



# International Journal of Cryptocurrency Research

Publisher's Home Page: <https://www.svedbergopen.com/>



Research Paper

Open Access

## Cryptocurrency Legality and Regulations – An International Scenario

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### Article Info

Volume 2, Issue 1, June 2022

Received : 16 December 2021

Accepted : 08 May 2022

Published : 05 June 2022

doi: [10.51483/IJCCR.2.1.2022.19-29](https://doi.org/10.51483/IJCCR.2.1.2022.19-29)

### Abstract

As cryptocurrencies become more widely used, so we need to have regulations put in place to regulate them. The terrain is always changing, and keeping up with the rules in several jurisdictions is difficult. In this paper the author looks at the global situation in terms of the current regulatory regime for cryptocurrencies and their trading on crypto exchanges. The author further analyzed how some of the world's largest economies are attempting to handle crypto assets to provide us with insight into the need for and emerging trends in crypto regulation.

**Keywords:** *Cryptocurrency, Legality, Regulations, International Scenario, Economy*

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## 1. Introduction

Various national and regional authorities have been forced to grapple with their regulation given the expansive growth of the cryptocurrency over the years. While the terminology used to describe cryptocurrency varies from one jurisdiction to another, one of the most common actions identified across jurisdictions is the Government issued notices about the pitfalls of investing in cryptocurrency markets mostly issued by the Central Banks. The warnings issued by various countries majorly centers around the fact that cryptocurrencies may create an avenue for illegal activities such as money laundering, terrorism, and other organized crimes.

As cryptocurrencies spread across the globe, so to do the regulations put in place to try and govern them. The landscape is constantly evolving and keeping up to date with the rules in different territories is not easy. Let us take a look at the international scenario in regards to prevailing regulatory atmosphere *vis-à-vis* cryptocurrencies and their trading via crypto exchanges. How some major economies of the world are trying to manage the crypto assets would give us an insight into the need for and emerging trends of regulating the crypto economy.

## 2. United States

### 2.1. Cryptocurrencies

Not considered legal tender.

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While it is difficult to find a consistent legal approach at state level, the US continues to make progress in developing federal-level cryptocurrency legislation. The Financial Crimes Enforcement Network (FinCEN)<sup>1</sup> does not consider cryptocurrencies to be legal tender but considers cryptocurrency exchanges to be money transmitters on the basis that cryptocurrency tokens are “other value that substitutes for currency.”

The Internal Revenue Service (IRS)<sup>2</sup> does not consider cryptocurrency to be legal tender but defines it as “a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value” and has issued tax guidance accordingly.

## 2.2. Cryptocurrency Exchanges

Legal, regulation varies by State.

Cryptocurrency exchanges are legal in the US and are covered by regulatory scope of the Bank Secrecy Act (BSA). This means that cryptocurrency exchange service providers must get requisite license from FINCEN, implement an AML/CFT and Sanctions program, maintain appropriate records, and submit timely reports to the authorities. Meanwhile, the US Securities and Exchange Commission (SEC) considers cryptocurrencies to be securities, and applies securities laws to digital wallets comprehensively in a way that affects both exchanges and investors alike. By contrast, The Commodities Futures Trading Commission (CFTC) has adopted a friendlier approach, recognizing Bitcoin and Ethereum as ‘commodities’ and allowing other virtual and cryptocurrency derivatives to trade publicly on exchanges that it regulates.<sup>3</sup> After the Financial Action Task Force (FATF) published their guidelines in June 2019,<sup>4</sup> FinCEN has also made clear that it expects crypto exchanges to comply with record-keeping requirements and the “Travel Rule” by sharing information about the originators and beneficiaries of cryptocurrency transactions. The US places virtual currency exchanges in the same regulatory category as traditional AML/CFT gatekeepers, financial institutions, and money transmitters. Accordingly, the same regulations apply.

## 2.3. Future Regulations

The US Treasury has emphasized an urgent need for crypto regulations to combat global and domestic criminal activities. In 2018, Treasury Secretary Steve Mnuchin announced a new Financial Stability Oversight Council (FSOC) working group to explore the increasingly crowded cryptocurrency marketplace and in December 2020, FinCEN proposed a new data collection requirement for persons responsible for managing cryptocurrency exchanges, digital assets, DTLs, and crypto payment private digital wallets. If implemented, the regulation would also require exchanges to submit Suspicious Activity Reports (SAR/CTR) for transactions (over the current threshold of \$10,000) and require non-registered financial institutions or Money Services Businesses (MSB) wallet owners to identify themselves when sending \$3,000 or more in a single or series of linked transactions.

