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NOTE FROM THE EDITOR-IN-CHIEF



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Welcome back to the 9th issue of the International Journal of Blockchain Law (IJBL), which offers a variety of insightful crypto-related topics from various jurisdictions and a link to the recording of the May 2024 episode of the IJBL/GBBC webinar, "Emerging Topics in Blockchain Law." I am proud that the 9th issue covers reports on regulatory frameworks across Thailand, Turkey, South Korea, United Arab Emirates (UAE), and Switzerland.

To set the scene: I am planning a series of articles touching on blockchain sandboxes established by regulators in various jurisdictions. We have already covered the Fintech Sandbox which has been launched and governed by the Monetary Authority of Singapore (MAS). I refer to the article by Paul Yuen from the [4th issue of IJBL released in December 2022](#). We will be exploring additional sandboxes in our future editions. It is worth to note that other jurisdictions have been working on regulatory sandboxes in the financial market as well, including the UK government.

In that context, we start off with an article from Thanaporn Rattanakul from the Digital Currency Policy and Development Unit of the Bank of Thailand, who sheds light on the recent sandbox initiative of the Bank of Thailand, the "Enhanced Regulatory Sandbox" (ERS) launched in June 2024.

The ERS is designed as a dynamic, living sandbox, operating through a thematic approach and setting the stage for groundbreaking innovations. Both regulated and unregulated entities under the Band of Thailand's supervision may apply to join the ERS. This is a new approach to policy and regulatory decisions for financial innovations in Thailand.

Elçin Karatay and Ahmet Demirtaş from the Solak & Partners Law Firm (Istanbul) provide an overview of the Turkish Crypto Asset Law which went into effect on July 2, 2024. They also examine the legal actions necessary for entering the Turkish crypto asset market. As a tool for practitioners, they highlight the similarities and discrepancies of the new Turkish law with the European Markets in Crypto-Assets (MiCA).

Interestingly, at almost the same point of time, the Virtual Asset User Protection Act was established in the Republic of South Korea on July 19, 2024. This regulation is the first law solely dedicated to regulating the virtual asset industry. Shin & Kim lawyers Mooni Kim, Hyun-il Hwang, and Jaecheong Oh (Seoul) dive into the scope and requirements of the new law which primary objective is to protect users and their assets. The Virtual Asset User Protection Act features the Korean's regulators timely efforts to integrate the virtual asset industry into the regulatory framework.

Soham Panchamiya, Pankhuri Malhotra, Areeb Ahmad and Abhay Raj from TLP Advisors (United Arab Emirates) explore the UAE's current regulatory approach to cryptocurrencies and explain why the UAE stands out as an ideal jurisdiction and a suitable 'home' for crypto-related businesses. They elaborate on the UAE's jurisdictional framework, highlighting the presence of various regulators. Following this, the article outlines the support these regulators offer to multiple categories of virtual asset businesses.

Alongside the UAE, Turkey, and South Korea, Switzerland has also positioned itself as a harbor for Fintech and DLT companies through supportive regulatory frameworks. Maxime Ochrymowicz, Roza Celebi, and Darko Stefanoski from E&Y Switzerland investigate the Swiss regulation for crypto assets and the repercussions on taxation of tokens to be issued in the Swiss Crypto Valley. They have concluded that Switzerland's blockchain-friendly legal, tax and regulatory environment, as well as the Swiss government's dynamic approach, offer excellent opportunities for businesses which capitalize on blockchain technology.

As mentioned above, I include a link to the webinar broadcasted in May 2024. During this roundtable, Guilherme C. Hellwig (Banco Central do Brasil), Nina Moffatt (Paul Hastings), Diego Ballon Ossio (Clifford Chance) and Eric Hess (Hess Legal Counsel) jointly discussed digital currencies, examining global considerations, regulation, the issue of coexistence and interoperability between CBDCs and stablecoins, and more.

In August, the second edition of the International Handbook of Blockchain Law, which I have contributed to as an author and editor, will be published. You can find the flyer on the last page of this issue.

Happy reading and listening.

Matthias Artzt
Editor-in-Chief

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EXPLORING TOKENIZATION SANDBOXES: RECENT APPROACHES IN THE EU, UK, HONG KONG, AND THAILAND



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INTRODUCTION: UNPARALLEL PACE OF TOKENIZATION MOMENTUM VERSUS REGULATORY FRAMEWORK

As tokenization revolutionizes the monetary system, it is essential for financial authority to implement appropriate policy and regulatory framework. To effectively navigate this innovation, authorities must first comprehend how tokenization pivots the economic arrangement. Approaches range from in-house research and industry collaboration to fostering private sector innovation in a controlled, limited-risk environment known as a “sandbox.” This article explores recent sandbox initiatives by the EU, UK, Hong Kong and Thailand,¹ highlighting what each sandbox aims to test and how these tests might be beneficial to policy and regulatory decision.

LEGAL MATTERS: NAVIGATING REGULATORY GAPS IN THE TOKENIZATION ERA

Regulatory clarity is crucial for fostering innovation while ensuring robust customer-protected. However, policymaker often face challenges in responding appropriately to novel technologies in the financial sector.

* Any views expressed are solely those of the author and cannot be taken to represent those of the Bank of Thailand or to state the Bank of Thailand policy. This paper should therefore not be reported as representing the views of the Bank of Thailand.

¹ All sandboxes discussed in this article involve real-value testing within a confirmed environment under the monitoring of the relevant monetary authorities in each jurisdiction.

Globally, it remains uncertain whether tokenization would necessitate modifications to existing statutory or regulatory frameworks, the creation of new regulatory framework, or if existing laws are adequate.

Several key questions arise:

(i) *Tokenized money and assets* - Does tokenization necessitate the creation of a new class of money or assets?

(ii) *Intermediary* - How will tokenization infrastructure providers and messaging or settlement provider be regulated, and under which laws (e.g., securities or payment laws)?

(iii) *Reporting and compliance* - Can current rules and requirements apply effectively within a monetary system powered by tokenization?

These questions underscore the unresolved issues regarding the extent to which regulatory framework need to be adapted for the tokenized-financial sector.

In exploring, developing and promoting the uptake of transformative technologies in the financial sector, lawmakers must deepen their understanding of the technology properties and architectural design behind tokenization. This knowledge is essential for crafting appropriate legal implication and ensuring that regulations support innovation without compromising stability or security.

PROPOSED SOLUTION: SANDBOX AS A WORKAROUND

Can monetary authorities be innovative too? Several government agencies have embraced sandbox arrangements to support the development of financial technology and identify potential regulatory adjustments needed for innovative technologies in financial markets. **From 2023 onwards, the EU, UK, Hong Kong and Thailand have individually launched its own “sandbox” as a vehicle for financial tokenization to thrive in a risk-controlled environment.**

In March 2023, the EU announced its “Distributed Ledger Technology (DLT) Pilot Regime”, set to run for at least three years with the possibility of extension. Its primary goal is to test DLT-based financial instruments and market infrastructure within a controlled regulatory framework.²

Following this, three jurisdictions launched their sandboxes in 2024.

The UK announced its five-year Digital Securities Sandbox: DSS in January 2024, aimed at facilitating the adoption and integration of novel technologies, whether DLT or non-DLT, in the trading and settlement of digital securities. The DSS is structured to support live testing in a controlled and supervised environment, enabling the practical application of DLT and other innovative technologies in financial markets.^{3 4}

Subsequently, Hong Kong introduced Stablecoin Issuer Sandbox in March 2024. It focuses on developing technologies and gathering feedback to shape the final regulatory framework for fiat-referenced stablecoins.⁵

This sandbox is designed to evolve based on industry interest and regulatory developments, with no defined end dates.⁶

Most recently, **Thailand announced its new sandbox, so-called “Enhanced Regulatory Sandbox: ERS” in June 2024.** ERS is the new venue for private sector to showcase innovation and contribute to future policy and regulatory frameworks for novel financial products and services pending regulatory clarity or not currently supervised by the Bank of Thailand.

The ERS is designed as a dynamic, living sandbox, operating through a thematic approach—embarking on its inaugural theme with “Programmable Payments,” setting the stage for groundbreaking innovations. Additionally, both regulated and unregulated entities under the BOT’s supervision may apply to join the ERS.

