activities and service providers, in addition self-regulatory agencies which have the power to police crypto asset service providers. |
| EU | Bespoke legislation:<br><br>- Enactment of MiCA, which provides tailored rules on crypto assets and related activities including issuance, custody, trading and other ancillary services. |
| USA | Regulation by enforcement<br><br>- Enforcement of existing securities rules if activity falls within purview of the regulated activities as determined on a case-by-case basis. |
| Nigeria | Issuance of regulations without targeted legal amendments. |

[52] As defined under the Payment Systems Act.

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| | - Issuance of regulation by securities regulator regarding the definition of crypto assets, rules on issuance, custody, trading, and other related activities.<br>- Licensing and registration regime for crypto asset service providers |
| South Africa | Issuance of regulations without targeted legal amendments.<br><br>- Crypto assets[53] are classified as "financial product" under the Financial Advisory and Intermediary Service Act. Service providers and intermediaries must be authorized by the Financial Sector Conduct Authority under the Act. |
| Hong Kong | Issuance of regulations without targeted legal amendments.<br><br>- Issuance of regulations and licensing regime for crypto asset service providers under the securities regulator.<br>- Amendment of AML/CFT laws to provide for the definition of virtual assets and regulation of virtual asset service providers. |
| Botswana | Bespoke legislation<br><br>- Enactment of the Virtual Assets Act<br>- The Act provides a licensing regime for VASPs and initial token issuers.<br>- The Non-Financial Institutional Regulatory Authority is the designated regulatory and supervisory authority under the Act. |
| UAE | Bespoke legislation<br><br>- Federal level legislation applicable to virtual assets<br>- Provides for licensing regime under federal or local licensing authority[54] |
| Bahamas | Bespoke legislation<br><br>- Enactment of the Digital Assets and Registered Exchanges Act<br>- The Act regulates "digital asset business" and initial token offerings.<br>- The Securities Commission is responsible for the regulation, monitoring and supervision of digital asset issuances and digital asset businesses. |
| Namibia | Bespoke legislation<br><br>- Enactment of the Virtual Assets Act which provides for the licensing and regulation of virtual asset service providers, and on virtual asset services including initial token offerings, exchange services and platform providers, custody, etc. |

[53] As defined in the Financial Sector Conduct Authority General Notice 1350 of 2022 -Financial Advisory and Intermediary Services Act: Declaration of a crypto asset as a financial product (www.gov.za)

[54] The only local licensing authority currently is Dubai's Virtual Assets Regulator Authority which regulated virtual assets within Dubai.

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| | - The Act designated the Bank of Namibia as the regulatory and supervisory authority. |
| Brazil | Bespoke legislation<br><br>- The Crypto assets Act provides rules for crypto asset service providers with a focus on investor protection, provision on AML/CFT, including licensing and registration requirements.<br>- The law regulates activities including the issuance, sale, transfer, exchange, and custody of crypto assets.<br>- The central bank oversees and regulates services related to crypto assets. |