The Justice Department continues to coordinate with the SEC, CFTC, and other agencies over future cryptocurrency regulations to ensure effective consumer protection and more streamlined regulatory oversight. However, with the Covid-19 crisis hampering (yet adding urgency to) efforts to advance cryptocurrency regulation, the federal approach continues to be gradual. Despite setbacks, US lawmakers are keen to bring cryptocurrencies under regulatory oversight in anticipation of their potential destabilizing effect on the globally dominant US dollar, and of the impact that private and centrally banked currencies might have.

## 3. Canada

### 3.1. Cryptocurrencies

Not legal tender.

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<sup>1</sup> US Department of The Treasury, Financial Crimes Enforcement Network, <https://www.treasury.gov/about/history/Pages/fincen.aspx>, (last accessed on November 03, 2021).

<sup>2</sup> Investopedia: Internal Revenue Service (IRS) (March 30, 2021), <https://www.investopedia.com/terms/i/irs.asp> (last accessed on November 03, 2021).

<sup>3</sup> David Lucking (2019), Vinod Aravind: Cryptocurrency as a Commodity: The CFTC’s Regulatory Framework, [https://www.allenoverly.com/global/media/allenoverly/2\\_documents/news\\_and\\_insights/publications/2019/8/cryptocurrency\\_as\\_a\\_commodity\\_the\\_cftcs\\_regulator\\_framework.pdf](https://www.allenoverly.com/global/media/allenoverly/2_documents/news_and_insights/publications/2019/8/cryptocurrency_as_a_commodity_the_cftcs_regulator_framework.pdf) (last accessed on 03 NOV 2021)

<sup>4</sup> FATF: Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers (November 2019), <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-virtual-assets.html> (last accessed on November 03, 2021).

Cryptocurrencies are not legal tender in Canada but can be used to buy goods and services online or in stores that accept them. Canada has been fairly proactive in its treatment of digital, virtual, and cryptocurrencies: it was the first country to approve AML-related regulation of cryptocurrency service providers, primarily regulating them under provincial securities laws as Money Service Businesses (MSBs) in order to protect the public. Canada brought entities dealing in virtual currencies under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)<sup>5</sup> as early as 2014, while in 2017, the British Columbia Securities Commission registered the first cryptocurrency – only investment fund. In August 2017, the Canadian Securities Administrators (CSA) issued a notice on the applicability of existing securities laws to cryptocurrencies and, in January 2018, the head of Canada’s Central Bank characterized them “technically” as securities.<sup>6</sup> The Canada Revenue Agency has taxed cryptocurrencies since 2013 and Canadian tax laws apply to cryptocurrency transactions.

### **3.2. Cryptocurrency Exchanges**

Legal, required to register with FinTRAC after June 1, 2020.

Exchanges in Canada are essentially regulated in the same way as money services businesses and are subject to the same due diligence, record keeping, verification, and reporting obligations as MSB’s dealing with fiat currencies. After amendments to the PCMLTFA<sup>7</sup> (approved in July 2019), from June 2020 all cryptocurrency exchanges need to register with the Financial Transactions and Reports Analysis Center of Canada (FinTRAC)<sup>8</sup> and, where applicable, comply with margin and market valuation requirements.

In February 2020, the Virtual Currency Travel Rule came into effect in Canada, requiring all financial institutions and MSB to keep a record of all cross-border cryptocurrency transactions (along with all electronic fund transfers). This change also effectively means that crypto asset deals, and persons that undertake cross-border transactions, are subject to the enhanced due diligence requirements set out in PCMLTFA.

### **3.3. Future Regulations**

While regulations are constantly evolving, there are no signs of significant additional legislation on the horizon. Recent updates to the PCMLTFA have yet to fully take effect and the requirement that MSBs register with FinTRAC will not come into effect until June 2021. It is likely that both the government and crypto exchanges will need time to evaluate how these legislative changes have affected the crypto landscape before considering additional legislation.

## **4. Singapore**

### **4.1. Cryptocurrencies**

Not legal tender.