The first theme, programmable payments, is open for applications until mid-September 2024, with the ERS continuing indefinitely based on industry needs. This is the new approach to policy and regulatory decisions for financial innovation ushers in a new era of innovation in Thailand.⁷

SANDBOX APPROACHES ACROSS JURISDICTIONS: A COMPARATIVE RECAP

Despite the universal concept of the sandbox schemes, each jurisdiction implements its sandbox with a unique approach. Here is a summary of the common and unique dimensions of these sandboxes (briefly captured in *Figure 1* on the next page).

2 Source: <https://www.esma.europa.eu/esmas-activities/digital-finance-and-innovation/dlt-pilot-regime>

3 Source: <https://www.bankofengland.co.uk/news/2024/april/the-boe-and-fca-issue-joint-consultation-and-draft-guidance-on-the-digital-securities-sandbox>

4 Source: <https://www.bankofengland.co.uk/paper/2024/cp/digital-securities-sandbox-joint-bank-of-england-and-fca-consultation-paper>

5 Source: <https://www.hkma.gov.hk/eng/news-and-media/press-releases/2024/03/20240312-4/>

6 Concurrently, Project Ensemble explores the interaction between Wholesale Central Bank Digital Currency (wCBDC), tokenized deposits, and tokenized assets to facilitate the seamless settlement of tokenized money on a proof of concept basis. For more details, please visit <https://www.hkma.gov.hk/eng/news-and-media/press-releases/2024/03/20240307-5/>

7 Source: <https://www.bot.or.th/content/dam/bot/documents/en/news-and-media/news/2024/news-en-20240614.pdf>

FIGURE 1: TOKENIZATION SANDBOX RELEASED IN 2023-2024 BY EU, UK, HK, TH (SOURCE: AUTHOR)

Jurisdiction	EU	UK	Hong Kong	Thailand
Scheme Name	DLT Pilot Regime	Digital Securities Sandbox	Stablecoin Issuers Sandbox	Enhanced Regulatory Sandbox
Release	March 2023	January 2024	March 2024	June 2024
Hosted By	ESMA	BOE x FCA	HKMA	BOT
Focus/ Objective	To test DLT-based financial instruments and infrastructures	To facilitate technology adoption in digital securities trading and settlement	To enable (i) stablecoin issuer to test in a confined space (ii) regulator to shape the regulatory framework	To address policy question as to whether and to what extent to regulate unregulated activity
Novel Products/ Services	Tokenized Shares, Bonds, UCITS, DLT market infrastructure	Tokenized/Digitized Securities	Stablecoin issuer	Programmable payment, Stablecoin (1st theme)
Technology	DLT	DLT/non-DLT (but not permissionless blockchain)	DLT/non-DLT	DLT/non-DLT
Sandbox Period	3 years	5 years	No end date	No end date (≤12 months for each theme)

A. Common Feature—“Regulatory Flexibility”

All four jurisdictions explored—UK,⁸ EU,⁹ Hong Kong¹⁰ and Thailand¹¹ — offer regulatory flexibility during their sandboxes. These flexibilities include exemptions from certain laws at the regulators’ discretion, encouraging innovation while managing risk.

For instance, the EU’s DLT Pilot Regime Regulation allows DLT market infrastructure to be temporarily exempt from existing financial regulations that could hinder DLT innovation.

This includes waiving the need to separate the trading and post-trade infrastructure, given the near-real time settlement enabled by DLT.

Notably, Hong Kong aims to use its Stablecoin Issuer Sandbox as a valuable platform for the Hong Kong Monetary Authority (HKMA) and industry stakeholders to share perspectives on the proposed regulatory framework. This initiative will aid in developing tailored and risk-based regulatory guidelines.

⁸ Source: https://www.legislation.gov.uk/ukxi/2023/1398/pdfs/ukxiem_20231398_en_001.pdf

⁹ Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R0858>

¹⁰ Source: <https://www.hkma.gov.hk/eng/news-and-media/press-releases/2024/03/20240312-4/>

¹¹ Source: https://www.bot.or.th/content/dam/bot/financial-innovation/digital-finance/fintech/sandbox/Published13June2024_0000000000_RegulatorySandboxGuidelines.pdf

B. Diverse Scope of Testing

I. Focus, Rationale and Objective: The EU and UK both focus on new forms of securities through advanced technologies. The EU's sandbox aims to test DLT-based financial instruments and infrastructures, while the UK's DSS facilitates the adoption of novel technologies in digital securities trading and settlement. Hong Kong differentiates its approach by targeting specific areas with its Stablecoin Issuer Sandbox where the final regulatory framework is rolling out. Meanwhile, Thailand's ERS is focusing on policy questions as to whether and to what extent to regulate issuers and/or service providers of unregulated or non-permitted activities in financial innovation space.

II. Underlying technology: The EU limits its sandbox to DLT. In contrast, the UK, Hong Kong and Thailand generally do not restrict technology choices, allowing participants to propose their preferred technologies. It is worth noting that the UK currently does not permit the use of permissionless blockchains.

III. Program lifespan: The EU and UK have set preliminary sandbox periods of three and five years, respectively. In contrast, Hong Kong and Thailand have not specified end dates for their sandboxes, allowing the duration to be determined by the maturity and success of the innovations being tested.

These varied approaches reflect the diverse regulatory landscapes and innovation strategies of each jurisdiction. All aim to identify the need for application, adjustment or enactment of specific laws for financial tokenization. They strive to balance the promotion of financial technology advancements with the necessary regulatory oversight to ensure market stability and protection.

CLOSING THOUGHTS

It is exciting to anticipate the value that sandbox-tested use cases will bring to the industry. Regulators will gain a better understanding of how tokenization functions, while private entities will receive practical guidance on policy and regulatory directions. This collaboration fosters the development of a more harmonized regulatory framework, benefiting the entire financial ecosystem.

The author believes that sandbox initiatives will illuminate innovative use cases, offering a prime opportunity for public and private sectors to collaborate and shape the future of the monetary system together. Private-public collaboration remains a crucial enabler for creating comprehensive and cohesive regulatory strategies.

ARTICLE II

TÜRKİYE'S REGULATION PATH ON CRYPTO ASSETS: BRIEF COMPARISON BETWEEN NEW TURKISH CRYPTO ASSET LAW AND MICAR



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INTRODUCTION

Legal certainty has been elusive for many working with crypto assets. But not every country has followed the US example of regulation by enforcement. A recent Turkish legislative initiative represents a contrary approach, with regulatory measures rather than outright prohibition or purely discretionary enforcement. In particular, the Turkish Grand National Assembly has embraced this regulatory approach by approving the new Law on Crypto Assets ("**Turkish Crypto Asset Law**" or "**Law**") on June 26, 2024, which became effective on July 2, 2024.

The Law identifies Turkey's Capital Markets Board ("**CMB**") as the applicable regulatory authority. **CMB is authorized with broad discretionary power to enact secondary regulations and shaping the sector further.** This pioneering development is significant for the sector, as the Law brings certainty and predictability, potentially attracting a greater number of actors to the Turkish market.

The stated reason for passage of the Law is protecting the estimated 10 million Turkish users and avoiding previous negative incidents such as the collapse of certain crypto trading platforms.

This protective view is currently demonstrating itself as a requirement for obtaining an operating permit as a crypto asset service provider ("**VASP**"), technical and operational measures to be implemented through secondary legislation, and a very strict regime for liability of related persons such as executives and high-level employees.

In the following pages, we provide a concise overview of the provisions introduced by the Turkish Crypto Asset Law. We also discuss the Law's potential impact on the industry. We will also examine the legal actions necessary for entering into the Turkish crypto asset market. As a tool for practitioners, we will also try to highlight its similarities and discrepancies with Markets in Crypto-assets and amending Directive (EU) 2019/1937 ("**MiCAR**").

OVERVIEW OF TURKISH CRYPTO LAW AND COMPARISON WITH MICAR

Definition of Crypto Assets

MiCAR categorizes crypto assets into three primary groups: Asset-Referenced Tokens, e-money tokens, and crypto assets in general (See Art.3 of the MiCAR).¹ **The Turkish Crypto Asset Law differentiates between crypto assets that confer rights specific to capital market instruments and other types of crypto assets, however, it does not provide specific criteria for such distinction.** Crypto assets in general are defined very broadly as *“Intangible assets that can be electronically created and stored using distributed ledger technology or similar technology, distributed over digital networks, and can represent value or rights”*. The Law does not define e-money tokens and leaves the door open for interpretation for fiat based stablecoins which will probably be further regulated under payment regulations (and which are currently regulated by Central Bank of Republic of Türkiye).

Definition of Crypto Asset Service Providers (VASPs)

Under MiCAR, both services and service providers are defined in detail. The Turkish Crypto Asset Law provides definitions for VASPs instead (while leaving most services undefined) which includes:

- Platforms: Institutions where one or more of the following transactions are carried out: buying, selling, initial sale or distribution, exchange, transfer, custody required by these transactions, and other transactions that may be determined;
- Institutions providing crypto asset custody services; and

- Other institutions determined by to provide services related to crypto assets, including initial sales or distribution, under the regulations to be made based on this Law.

There are different obligations attached to the VASP category that an entity will fall under, however, most of the requirements will be provided under secondary regulations. For the sake of clarity, CMB has a power to draft and incorporate secondary regulations pursuant to authority given by Law. According to the Law, CMB is given 6 (six) months for implement the secondary regulations, however, in practice the timelines may differ.

Authorization Requirement (Obtaining an Operation Permit)

Under the Turkish Crypto Asset Law, CMB must grant permission for a VASP to establish and commence operations. These providers can only conduct activities authorized by the CMB. MiCAR also includes rules as to authorization requirement for the providers of certain crypto assets (See: Art. 16, Art. 48 Art.59).² Obtaining authorization from the competent authority is a crucial step in identifying which entities are engaging in activities within the crypto asset services market. This authorization enables authorities to effectively supervise and regulate these entities.

The Turkish Crypto Asset Law currently does not provide a comprehensive overview of the requirements for the permit and leave many aspects such as minimum share capital requirement and technical measures to the secondary regulations; while introducing criteria for board members and shareholders. We will further discuss the transition process below for entities already active or willing to enter the Turkish market.

This authorization enables authorities to effectively supervise and regulate these entities.

¹ Tina van der Linden/Tina Shirazi, “Markets in Crypto-Assets Regulation: Does It Provide Legal Certainty and Increase Adoption of Crypto-Assets? Financial Innovation, (2023), 17.

² Dirk A. Zetsche/Filippo Annunziata/Douglas W. Anner/Ross P. Buckley, “The Markets in Crypto Asset Regulation (MICA) and the EU Digital Market Financial Strategy”, (2020), 10.

The Turkish Crypto Asset Law currently does not provide a comprehensive overview of the requirements for the permit and leave many aspects such as minimum share capital requirement and technical measures to the secondary regulations; while introducing criteria for board members and shareholders. We will further discuss the transition process below for entities already active or willing to enter the Turkish market.

Protection of the Crypto Investors

The Turkish Crypto Asset Law includes a variety of provisions designed to safeguard for crypto investors, including but not limited to the following:

- Any contractual terms that eliminate or limit the liability of VASPs toward their users are deemed invalid. Consequently, service providers cannot shield themselves behind limitation of liability clauses.
- VASPs must maintain secure and accessible records of all transactions. Thus, all transactions conducted on their platforms can be traced in the event of a dispute.
- Investors' crypto assets must be held separately and cannot be seized or pledged to cover the debts of the service providers. This measure is particularly crucial in the event of a service provider's bankruptcy, allowing investors to retrieve their assets.
- The economic structure and information systems of VASPs will be subject to regular audits, ensuring ongoing compliance and reliability.
- VASPs are obliged to provide certain information. For instance, they must establish a written listing procedure to determine which crypto assets will be traded, initially sold, or distributed within their platforms. These rules collectively aim to enhance transparency, security, and accountability in the crypto asset services market.

MiCA also incorporates several measures aimed at protecting crypto investors:³

First, issuers of crypto assets must provide clear and comprehensive information to investors before they make investment decisions. This includes details about the asset's characteristics, associated risks, and the rights attached to the asset. The duty to inform investors appears to be more comprehensive in MiCA compared to the Turkish Crypto Asset Law, which leaves most aspects to secondary regulations.

Second, MiCAR mandates that custody providers must meet specific standards to safeguard investors' assets, ensuring they are held securely and managed appropriately.

Third, MiCAR establishes procedures for handling investor complaints and disputes related to crypto asset services. This includes mechanisms for seeking compensation or resolving disagreements through appropriate channels, thereby offering effective dispute resolution mechanisms for issues related to crypto assets. In contrast, the Turkish Crypto Asset Law is silent on effective dispute resolution mechanisms but only states that disputes are subject to general provisions of Turkish law. Secondary regulations may address these mechanisms to provide actual protection for investors. These measures within MiCAR aim to enhance investor protection, ensuring transparency, security, and effective resolution of disputes in the crypto asset market.

Reverse Solicitation

Reverse solicitation refers to instances where customers of a VASP begin using the platform's services on their own initiative, without any marketing activity, especially on the related market. **Under the Turkish Crypto Asset Law, foreign-based platforms may not target users residing in Türkiye without obtaining an operating permit from CMB.**

3 Viana Benson/Bogdan Adamyk/ Anitha Chinnaswamy/Oksana Adamyk, "Harmonising Cryptocurrency Regulation in Europe: Opportunities for Preventing Illicit Transactions, European Journal of Law and Economics, (2024), 50.

In cases where foreign-based platforms establish a business presence in Türkiye, create a Turkish website, or engage in promotion and marketing activities—either directly or through individuals or institutions residing in Türkiye—such activities are deemed to be targeted at individuals residing in Türkiye. CMB may establish additional criteria to determine if activities are aimed at individuals residing in Türkiye. Accordingly, in order to benefit from reverse solicitation, entities shall ensure they are not targeting users residing in Türkiye.

The Turkish Crypto Asset Law further provides that any activity related to crypto assets which is banned by secondary regulations, shall also not be provided to users resident in Türkiye by foreign entities.

MiCAR also covers the reverse solicitation (Art.61) and notes that if customer/client initiates at its own exclusive initiative to benefit from the services provided by VASPs, then requirement for authorization is not applicable.

MiCAR also covers the reverse solicitation (Art.61) and notes that if customer/client initiates at its own exclusive initiative to benefit from the services provided by VASPs, then requirement for authorization is not applicable. On the Draft Guidelines on Reverse Solicitation Under the MiCAR,⁴ European Securities and Markets Authority (“ESMA”) highlights that reverse solicitation exemption only applies to third-country firms and therefore EU-based companies cannot benefit from reverse solicitation.⁵ ESMA also emphasized that reverse solicitation exemption should be interpreted as narrow as possible.⁶

Financial Obligation for VASPs

There is a mandatory annual contribution from VASPs’ revenues to the CMB and The Scientific and Technological Research Council of Türkiye (“TÜBİTAK”) to support technology development, establishing a financial obligation for platforms, totaling 2% of the total revenues of platforms, excluding interest income.

⁴ Laura Douglas, International Handbook of Blockchain Law, 2nd edition, chapter 6 (2024), forthcoming.

⁵ European Securities and Markets Authority, “Consultation Paper on the draft guidelines on reverse solicitation under the markets in Crypto Assets Regulation (MiCAR)”, (2024), 7.

⁶ Ibid., 5

MiCAR is silent on financial obligations of platform or their taxation liability and seems to leave this matter to follow up regulations or local law.

Transitory Regime and Important Milestones to Note

According to The Turkish Crypto Asset Law, before detailed secondary regulation is issued:

- **those already engaged in the activity of providing crypto asset services should apply to CMB and submit a declaration which would state they will apply for an operating permit by fulfilling the conditions envisaged in the secondary regulations within 1 (one) month after the enactment of Law** or liquidate their entities; and
- those who are not active but intends to initiate activities can commence operations after the entry into force of the Law, by applying to CMB, and submit a similar declaration to CMB prior to initiating activities, which would state they will apply for an operating permit by meeting the conditions outlined in the secondary regulations.

After the enactment of secondary regulation, any entity that has not made an application prior to such shall initially obtain an operating permit from CMB. As can be seen, prior to enactment of secondary regulations the Law allowed for a very friendly transition period for previous and new market entrants.

Foreign based VASP should terminate their activities targeting individuals resident in Türkiye within 3 (three) months if they will not engage in activities in Türkiye and target Turkish users.

MiCAR envisages that VASPs that provided their services in accordance with applicable law before 30 December 2024, may continue to do so until 1 July 2026 or until they are granted or refused an authorization pursuant to Article 63, whichever is sooner. Also, issuers of asset-referenced tokens other than credit institutions that issued asset-referenced tokens in accordance with applicable law before 30 June 2024, may continue to do so until they are granted or refused an authorization pursuant to Article 21, provided that they apply for authorization before 30 July 2024.