In Singapore, cryptocurrency exchanges and trading are legal and the city-state has taken a friendlier position on the issue than some of its regional neighbors. Although cryptocurrencies are not considered legal tender, Singapore’s tax authority treats Bitcoins as “goods” and so applies Goods and Services Tax (Singapore’s version of Value Added Tax). The Monetary Authority of Singapore (MAS) has adopted a neutral position on the growth of cryptocurrencies: in 2017 it clarified that, while it would not seek to regulate virtual currencies, it would regulate Digital Payments Tokens (DPT) if those tokens were classified as “securities”. Although it has taken an even-handed approach to date, in 2020 MAS issued warnings to the public of the risks of investing in cryptocurrency products.

### **4.2. Cryptocurrency Exchanges**

Legal, registration with the Monetary Authority of Singapore required.

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<sup>5</sup> Government Bill (House of Commons) C-31 (41-2) – Third Reading – Economic Action Plan 2014 Act, No. 1 – Parliament of Canada, <https://www.parl.ca/DocumentViewer/en/41-2/bill/C-31/third-reading> (last accessed on November 04, 2021).

<sup>6</sup> Karen Tso, Arjun Kharpal; Bitcoin is ‘Gambling’ and Regulations are Needed, Canada central bank head says, (January 25, 2018), <https://www.cbc.com/2018/01/25/bitcoin-trading-is-gambling-canada-central-bank-governor.html> (last accessed on November 04, 2021).

<sup>7</sup> Govt. of Canada, Proceeds of Crime (Money Laundering) and Terrorist Financing Act, <https://www.fintrac-canafe.gc.ca/act-loi/1-eng> (last accessed on November 04, 2021).

<sup>8</sup> Govt. of Canada, Financial Transactions and Reports Analysis Centre of Canada, <https://www.fintrac-canafe.gc.ca/intro-eng> (last accessed on November 04, 2021).

MAS' generally soft approach to cryptocurrency exchange regulation has led it to apply existing legal frameworks where possible. In January 2018, MAS issued a press release warning the public of the risks of speculating with cryptocurrency, while Deputy Prime Minister, Tharman Shanmugaratnam, stated that cryptocurrencies are subject to the same AML and CFT measures as traditional fiat currencies. A year later, the Payment Services Act, 2019 (PSA)<sup>9</sup> was passed, bringing exchanges and other cryptocurrency businesses under the regulatory authority of MAS from January 2020, and requiring them to obtain a MAS operating license.

#### **4.3. Future Regulations**

With the PSA having only recently taken effect, there will inevitably be an adjustment period as crypto businesses adapt to the new legislative environment. The PSA is, in many ways, aligned with FATF's most recent recommendations, however, MAS is likely to follow up with additional regulations in an effort to further align its position. With that in mind, in July 2020, MAS proposed new financial sector regulations with consequences for the crypto industry: under the proposals, MAS is seeking to introduce stronger AML/CFT standards for cryptocurrency service providers and higher requirements for technology risk management in financial institutions.

### **5. Australia**

#### **5.1. Cryptocurrencies**

Legal, treated as property.

Cryptocurrencies, digital currencies, and cryptocurrency exchanges are legal in Australia, and the country has been progressive in its implementation of cryptocurrency regulations. In 2017, Australia's government declared that cryptocurrencies were legal and therefore subject to the Anti-Money Laundering and Counter-Terrorism Financing Act, 2006 (AML/CTF 2006), Section 5 and associated rules. The legislator specifically stated that Bitcoin (and cryptocurrencies that shared its characteristics) should be treated as property and subject to Capital Gains Tax (CGT). Cryptocurrencies had previously been subject to controversial double taxation under Australia's Goods and Services Tax (GST): the change in tax treatment is indicative of the Australian government's progressive approach to the crypto issue.

#### **5.2. Cryptocurrency Exchanges**

Legal, must register with AUSTRAC.

In 2018, the Australian Transaction Reports and Analysis Centre (AUSTRAC)<sup>10</sup> announced the implementation of more robust cryptocurrency exchange regulations. Those crypto regulations require exchanges operating in Australia to register with AUSTRAC, in compliance with the AML/CTF 2006 Part 6A – Digital Currency Exchange Register. The rule requires entities acting as exchanges, or providing registrable exchange type services, to identify and verify their users, maintain records, and comply with government AML/CTF reporting obligations. The CEO of AUSTRAC maintains the Digital Currency Exchange Register and unregistered exchanges are subject to criminal charges and financial penalties.

In May 2019, the Australian Securities and Investments Commission (ASIC) issued updated regulatory requirements for both Initial Coin Offerings (ICOs) and cryptocurrency trading. Similarly, in August 2020, Australian regulators forced many exchanges to delist privacy coins, a specific type of anonymous cryptocurrency.