CONCLUSION

The Turkish Crypto Asset Law represents a significant regulatory milestone for the Turkish crypto asset services market. By defining the scope of activities and establishing obligations for VASPs, especially with the forthcoming secondary regulations, it aims to create a more certain and predictable environment for market participants.

In general, obligations of VASPs and scope of allowed and prohibited activities will become much certain and predictable. This is likely to increase number of actors in the market and therefore will increase competition in the market. The Turkish Crypto Asset Law seems to be drafted considering the previous negative incidents and aims to protect crypto investors as much as possible.

There is still a long way to go and much to be determined, yet this is seen as an important step forward. This will be done initially, through secondary regulations, for subjects including initial token offerings, security token offerings, and custody services which the Law is not providing much detail but clearly made references to.

There are also aspects which are not included under the current Law and is currently discussed, such as the regime for e-money tokens, taxation of crypto assets and the potential revisions to Regulation on the Disuse of Crypto Assets in Payments enacted by Central Bank of Republic of Türkiye in April 2021 which limits payment sector's use of crypto assets.

With respect to MiCAR, currently, there are notable convergences between MiCAR and the Turkish Crypto Asset Law, particularly concerning authorization requirements, investor protection measures, and provisions regarding reverse solicitation; and we believe will be more through secondary regulations. For entities looking to operate within the Turkish crypto asset services market, swift legal actions may be necessary, such as submitting declarations to the CMB.

Both Turkish Crypto Asset Law and MiCAR aim to foster transparency, stability, and investor protection in the growing crypto asset services market.



THE VIRTUAL ASSET USER PROTECTION ACT: KOREA' FIRST LAW DEDICATED TO REGULATING THE VIRTUAL ASSET INDUSTRY COMES INTO EFFECT



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INTRODUCTION

The Virtual Asset User Protection Act (the “**Protection Act**”), enacted on July 18, 2023, has come into effect in the Republic of Korea (“**Korea**”) as of July 19, 2024. **The Protection Act is the first law solely dedicated to regulating the virtual asset industry and represents the first stage in the “two-step process” announced by the Financial Services Commission (the “FSC”), the primary financial regulatory authority in Korea, for establishing industry-specific legal frameworks for not only the protection of users but also the fostering of the industry.**

The key details of the Virtual Asset User Protection Act and the relevant Enforcement Decree and Supervisory Regulations¹ are as follows.

¹ The Enforcement Decree and the Supervisory Regulations have also come into effect together with the Virtual Asset User Protection Act on July 19, 2024. As the final form of the Supervisory Regulations were not publicly available when this article was written, we rely on the latest draft form disclosed by the FSC. Further, in this article, unless otherwise specified, the reference to the Protection Act includes references to the Enforcement Decree and the Supervisory Regulations.

SCOPE OF APPLICATION

The Protection Act broadly defines virtual assets as “electronic certificates (including all associated rights) that have economic value and can be traded or transferred electronically” while explicitly enumerating exceptions for those that cannot be exchanged for monetary value, goods or services and those regulated under other laws like game products, electronic prepayment means, and electronically registered shares. In short, the Protection Act adopts almost the same definition of virtual assets as set out in the Act on Reporting and Using Specified Financial Transaction Information (the “**AML Act**”)² except that the carve-outs for central bank digital currencies (“**CBDCs**”)³ and non-fungible tokens (“**NFTs**”).⁴

² The AML Act is the first law in Korea that has begun regulating virtual assets though within the existing anti-money laundering regime. The AML Act governs the reporting process (or de facto license process) for virtual asset service providers.

³ The main definition of virtual assets under the Protection Act excludes the CBDCs.

⁴ The Enforcement Decree and the Supervisory Regulations carve out the NFTs from the application of the Protection Act.

EXCLUSION OF NFTS FROM THE PROTECTION ACT

With respect to NFTs, the FSC issued their guidelines (the “**NFT Guidelines**”) on June 10, 2024 on how to classify NFTs from virtual assets and thereby “help improve predictability and remove obstacles in the application” of the Protection Act. Accordingly, the FSC defines NFTs—outside of the scope of “virtual assets” under the Protection Act—as “a digital identifier that is unique and irreplaceable (i.e., non-fungible), used mostly for the purpose of content collection or verification of transactions between users, which cannot be used as payment methods for goods or services”.

The FSC highlights that the legal nature of any NFT must be determined on a case-by-case basis based on the actual substance of the underlying digital asset (and not their name, technology or format), first by assessing whether they could be deemed as securities under the Financial Investment Services and Capital Markets Act (the “**Capital Markets Act**”) by reference to the February 2023 Security Token Guidelines of the FSC, followed by the test under the Protection Act by reference to the NFT Guidelines.

The NFT Guidelines add that digital assets are likely to be deemed as virtual assets, regardless of being named as NFTs, if they fail either the “singularity” or “irreplaceability” test, and provides a number of examples.

The Protection Act together with the NFT Guidelines represent the latest regulatory position on NFTs in Korea where the FSC has urged relevant businesses to conduct timely self-assessment. Any digital assets that fail to be classified as NFTs would trigger the application of the reporting requirement under the AML Act as well as the Protection Act, violations of which may incur criminal penalties.

REQUIREMENTS AROUND SAFEGUARDING USERS' ASSETS WITH IMPLICATIONS ON STAKING SERVICES

The Protection Act introduces requirements on safeguarding users' assets affording a similar level of protection as assets deposited with financial institutions, violations of which would incur administrative penalties of up to KRW 100 million per violation.

For example, the Protection Act requires virtual asset service providers to segregate their funds from users' funds which may be invested only in safe assets like government bonds in return for fees payable to its users. Moreover, the Protection Act prohibits virtual asset service providers from “arbitrarily blocking users' deposits and withdrawals in principle without justifiable grounds”, which include computer failures, requirements by courts or regulatory authorities and hacking risks. Even with justifiable reasons, virtual asset service providers are required to comply with the requirements for notice and management under the Protection Act around blockages.

Virtual asset service providers must “ensure that they in effect possess the types and quantities of virtual assets entrusted by the users” and hold at least 80% of users' assets offline (i.e., in cold wallets), whether on their own or via qualified custodians. The cold wallet threshold is to be calculated monthly based on the economic value of users' assets. We expect the introduction of such above requirements to essentially ban or significantly restrict the provision of staking or deposit services made available by third-party service providers.

While it remains unclear how the requirement for “possession in effect” of the same types and quantities of users’ assets deposited with a virtual asset service provider would be enforced in practice, **we expect a relatively higher level of scrutiny from the regulators**, based on the legislative intent to avoid incidents such as those where major virtual asset service providers suspended withdrawals upon the FTX collapse after having arbitrarily invested their users’ assets.

PROHIBITION OF UNFAIR TRADE PRACTICES

The Protection Act implements similar unfair trade restrictions under the Capital Markets Act like prohibition on use of material non-public information, market price manipulation, fraudulent transactions, self-dealings. Specifically, the Protection Act prohibits executives, employees, major shareholders, issuers, public officials and quasi-insiders as well as those who have received information from them from trading virtual assets using material non-public information (which shall be deemed non-public until six hours after any disclosure on an exchange or one day after disclosure by issuers on their website or whitepaper). Market price manipulation by disguised trading or actual trading (including potentially market making and liquidity provision) and self-dealings, for instance, by issuers of virtual assets including any affiliates, are also prohibited.

Engagement in unfair trade practices would lead to imprisonment of up to one year or criminal penalties amounting to three to five times of any profits gained or losses avoided by engaging in unfair trade practices (or, if calculation is difficult, up to KRW 500 million). The FSC has the discretion to impose a penalty surcharge of two times of any profits gained or losses avoided by such unfair trade practices (or, if calculation is difficult, up to KRW 4 billion).

CONCLUSION

While the Protection Act’s primary objective is to protect users and their assets, we foresee its requirements to significantly reconfigure the landscape of the virtual asset industry, ranging from existing virtual asset services to possible business constructs. This transition will be seen not only in Korea but also overseas, given the cross-border nature of the industry and the explicit provision in the Protection Act that it shall apply to any actions undertaken overseas with impact on Korea.

The scope of NFT businesses to be regulated has been broadened. It is unclear whether and how the staking and deposit services offered by Korean virtual asset service providers prevalently through collaboration with local and foreign virtual asset staking, management or investment service providers will change. Unfair trade practices in the market will become subject to heavy criminal punishments. Close monitoring of the market’s adjustment to and the regulators’ actual enforcement of the Protection Act is necessary to gauge the practical impact that the Protection Act would have on the industry.

In any case, the Protection Act epitomizes the Korean regulators’ timely efforts to integrate the virtual asset industry into the regulatory framework, with the introduction of the second stage law to follow.

Things 3 cannot be physically possessed, like Things 1, and cannot be established through legal action as a matter of law, like Things 2. Because digital assets are wholly virtual, certain of them can fall within the Things 3 grouping, but it depends on the bundle of rights, item or thing that is represented, so they might also be either Things 1 or Things 2. The June 2023 report provides detailed discussions of the antecedents of its recommendation to explicitly recognize Things 3 as well as how Things 3 might be defined, all of which makes for a dense read into the personal property law of England and Wales.

ARTICLE IV

MANY VASPS, MANY MASTERS: UNITED ARAB EMIRATES – A COMPLICATED YET PERMANENT HOME FOR CRYPTO



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INTRODUCTION

The United Arab Emirates (UAE) has rapidly established itself as a hub for virtual and digital asset entities with its inclusive and adaptable approach towards innovation. The UAE has demonstrated a steadfast commitment to the ecosystem with one of the most comprehensive frameworks for the blockchain and Web 3.0 industry.

Against this backdrop, the authors of the present article outline the UAE's current regulatory approach to cryptocurrencies and explain why the UAE stands out as an ideal jurisdiction and a suitable 'home' for crypto-related businesses. The initial parts of the article discuss the UAE's jurisdictional framework, highlighting the presence of various regulators. Following this, the article outlines the support these regulators offer to multiple categories of Virtual Asset (VA) businesses. In conclusion, it underscores why the UAE stands out as a premier jurisdiction despite the presence of numerous regulatory bodies.

OVERVIEW OF THE UAE REGULATORY FRAMEWORK: MULTIPLE EMIRATES, FREE ZONES AND FINANCIAL FREE ZONES

To understand the UAE's regulatory landscape, we must first understand the jurisdiction's federal structure. The UAE is a federation comprising seven individual emirates (that is, Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain), each with its own individual and autonomous laws while collectively adhering to federal regulations. **The UAE can be further divided into three primary jurisdictions: (i) the Mainland, (ii) the Free Zones, and (iii) the Financial Free Zones.** The Mainland refers to an area where companies are registered and operate under the regulatory framework established by each Emirate's government authority.

Independent authorities govern free zones in the UAE and offer benefits such as full foreign ownership, tax exemptions, and simplified customs procedures.¹ The Financial Free Zones, such as the Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM), are specialised zones within the UAE designed to attract financial services businesses. They offer a regulatory environment based on international standards and common law frameworks, allowing for banking, asset management, and insurance activities with flexible regulations tailored to the financial services sector.²

MANY MASTERS: OVERVIEW OF THE REGULATORS

The Central Bank of the United Arab Emirates (CBUAE)

The CBUAE, a federal regulatory authority operating in mainland UAE, is a key regulator, playing a crucial role in shaping the country's financial landscape. **The CBUAE regulates all virtual assets businesses involved in the domain of payment tokens (or stablecoins).** The CBUAE recently issued its Payment Token Services Regulations, providing a framework for entities engaged in payment tokens (i.e., stablecoins) services. Consequently, all entities incorporated within or catering to Mainland UAE³ will be prohibited from conducting any services related to payment tokens without approval from the CBUAE after the one-year transition period ends in June 2025.

¹ Article 1 of Law No. 4 of 2001 (now repealed) provides for the establishment of 'free zones' by a decision of the Ports, Customs and Free Zone Corporation of UAE. Several prominent Free Zones, such as the Dubai Multi Commodities Centre and Jebel Ali Free Zone Authority, have been established by it.

² Federal Law No. 8 of 2004 specifically permits a subset of the free zones called 'Financial Free Zones'. Federal Law No. 8 of 2004 issued on March 27, 2024, <<https://www.dfsa.ae/application/files/8915/8936/4840/Federal-Law-No-8-of-2004.pdf>>.

³ This excludes the jurisdiction of DIFC and ADGM. However, this includes the jurisdiction of VARA.

Securities and Commodities Authority (SCA)

The SCA is a federal financial services regulatory authority that regulates mainland UAE's financial market. Through its Regulation concerning Virtual Assets and their Service Providers,⁴ the SCA aims to provide comprehensive rules for VASPs⁵ to prosper while offering protection to investors. The SCA does not govern payment tokens, which fall under the ambit of the CBUAE.

Dubai Financial Services Authority (DFSA)

The DFSA regulates the DIFC and has published various frameworks for regulating VASPs. For instance, the framework relating to Investment Tokens,⁶ Crypto-Assets, and the Digital Assets Law,⁷ clarifies the legal principles applicable to digital assets. The recent regulatory changes made by the DFSA allow more than five Recognised Crypto Tokens⁸ to be used in domestic funds.⁹

Financial Services Regulatory Authority (FSRA)

The FSRA has provided a comprehensive international standard to regulate virtual assets in the ADGM, including rules, guidance, and regulations for spot VA activities conducted by multilateral trading facilities, brokers, custodians, asset managers, and other intermediaries. It regulates the activities of financial services providers and VASPs in the ADGM.¹⁰

⁴ The Cabinet Resolution No. (111) of 2022.

⁵ Includes all entities providing virtual asset services, such as exchanges, custodians, brokers, lenders and advisors, asset managers and issuers of virtual assets.

⁶ General Module (GEN) [VER65/06-24], GEN APP 6 Investment Tokens, Issued October 25, 2021.

⁷ 44A, Regulation of Crypto Tokens, Regulatory Law DIFC Law No. 1 of 2004. Please see the link to the publication of the framework and the amendments: <https://dfs.ae.thomsonreuters.com/sites/default/files/net_file_store/DFSA_Crypto_Token_regime_comes_into_force_English.pdf>.

⁸ Tokens designated by DFSA as 'Recognised Crypto Tokens' are Bitcoin, Ethereum, Ripple, Litecoin and Ton.

⁹ The major modification has allowed for tokens on the cryptocurrency market that are not yet recognised to be purchased with domestic funds of Qualified Investor Funds (QIFs). This modification seeks to promote a more dynamic and creative financial environment in conjunction with improvements to the custody and transparency requirements for investments in cryptocurrency tokens.

¹⁰ Guidance – Regulation of Virtual Asset Activities in ADGM (VER05.181223), <<https://www.adgm.com/documents/legal-framework/guidance-and-policy/fsra/guidance-virtual-asset-activities-in-adgm-20231218.pdf>>

Virtual Assets Regulatory Authority (VARA)

VARA is a unique regulator dedicated solely to regulating virtual assets and VA-related activities.¹¹

VARA operates at the emirate level within the Emirate of Dubai (excluding the DIFC) and provides a robust environment for VASPs' business, guided by precise rules, regulations, and guidelines.

THE HOME TO MANY VASPS: UAE

The integral choice of selecting the appropriate jurisdictions for a VASP often needs to be clarified due to the complexity and variability of regulatory environments. **The five distinct regulators in the UAE bring unique expertise and support to various VA industry sectors.** Their distinctive approach lies in their openness to innovation. They often engage in dialogue with founders to thoroughly grasp their business concepts rather than denying licence applications out of hand. The table below highlights a few of the prominent sub-categories of crypto businesses and their suitable regulators.

TABLE 1: TYPES OF VASP BUSINESS AND THE SUITABLE REGULATOR

Category	Regulators
Decentralised Finance: Lending, Borrowing and Staking	<p>The FSRA and VARA are the most prominent jurisdictions for decentralised finance businesses.</p> <p>The FSRA and VARA together have issued licences to more than 20 lenders, borrowers and staking platforms including prominent industry players such as Binance and Crypto.com.</p>
VA Brokers	<p>VA Brokers and Dealers should apply for a licence from VARA or FSRA as the regulators have collectively issued more than 100 licences in this spectrum to companies such as Fasset, Wadzpay, Binance and Crypto.com.</p>
VA Exchanges	<p>VARA, along with the FSRA, have emerged as the prominent licence issuing regulators for this category of VASPs.</p> <p>If the business also includes setting up multi-trading facilities (MTFs) for securities and derivatives, apart from virtual assets, FSRA is the most suitable regulator with a robust regulatory framework for their licensing and ongoing compliance requirements. Notably, the FSRA has currently licenced eight (8) MTFs, including, M2 Limited, Matrix Limited, MidChains Limited, Glomax Exchange, Payward MENA Holdings, BLEX Financial, DEX Limited, Bitnema Limited.*</p>

¹¹ Law No. 4 of 2022 Regulating Virtual Assets in the Emirate of Dubai, established a public corporation named the "Dubai Virtual Assets Regulatory Authority". Further, Cabinet Decision No. 112/2022 on Delegating Certain Competencies related to the Regulation of Virtual Assets, delegated VARA to exercise the competencies and powers of the SCA.