#### **5.3. Future Regulations**

Australia has established a pattern of proactive cryptocurrency regulation, and these latest regulations demonstrate the country's continued effort to provide a clear operational framework for crypto businesses going forward. However, recent revelations that have exposed serious flaws in Australia's financial industry<sup>11</sup> will undoubtedly affect the way AUSTRAC approaches future compliance enforcement and will likely lead to increased scrutiny and a tightening of regulatory controls across the board.

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<sup>9</sup> Singapore Statutes Online, <https://sso.agc.gov.sg/Acts-Supp/2-2019/Published/20190220?Doc Date=20190220> (last accessed on November 04, 2021).

<sup>10</sup> Australian Govt., <https://www.austrac.gov.au> (last accessed on November 04, 2021).

<sup>11</sup> The Guardian, Banking Royal Commission: All you Need to Know – So Far (April 19, 2018), <https://www.theguardian.com/australia-news/2018/apr/20/banking-royal-commission-all-you-need-to-know-so-far> (last accessed on November 04, 2021).

## 6. Japan

### 6.1. Cryptocurrencies

Legal, treated as property.

Japan currently has the world's most progressive regulatory climate for cryptocurrencies and recognizes Bitcoin and other digital currencies as "legal property" under the Payment Services Act (PSA). Following those regulations, crypto exchanges in Japan are required to be registered and comply with traditional AML/CFT obligations. In December 2017, the National Tax Agency ruled that gains on cryptocurrencies should be categorized as 'miscellaneous income' and investors taxed accordingly.

Recent regulations include amendments to the PSA and to the Financial Instruments and Exchange Act (FIEA), which took effect in May 2020.<sup>12</sup> The amendments introduce the term "crypto-asset" (instead of "virtual currency"), place greater restrictions on managing users' virtual money, and more tightly regulate crypto derivatives trading. Under the new rules, cryptocurrency custody service providers (that do not sell or purchase crypto assets) fall under the scope of the PSA while cryptocurrency derivatives businesses fall under the scope of the FIEA.

### 6.2. Cryptocurrency Exchanges

Legal, must register with the Financial Services Agency.

Cryptocurrency exchange regulations in Japan are similarly progressive. Under the PSA, only businesses with a competent local Financial Bureau are allowed to operate as a cryptocurrency exchange, however, in keeping with Japan's progressive stance, foreign cryptocurrency exchanges are permitted to register where they can demonstrate an equivalent registration standard in their host country.

While exchanges are legal in Japan, after a series of high profile hacks, including the notorious Coincheck heist of \$530 mn in digital currency,<sup>13</sup> crypto regulations have become an urgent national concern. Japan's Financial Services Agency (FSA) has stepped up efforts to regulate trading and exchanges: amendments to the PSA require cryptocurrency exchanges to register with the FSA in order to operate – a process which can take up to six months and which imposes stricter requirements around both cyber security and AML/CFT.

In Japan, exchange-based regulations primarily aimed at protecting market integrity, users, investors, and exchanges, must observe certain record-keeping requirements and provide the FSA with an annual report. Subsequent amendments in 2016 and 2019 updated this requirement to include checking customer identification and to cover custodian services providers.

### 6.3. Future Regulations

Japan remains a friendly environment for cryptocurrencies but growing AML concerns are drawing the FSA's attention towards further regulatory steps. Following talks between exchanges and the FSA, an agreement to form two self-regulatory bodies – the Japanese Virtual Currency Exchange Association (JVCEA)<sup>14</sup> and the Japan STO Association – was put in place in April 2020.<sup>15</sup>

Japan is the first country to take this self-regulatory step: all exchanges are members of the JVCEA while five major Japanese financial institutions collaborated to establish the Japan STO Association. The JVCEA and the STO Association work to provide advice to as-yet unlicensed exchanges and promote regulatory compliance: both promise to play a significant ongoing role in establishing crypto industry best practices and ensuring compliance with the recently-implemented regulations.

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<sup>12</sup> Sygna, Japan's Financial Services Agency (FSA) To Enforce New Crypto-Asset Exchange Regulations from 1 May 2020, <https://www.sygna.io/blog/japan-crypto-asset-regulation-financial-services-agency-changes-psa-fiea-may-2020> (last accessed on November 04, 2021).

<sup>13</sup> CNBC, Daniel Shane, \$530 mn cryptocurrency heist may be biggest ever, (January 29, 2018), <https://money.cnn.com/2018/01/29/technology/coincheck-cryptocurrency-exchange-hack-japan/index.html> (last accessed on November 04, 2021).