* Public Register of Licenced Financial Services Firms, <<https://www.adgm.com/public-registers/fsra?type=financial-services-firms>>.

Category	Regulators
VA Funds and Venture Capitalists	<p>ADGM provides the best framework for derivatives and funds, if a crypto token element is involved. Notably, for Venture Capitalists and Investment Advisors, the FSRA has issued forty-eight (48) licences to Asset Managers.</p> <p>The DFSA has amended its existing regulatory framework to allow investment funds to deal in all crypto assets. Now, in addition to the five recognised crypto tokens, domestic funds can invest in non-recognised crypto tokens. While licensing has not been tested yet with the DFSA, the amendments demonstrate the willingness of the DFSA to invite more funds.</p>
Any business related to stablecoins	<p>Through the new Payment Token Services Regulation, the CBUAE has clearly provided for a robust mechanism for the licensing and registration for all entities involved in Payment Token Services.</p> <p>We anticipate that licences will begin to be issued during the course of 2024 (as they are only a month old as of the date of this article).</p>
VA Wallet: Custody Service Providers	<p>Both FSRA and VARA are the prominent regulators for VA custody service providers having granted the licence to entities such as Hex Trust, Koimanu and M2 Custody Limited.</p>
Layer 1 and Layer 2 protocols (without a cryptocurrency)	<p>If the business does not involve a cryptocurrency element to it, DIFC is an ideal jurisdiction for incorporation. VARA and FSRA remain as the prominent regulators for businesses with a crypto token element.</p>
NFT Gaming	<p>VARA remains the jurisdiction of choice having defined rules and space for cost-effective regulation of NFT-based games and the issuance of NFTs themselves.</p>

Note: Until further clarifications are issued by the CBUAE on the new Payment Token Regulations, all business planning to get licenced from VARA are advised to obtain advice from a legal expert on the applicability of a dual licence.

As evident from the table above, the proactive approach of embracing and regulating cryptocurrencies by the regulators in the UAE acts as a model for other nations seeking to harness the benefits of the digital economy. The table on the next page outlines the advantages to businesses offered by the UAE.

TABLE 2: ADVANTAGES OF UAE

Business Aspect	Advantage
Tax	UAE is a tax-effective jurisdiction allowing companies to function even without paying any tax. The maximum limit for corporate tax in UAE is 9% and for VAT is 5%. The UAE does not have any income tax, capital gains tax, withholding tax or property tax.
Securing funding and marketability	Many organisations have found success in the UAE due to its regulatory certainty and reputation as one of the top 20 jurisdictions in the Ease of Doing Business index leading to a consistent increase in funding for the businesses.
Support by the regulator	The regulators are equipped to provide personalised support, which is unparalleled, when compared to any other jurisdiction. For instance, the FSRA provides support services, such as that of regulatory sandbox, resources for training and compliance. Similarly, DFSA has an innovation hub, connecting investors, stakeholders, and founders, on one platform.
Evolution of regulatory framework	All the regulatory authorities within the UAE, have a proactive approach in regularly updating their regulatory framework to align with industry requirements.
Multiple regulators	Unlike other jurisdictions with a single regulator whose decisions are final and binding, the UAE offers VASPs the prospect of licensing from potentially multiple independent regulators. This would allow a project to ultimately benefit from the reputation of being a UAE-based company while also having a specific industry-based licence.

CONCLUSION

While the UAE's regulatory landscape may appear complex with its multiple regulators and diverse licensing options, this environment offers unparalleled certainty for VASPs. The rigorous enforcement and penalties make the UAE an inhospitable environment for entities engaging in unethical practices such as 'rug pulls', laundering illicit funds, or financial terrorist activities. For VASPs dedicated to the sustained success of their crypto ventures, the UAE presents an unmatched opportunity.

The presence of numerous regulators not only ensures thorough supervision but also provides tailored support according to the specific category of business. Obtaining a licence enhances marketability and fundraising prospects and signifies a commitment to compliance and integrity in a jurisdiction known for its robust regulatory framework. Embracing this complexity allows crypto ventures to flourish as respected entities within the UAE, establishing a foundation for long-term growth and credibility in the global market.

LEGAL, REGULATORY AND TAX ENVIRONMENT IN SWITZERLAND RELEVANT FOR BLOCKCHAIN BASED BUSINESSES



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INTRODUCTION

Switzerland has positioned itself as a fertile ground for blockchain and distributed ledger technologies (DLTs), striving to become a leading, innovative hub for Fintech and DLT companies through supportive regulatory frameworks. This commitment includes robust measures to combat abuse, particularly in areas such as money laundering and terrorist financing, ensuring Switzerland maintains its integrity and global reputation as a financial and business center.¹

The Swiss Crypto Valley is globally recognized as a center for blockchain innovation, driven by its dynamic ecosystem. This leadership extends beyond the initial hub in Zug, with other cities/cantons in Switzerland increasingly embracing cryptocurrency initiatives. Switzerland's regulatory framework, overseen by the Swiss Financial Market Supervisory Authority (FINMA)² is pivotal in fostering confidence in crypto-based assets and services.

¹ <https://www.efd.admin.ch/efd/en/home/digitalisation/blockchain.html>

² <https://www.finma.ch/en/>

EVOLUTION OF THE SWISS LEGAL AND REGULATORY FRAMEWORK

Today, Switzerland has a very developed and advanced regulation for crypto assets thanks to its principle-based and technology-neutral laws. The main regulator, FINMA, oversees the financial market, but certain regulatory and supervisory activities are carried out by recognized self-regulatory organizations (SROs).³

Already in February 2018 FINMA established the "ICO Guidelines"⁴ to provide guidance on financial market laws for blockchain-based activities, helping market participants determine if they fall under FINMA's regulatory authorization.⁵ **This initiative positioned FINMA as a pioneering global regulator, showcasing a proactive stance toward digital assets.**

³ <https://www.finma.ch/en/authorisation/self-regulatory-organisations-sros/>

⁴ <https://www.finma.ch/en/news/2018/02/20180216-mm-ico-wegleitung/>

⁵ <https://www.finma.ch/en/news/2018/02/20180216-mm-ico-wegleitung/>

FINMA's guidelines classify digital tokens into three main categories, each carrying substantial regulatory implications:

- Asset tokens represent assets outside the blockchain, such as claims against the issuer or membership rights in a company, but also things in general. Thus, shares (securities) or derivatives, for example, can also be "digitized" by way of asset tokens. In other words, with asset tokens, assets "outside" the blockchain are represented on the blockchain. Typically regarded as securities, asset tokens are subject to regulatory requirements, including prospectus obligations, disclosure rules, and anti-money laundering (AML) measures. Issuers may need to obtain securities dealer licenses, contributing to increased compliance costs and operational challenges. However, several exceptions exist that need to be assessed as well.
- Utility tokens which are intended to provide access digitally to an application or service by means of a blockchain-based infrastructure. Although not generally classified as securities, utility tokens must adhere to potentially relevant consumer protection and AML regulations. Their primary function is to provide access to digital services, potentially necessitating compliance with sector-specific regulations like telecommunications or data privacy laws.
- Payment tokens are used or intended by the issuer to be used as a means of payment for the purchase of goods and services. They are intended to function as a medium of exchange, a store of value, and/or a unit of account, with the medium of exchange function likely to dominate now.

Designed for use as a medium of exchange, payment tokens are subject to AML regulations, requiring issuers and exchanges to implement KYC procedures. They may also fall under payment services regulations, mandating compliance with licensing and operational standards, while regulatory bodies enforce consumer protection laws to safeguard against fraud and financial risks for users.