<sup>14</sup> William Suberg, Japan Finally Gets Self-Regulatory Body For Cryptocurrency Exchanges, (24 Apr, 2018), <https://cointelegraph.com/news/japan-finally-gets-self-regulatory-body-for-cryptocurrency-exchanges> (last accessed on November 04, 2021).

<sup>15</sup> Japan Financial Services Agency, <https://www.fsa.go.jp/news/r1/shouken/20200430.html> (last accessed on November 04, 2021).



## **7. United Kingdom (UK)**

### **7.1. Cryptocurrencies**

Not legal tender.

The United Kingdom's approach to cryptocurrency regulations has been measured but has matured in the post-Brexit financial landscape. Although the UK confirmed in 2020 that crypto assets are property, it has no specific cryptocurrency laws and cryptocurrencies are not considered legal tender.

According to the Bank of England, since cryptocurrencies lack classical definitional characteristics, they are not considered 'money' and do not pose a systemic risk to the stability of the banking ecosystem. However, because the legal consequences, regulations, and status of crypto assets and currencies can change depending on their nature, type, and usage, the FCA and the Bank of England have issued a range of warnings and guidance about their use. Those warnings concern the absence of regulatory and monetary protection, the status of cryptocurrencies as stores of value, and on the dangers of speculative trading and volatility.

The regulatory uncertainty associated with cryptocurrencies, prompted the UK government to create a dedicated task force in 2018. The taskforce defined three types of cryptocurrencies and three ways in which crypto assets are used – before setting out a requirement for additional AML/CFT and taxation considerations. Her Majesty's Revenue and Customs (HMRC), the tax authority of the UK government, has issued a brief on the tax treatment of cryptocurrencies, stating that their "unique identity" means they can't be compared to conventional investments or payments, and that their "taxability" depends on the activities and parties involved. Gains or losses on cryptocurrencies are subject to capital gains tax.

### **7.2. Cryptocurrency Exchanges**

Legal, registration requirements with FCA.

Exchanges have registration requirements in the UK. Although it left the EU in 2020, the UK previously transposed the cryptocurrency regulation requirements set out in 5AMLD and 6AMLD into domestic law. From January 10, 2021, all UK crypto asset firms (including recognized cryptocurrency exchanges, advisers, investment managers, and professionals) that have a presence or market product in the UK, or that provide services to UK resident clients, must register with the Financial Conduct Authority (FCA).<sup>16</sup> Critically, these groups must comply with AML/CFT reporting and customer protection obligations. FCA guidance stresses that entities engaging in activities involving crypto assets must also comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs). Amendments to those regulations came into force in January 2020 and incorporate the latest FATF guidelines.

### **7.3. Future Regulations**

After leaving the EU in 2020, it is likely that the UK's cryptocurrency regulations will remain largely consistent with the bloc in the short term, implementing directives equivalent to the EU's Markets in Crypto-Assets (MiCA)<sup>17</sup> and E-Money proposals, along with various payment directives.

In the future, however, it is likely that the UK will diverge from the EU's crypto-regulatory landscape to some degree. Currently, there is no specific UK crypto legislation on the horizon but HM Treasury guidance, issued via the UK Crypto Asset Task Force in January 2021, emphasized the UK's intention to consult on bringing certain cryptocurrencies under the scope of 'financial promotions regulation' and to continue to consider a 'broader regulatory approach' to crypto assets.

## **8. China**

### **8.1. Cryptocurrencies**

Not legal tender.

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<sup>16</sup> Financial Conduct Authority, <https://www.fca.org.uk/> (last accessed on November 04, 2021).

<sup>17</sup> Werner Vermaak, MiCA: A Guide to the EU's Proposed Markets in Crypto-Assets Regulation, (n.d.) <https://www.sygnia.io/blog/what-is-mica-markets-in-crypto-assets-eu-regulation-guide/> (last accessed on November 04, 2021).

The People's Bank of China (PBOC) banned financial institutions from handling Bitcoin transactions in 2013 and went further by banning ICOs and domestic cryptocurrency exchanges in 2017. In justifying the ban, PBOC described ICO financing (that raises virtual currencies like Bitcoin or Ethereum via the irregular sale and circulation of tokens) as public financing without approval which is illegal under Chinese law. Unsurprisingly, China does not consider cryptocurrencies to be legal tender and the country has a global reputation for strict currency control regulations on the majority of foreign currencies, including cryptocurrencies. Under a 2020 amendment to China's Civil Code, the government ruled that state-approved cryptocurrencies had the status of property for the purposes of determining inheritances.