These token classifications intertwine in significant ways. Asset and utility tokens can also be classified as payment tokens, termed hybrid tokens, thereby subjecting them to overlapping regulatory requirements as both securities and payment instruments.⁶

The regulatory classifications of tokens under FINMA's guidelines not only shape compliance obligations but also profoundly influence their tax treatment in Switzerland, as outlined by the Swiss Federal Tax Administration (SFTA).⁷ **These classifications—payment, asset, and utility tokens—carry distinct tax implications for both issuers and investors.** Payment tokens, for instance, are subject to wealth tax as movable capital assets, and income from mining them may be taxed as self-employed income. Asset tokens issued during Initial Coin Offerings (ICOs) or Initial Token Offerings (ITOs) are classified based on their nature and are also subject to wealth tax, income tax, withholding taxes, and stamp duties. Utility tokens, on the other hand, trigger income tax upon issuance and are subject to wealth tax for investors. Understanding these classifications is essential for assessing tax liabilities accurately, as detailed in the tax chapter below.

⁶ <https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/1bewilligung/fintech/wegleitung-ico.pdf>

⁷ <https://www.estv.admin.ch/estv/en/home.html>

Furthermore, in September 2023, FINMA issued a supplement to the ICO Guidelines to discuss the legal qualification of stablecoins under Swiss law. This qualification involves categorizing stablecoins based on their primary function and underlying assets. Each category — payment tokens, asset tokens, utility tokens, and hybrid tokens — comes with specific regulatory requirements, particularly around AML compliance, securities regulation, and consumer protection.

The supplement to the ICO Guidelines aims to provide clarity on how stablecoins should be treated under existing Swiss financial regulations, ensuring legal certainty for issuers and investors alike. Additionally, FINMA issued guidelines on payments on the blockchain and a fact sheet “crypto assets.” These include AML compliance, licensing requirements, consumer protection measures, adherence to technology and security standards, proper classification and regulatory compliance of crypto assets, tax obligations, operational standards, and market conduct regulations.⁸

In February 2021, several significant topics were introduced to enhance the regulatory framework surrounding distributed ledger technology (DLT) and blockchain in Switzerland. These topics included the establishment of DLT trading facilities, which are specialized trading venues for DLT-based assets, and the creation of a new license category for DLT trading facilities. Additionally, amendments were made to the Swiss Code of Obligations to accommodate the transfer of DLT-based rights, and insolvency law was adapted to clarify the segregation of crypto-based assets in the event of bankruptcy.⁹

The Federal Act on the Adaption of Federal Law to Developments in the Technology of Distributed Electronic Registers (DLT Act), effective from August 1, 2021, introduced a legal framework for asset token, which may be created as ledger-based securities.¹⁰ These can fulfill the same functions as securities, requiring legal documentation, registration in a DLT register, and compliance with securities laws. This framework enables a more legally sound tokenization of assets by providing legal certainty, enhancing investor protection, and facilitating the transferability and market access of tokenized assets.

The DLT Act contained amendments to the following laws and its respective ordinances: To increase awareness among market participants about staking, FINMA has engaged in roundtable discussions with industry leaders and conducted a survey among supervised institutions regarding their staking services.¹¹ FINMA’s guidance on staking services, issued in December 2023, highlights key banking licensing requirements and implications for capital adequacy. Institutions offering staking services must meet specific banking licensing standards set by FINMA, ensuring compliance with laws governing asset custody and management.¹²

The guidance emphasizes distinguishing between custody assets protected during bankruptcy and deposits exposed to insolvency risks. Regarding capital adequacy, institutions must maintain robust financial reserves to mitigate risks associated with staking activities, safeguarding financial stability amid market uncertainties and potential losses. These measures are crucial for maintaining operational resilience and protecting stakeholders’ interests in the dynamic landscape of digital asset management.¹³

⁸ <https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/1bewilligung/fintech/wegleitung-stable-coins.pdf?la=en>

⁹ https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/11/529_488_529/20230101/de/pdf-a/fedlex-data-admin-ch-eli-cc-11-529_488_529-20230101-de-pdf-a-5.pdf

¹⁰ <https://www.admin.ch/gov/en/start/documentation/media-releases/media-releases-federal-council.msg-id-84035.html>

¹¹ <https://blockchainfederation.ch/en/index.php/2023/12/21/compromise-of-the-finma-practice-change-for-staking-services/>

¹² <https://www.finma.ch/en/news/2023/12/20231220-meldung-am-staking/>

¹³ <https://www.finma.ch/en/supervision/banks-and-securities-firms/requirements/>

Beyond financial regulations, Switzerland's legal framework for blockchain technology encompasses crucial areas. Data protection laws, governed by the Federal Act on Data Protection (FADP), ensure compliant handling of personal data within blockchain applications.¹⁴ Intellectual property laws protect blockchain innovations through patents and copyrights under the Swiss Federal Institute of Intellectual Property (IPI).¹⁵

Recent developments include the enactment of the Blockchain Act in 2021, which established a clear legal framework for digital assets and smart contracts, aiming to provide certainty and facilitate innovation.¹⁶ To encourage the use of blockchain technology, the Swiss government aims to become a leading hub for blockchain research and solutions.¹⁷

The DLT Act and support for fintech innovation demonstrate the government's commitment.¹⁸

Industry associations such as The Swiss Blockchain Federation (SBF),¹⁹ Crypto Valley Association (CVA),²⁰ and the Capital Markets and Technology Association (CMTA)²¹ are pivotal in uniting top blockchain and crypto professionals and companies worldwide. They contribute significantly to fostering growth, encouraging collaboration, and maintaining integrity across the global blockchain economy.

All the above-mentioned laws and regulations might apply in a blockchain based business context, hence a legal and regulatory assessment against such laws and regulations is always recommended.

TAXATION OF TOKENS IN SWITZERLAND

The relies on FINMA's token classification and distinguishes between payment, asset, and utility tokens for Swiss tax purposes. As these tokens are categorized differently in the Swiss tax system, they have different tax implications for both issuers and investors:

- Payment tokens qualify as assessable and movable capital assets, which invoke wealth tax consequences at cantonal level. In addition, it should be noted that any income earned through mining, in the form of payment tokens, might be seen as taxable self-employed income. In this case, expenses related to mining can be deducted from tax, and any losses can be offset against other taxable income. Airdrops, which are coins or tokens distributed as part of marketing mechanism, are subject to income tax.
- Asset tokens are issued by companies during ICOs or ITOs as a method of raising capital. Their taxation is dependent on their classification, either as debt tokens, contract-based asset tokens, or participation rights asset tokens, with all categories considered movable capital assets and subject to wealth tax. Depending on their qualification, these different types of asset tokens may trigger income tax consequences, withholding taxes and stamp taxes for both issuer and investors.
- Utility tokens grant the right to digitally use a service that is commonly delivered on a (decentralized) platform. The specific taxation procedure depends on the legal relationship under civil law between the investor and the issuer, but typically follows contractual regulations excluding a claim for investment repayment.

¹⁴ <https://www.kmu.admin.ch/kmu/en/home/facts-and-trends/blockchain.html>

¹⁵ <https://www.ige.ch/en/intellectual-property/ip-and-society/future-scenarios/blockchain>

¹⁶ https://www.sif.admin.ch/sif/en/home/finanzmarktpolitik/digit_finanzsektor/blockchain.html

¹⁷ <https://www.efd.admin.ch/efd/en/home/digitalisation/blockchain.html>

¹⁸ <https://www.sif.admin.ch/sif/en/home/documentation/press-releases/medienmitteilungen.msg-id-73398.html>

¹⁹ <https://blockchainfederation.ch/>

²⁰ <https://cryptovalley.swiss/>

²¹ <https://cmta.ch/>

At issuer level, the funds received qualify as taxable income for income tax purposes upon issuance. At investor level, utility tokens represent movable capital assets that are subject to cantonal wealth tax, valued at market value at the end of each tax period.

The SFTA annually ascertains cryptocurrency values through an average of various trading platforms and prices at each year's end. In the absence of a market value, the original purchase price in Swiss francs is used for declaration. **Trading of tokens for tax purposes, is generally treated in the same way to conventional currency transactions.** For private individuals, profits or losses from token trading are usually viewed as tax-free capital gains (or non-deductible capital losses) if held in their private wealth. However, for commercial trading of tokens, capital gains are subject to income tax and losses as well as business expenses are tax deductible. It is crucial to understand and assess these token types clearly, as they impact both individuals and businesses dealing with crypto assets.