## **8.2. Cryptocurrency Exchanges**

Illegal

Although domestic cryptocurrency exchanges are under a blanket ban in China, work arounds are possible using foreign platforms and websites (the majority of which are not regulated by China). Despite the near-comprehensive prohibition on crypto trading and related services, the law in China currently still permits crypto mining activities: while a ban on mining had been considered, in 2019 the government reconfirmed that it would remain legal but would be increasingly subject to global geopolitical sanctions and export control implications.

## **8.3. Future Regulations**

There is no indication that China intends to lift or loosen its ban on cryptocurrencies anytime soon but recent developments suggest that the government intends to position the country as a leader in the crypto space. Those developments include statements by Chinese government officials endorsing blockchain technology, the extensive trial and testing of the central bank's digital currency (the digital yuan), a joint venture with SWIFT (the international payment and cross-border payment gateway), and the continued status of crypto mining within China. While a timeline is still undefined, China's central bank has been working on introducing an official digital currency since 2012, with efforts accelerating after Facebook's announcement of its plans to introduce its own currency, Diem (formerly Libra). To this end, in late 2020, the Chinese government drafted a law that conferred legal status on PBOC's digital Yuan: the legislation is expected to result in the demise of the fiat currency, and the introduction of bespoke currency controls covering exchanges.

A recent news report by Reuters states that China, in its latest attempt, has banned financial institutions and payment companies from providing services related to cryptocurrency transactions, and warned investors against speculative crypto trading.<sup>18</sup>

Under the ban, such institutions, including banks and online payments channels, must not offer clients any service involving cryptocurrency, such as registration, trading, clearing and settlement. The institutions must not provide saving, trust or pledging services of cryptocurrency, nor issue financial product related to cryptocurrency, report the news.

## **9. South Korea**

### **9.1. Cryptocurrencies**

Not legal tender.

In South Korea, cryptocurrencies are not considered legal tender and exchanges, while legal, are part of a closely-monitored regulatory system. Cryptocurrency taxation in South Korea represents a grey area: since they are considered neither currency nor financial assets, cryptocurrency transactions are currently tax-free. However, the Ministry of Strategy and Finance has indicated that it is considering imposing a tax on income from crypto transactions and is planning to announce a taxation framework in 2022.

### **9.2. Cryptocurrency Exchanges**

Legal, must register with FSS.

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<sup>18</sup> Reuters: China Bans Financial, Payment Institutions from Cryptocurrency Business (May 18, 2021), <https://www.reuters.com/technology/chinese-financial-payment-bodies-barred-cryptocurrency-business-2021-05-18/> (last accessed on November 04, 2021).

Cryptocurrency exchange regulations in South Korea are strict and involve government registration and other measures overseen by the South Korean Financial Supervisory Service (FSS).

Although a rumored ban never materialized, in 2017 the South Korean government prohibited the use of anonymous accounts in cryptocurrency trading and also banned local financial institutes from hosting trades of Bitcoin futures. In 2018, the Financial Services Commission (FSC) imposed tighter reporting obligations on banks with accounts held by crypto exchanges. The new rules allow cryptocurrency trades only from “real-name bank accounts”: in practice, this means that a trader (customer) must open a real-name account at the same bank as their cryptocurrencies dealer in order to make a deposit or extract funds from their e-wallet. Both the bank and the dealer must check the trader’s identity in keeping with traditional AML/CFT regulations and with structured transactions reporting requirements. In 2020, the South Korean government passed an amendment to the existing legislation, extending mandatory AML/CFT obligations to all South Korean exchanges, and introducing a requirement that firms obtain an operating license from the Financial Services Commission’s Financial Intelligence Unit by the end of September 2021.

### **9.3. Future Regulations**

In addition to the proposed tax framework for cryptocurrencies, South Korea has indicated that it will continue to work to bring the industry into alignment with FATF’s anti-money laundering policies. It is unclear if associated rules on age limits (of local customers), access by foreign or anonymous traders (to withdraw funds from e-wallets), or cash withdrawals, will be relaxed, hardened, or amended by the new policies.

## **10. Switzerland**

### **10.1. Cryptocurrencies**

Legal, accepted as payment in some contexts.

In Switzerland, crypto and virtual currencies are classified as assets or property. Exchanges are legal and, depending on the nature of the assets and investor protections, the country has adopted a remarkably progressive stance towards cryptocurrency regulations. Virtual currency exchanges and platforms are considered equivalent to financial institutions in Sweden and so must demonstrate compliance with local AML/CTF and consumer protection obligations, although certain Banking Regulations and thresholds are exempted or less onerous. The Swiss Federal Tax Administration (SFTA) considers cryptocurrencies to be assets: they are subject to Swiss wealth, income, and capital gains taxes and must be declared on annual tax returns.

### **10.2. Cryptocurrency Exchanges**

Legal, regulated by SFTA and FINMA.

Switzerland imposes a registration process on cryptocurrency exchanges and a requirement to obtain a license from the Swiss Financial Market Supervisory Authority (FINMA) in order to operate. While cryptocurrency licensing exemptions are available for public deposits of funds up to CHF1 mn, exchanges must write and inform their customers that their funds are not subject to protections if the firm is supervised by FINMA.

Cryptocurrency regulations in Switzerland are also in place for ICOs: in 2018, FINMA published a set of guidelines that applied existing financial legislation to offerings in a range of fields, from banking to securities trading and collective investment schemes (depending on their structure).<sup>19</sup> In 2019, Switzerland’s government also approved a motion that directed the Federal Council to adapt existing provisions to include cryptocurrencies. In September 2020, Switzerland’s parliament passed the Blockchain Act, further defining the legalities of exchanging cryptocurrencies and running cryptocurrency exchanges in Swiss Law. The legalities require compliance with local ICO, AML, and CTF requirements as soon as a token can technically be transferred to the blockchain infrastructure.

### **10.3. Future Regulations**

Switzerland’s government has indicated that it will continue to work towards a regulatory environment that is friendly to cryptocurrencies. In 2016, the town of Zug, a prominent global cryptocurrency hub, introduced Bitcoin as a way of paying city fees. Building on those objectives, in late 2020, Switzerland’s Department of Finance began a consultation on new blanket cryptocurrency regulations that would enable it to take advantage of blockchain technology without stifling innovation.

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<sup>19</sup> FINMA, FINMA is investigating ICO procedures, (September 29, 2017), <https://www.finma.ch/en/news/2017/09/20170929-mm-ico/> (last accessed on November 04, 2021).



## 11. The European Union (EU)

### 11.1. Cryptocurrencies

Legal, Euro-backed member states may be restricted on introducing their own cryptocurrencies.

Cryptocurrencies are broadly considered legal across the European Union, but cryptocurrency exchange regulations depend on individual member states. Cryptocurrency taxation also varies but many member-states charge capital gains tax on cryptocurrency-derived profits at rates of 0-50%. In 2015, the Court of Justice of the European Union ruled that exchanges of traditional currency for crypto or virtual currency (and vice versa) constitute supply of services but should be exempt from VAT.<sup>20</sup>

In January 2020, the EU's Fifth Anti-Money Laundering Directive (5AMLD) came into effect. 5AMLD brings cryptocurrency-fiat currency exchanges under the scope of EU anti-money laundering legislation, requiring exchanges to perform KYC/CDD on customers and to fulfil standard reporting requirements. In December 2020, 6AMLD came into effect: the directive made cryptocurrency compliance more stringent by adding cybercrime to the list of money laundering predicate offences.

### 11.2. Cryptocurrency Exchanges

Regulations may vary by member state, and by compliance with the European Banking Authority (EBA), European Commission (EC), European Central Bank (ECB), European Insurance & Pension (EIOPA), European Supervisory Authority for Securities (ESMA).

In the EU, cryptocurrencies and crypto assets are classified as Qualified Financial Instruments (QFI's). EU laws do not prohibit banks, credit, or investment firms from holding, gaining an exposure to, or offering services in, crypto assets or cryptocurrencies. Exchanges that deal in QFI's are regulated at a regional level and firms can simply rely upon their existing QFI licences in order to provide cryptocurrency-related products and services. Firms must, however, comply with an extensive range of EU legislation and rules including AML/CTF, CRD/CRR, EMD2, MiFID II, PSD2, compensation, margin, deposit, and sanctions obligations.

In certain EU member states, exchanges have registration requirements with their respective regulators such as Germany's Financial Supervisory Authority (BaFin), France's Autorité des Marchés Financiers (AMF), or Italy's Ministry of Finance. Authorizations and licenses granted by these regulators can then "passport" exchanges, allowing them to operate under a single regime across the entire bloc.