CONCLUSION AND KEY TAKEAWAYS

Switzerland's blockchain-friendly legal and regulatory environment offers excellent opportunities for businesses seeking to leverage blockchain and DLTs. The DLT Act and FINMA's technology-neutral approach provide legal certainty and flexibility for innovative projects. The Swiss government's dynamic approach towards the valuation and taxation of crypto assets further simplifies crypto-business operations.

As the world continues to explore the possibilities of blockchain, Switzerland is well-positioned to lead the way with its favorable legal, regulatory, and tax environment, encouraging innovation and advancing the adoption of this transformative technology.

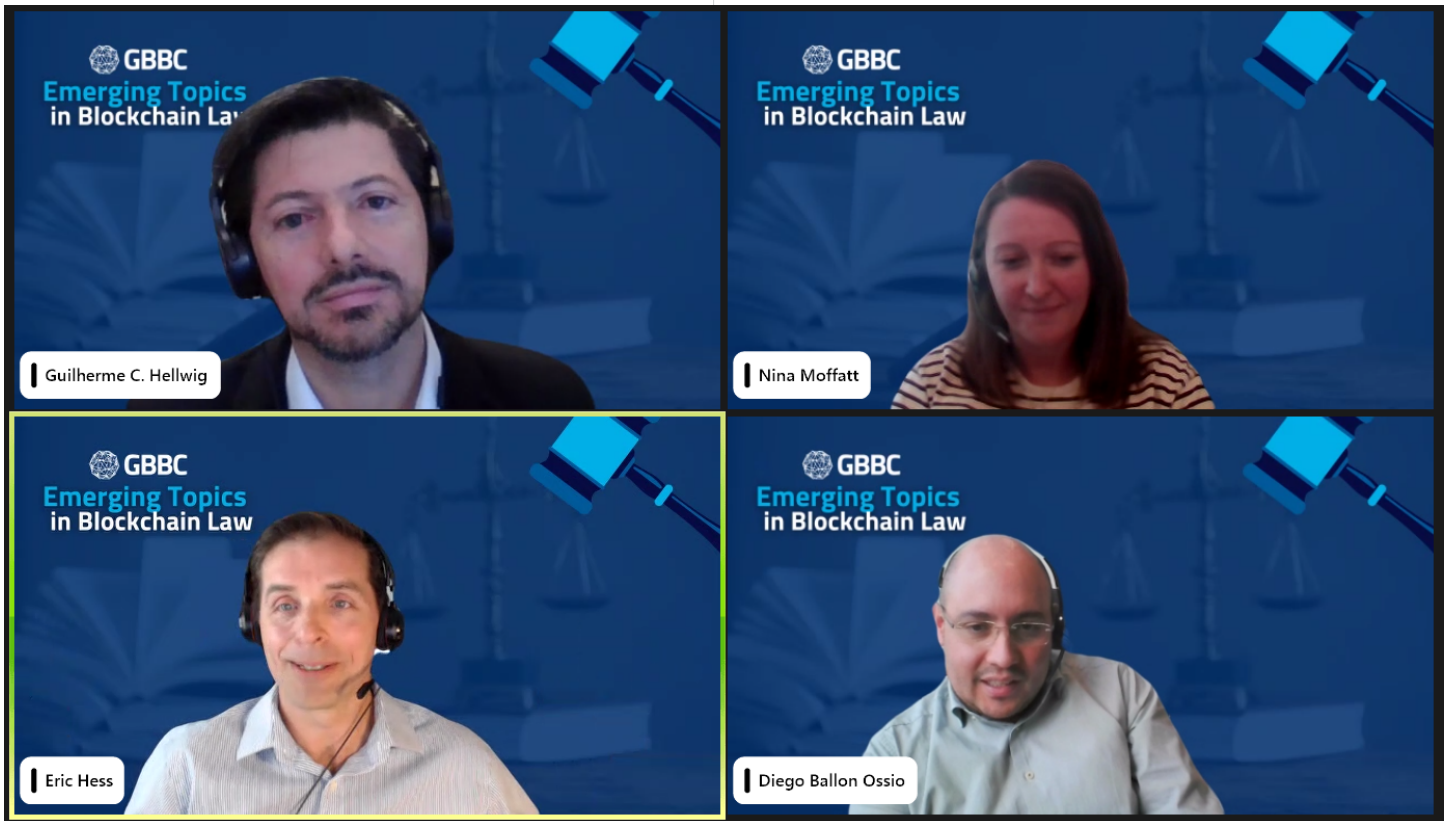
Individuals and businesses involved with cryptocurrencies as well as legal practitioners should remain up to date with evolving regulations, guidance from FINMA, and reports from the Swiss government and tax authorities, as these provide valuable insights into the ongoing developments in Switzerland's blockchain landscape.

In conclusion, Switzerland's progressive approach to blockchain regulation has established the country as a preferred destination for blockchain-based businesses. The DLT Act and FINMA's guidance demonstrate the government's commitment to fostering innovation within a robust regulatory framework. As blockchain technology continues to disrupt various industries, Switzerland remains at the forefront, offering businesses an ideal environment to thrive and contribute to the global blockchain ecosystem.

WEBINAR

“EMERGING TOPICS IN BLOCKCHAIN LAW”

MAY 2024



“Emerging Topics in Blockchain Law,” a virtual roundtable presented by GBBC’s International Journal of Blockchain Law (IJBL), explores the pressing legal and regulatory issues related to blockchain and digital assets.

During this roundtable, Guilherme C. Hellwig (Banco Central do Brasil), Nina Moffatt (Paul Hastings), Diego Ballon Ossio (Clifford Chance) and Eric Hess (Hess Legal Counsel) delve into digital currencies, examining global considerations, regulation, the coexistence and interoperability between CBDCs and stablecoins, and more.

[VIEW THE WEBINAR](#)

International Handbook of Blockchain Law

A Guide to Navigating Legal and Regulatory Challenges of Blockchain Technology and Crypto Assets, Second Edition

Overview

International Handbook of Blockchain Law, currently in its second edition, is a handbook comprising new chapters and topics but still following the systematic and structured approach of the first edition. Blockchain's significant advances since 2020 – including many new use cases – have necessitated a comprehensive revision of the first edition of this matchless resource.

What's in this book:

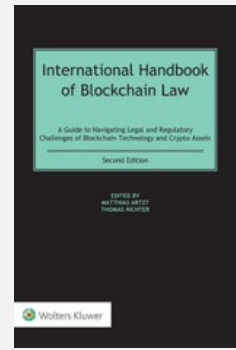
Each contributor – all of them practitioners experienced with blockchain projects within their respective areas of expertise and specific jurisdictions – elucidates the implications of blockchain technology and related legal issues under such headings as the following:

- understanding blockchain from a technological point of view;
- regulatory aspects of blockchain;
- smart contracts;
- data privacy;
- capital markets;
- crypto asset regulation in Europe, the UK and the US;
- intellectual property; and
- antitrust law.

The foundational chapter on the technical aspects of blockchain technology has been meticulously expanded to elucidate the proof of stake consensus mechanism alongside fresh insights into the ERC-721 Token Standard for non-fungible tokens, decentralized exchanges, staking, stablecoins, and central bank digital currencies.

How this will help you:

As blockchain law cements itself as a distinct legal field, this new edition is invaluable for legal practitioners, in-house lawyers, IT professionals, consultancy firms, blockchain associations, and legal scholars. At a depth that allows non-IT experts to understand the groundwork for legal assessments, the handbook provides those charting the dynamic waters of this field of law with a compass, ensuring they are well-equipped to tackle the legal issues raised by the usage of blockchain technology.



Edited by: Matthias Artzt & Thomas Richter

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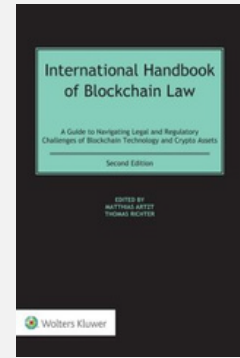
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Length	3-4 print pages including footnotes
Target Audience for Submission	Broader business community aiming to better understand the technology and the legal issues associated with it
Content	All legal areas related to blockchain technology and digital assets
Structure	Introduction - Description of legal matter - Proposed solution - Conclusion/key takeaways
Writing Style	Not too academic; lucid and clear-cut language
What can I Submit?	Previously published work is welcome for submission to the IJBL

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