Following 5AMLD, 6AMLD also has consequences for cryptocurrency exchanges. The directive extends liability for money laundering offences to legal persons as well as individuals, meaning that, going forward, the leadership employees of crypto asset, currency, wallet, and exchange firms must exercise much greater oversight of their internal AML controls.

### 11.3. Future Regulations

The EU is actively exploring further cryptocurrency regulations. An EU draft document expressed concerns about the risks associated with private digital currencies and confirmed that the European Central Bank is considering the possibility of issuing its own digital currency.<sup>21</sup> The EBA is concurrently promoting the adoption of a Single AML/CFT Rule Book which member states would be obliged to follow without exception.

In January 2020, the European Commission announced a public consultation initiative, seeking guidance on where and how crypto assets fit into the EU's existing regulatory framework. The Commission followed up in September 2020 with a new proposal known as the Markets in Crypto-Assets Regulation (MiCA).<sup>22</sup> The proposal sets out draft regulatory measures for cryptocurrencies including the introduction of a new licensing system for crypto-asset issuers, industry conduct rules, and new consumer protections.

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<sup>20</sup> CJEU, Judgment of 22 October 2015 in case C-264/14 titled *Skatteverket v. Hedqvist* (February 04, 2016) <https://circabc.europa.eu/sd/a/add54a49-9991-45ae-aac5-1e260b136c9e/892%20-%20CJEU%20Case%20C-264-14%20Hedqvist%20-%20Bitcoin.pdf> (last accessed on November 04, 2021).

<sup>21</sup> Francesco Guarascio, Alarmed by Libra, EU to look into issuing public digital currency: draft, (November 05, 2019), <https://www.reuters.com/article/us-eu-cryptocurrency-regulations/alarmed-by-libra-eu-to-look-into-issuing-public-digital-currency-draft-id>, (last accessed on November 04, 2021).

<sup>22</sup> EUR-Lex, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0593> (last accessed on November 04, 2021).

## **12. Luxembourg**

### **12.1. Cryptocurrencies**

Not legal tender.

There are no specific cryptocurrency regulations in Luxembourg but the government's legislative attitude towards cryptocurrencies is generally progressive. Finance Minister Pierre Gramegna has commented that, given their widespread use, cryptocurrencies should be "accepted as a means of payment for goods and services" in Luxembourg. Although cryptocurrencies are not legal tender they are considered intangible assets for tax purposes, and, in 2018, authorities issued advice on the tax treatment of cryptocurrencies which, in a business context, depends on the type of transaction involved.<sup>23</sup> Accordingly, for tax purposes, use of cryptocurrencies as means of payment does not affect the nature of income, aligning compliance with Luxembourg tax rules.

In 2018 the Commission de Surveillance du Secteur Financier (CSSF) issued a warning about the volatility of cryptocurrencies, their vulnerability to crime, and the associated risks of investing in ICOs – despite the warning Luxembourg's progressive approach to crypto has endured. The CSSF has acknowledged the financial benefits of blockchain technology and Minister of Finance, Pierre Gramegna has spoken of the "added value and efficient services" that cryptocurrencies bring. Following those statements, in early 2019 lawmakers passed legislation that gave blockchain technology transactions the same legal status as those executed using traditional methods.

### **12.2. Cryptocurrency Exchanges**

Legal, must register with the CSSF.

Cryptocurrency exchanges or virtual currency platforms in Luxembourg are regulated by the CSSF and new crypto businesses (i.e., service providers or intermediaries that are receiving or transferring) must obtain a payments institutions license if they wish to begin trading.

The licenses impose AML/CFT reporting obligations under Luxembourg's "electronic money" statutes: the first crypto license was granted in 2016 to Bitstamp, which trades in a range of currencies, including USD, EUR, Bitcoin, and Ethereum, and passports holders into other EU member-states. In 2018, following Bitstamp, the Japanese virtual currencies exchange platform, bitFlyer, was granted a licence. In 2020 amendments were made to Luxembourg's AML/CFT laws introducing new registration and governance requirements for cryptocurrency and Virtual Assets Service Providers (VASPs). The amendments also clarified the legal definition of cryptocurrencies, VASPs, virtual assets, safeguarding, administrative service providers, and custodian wallets providers for regulatory purposes.

### **12.3. Future Regulations**

Although there are no specific legislative steps on the radar in Luxembourg, it is expected that more crypto legislation are to be forthcoming, especially given the introduction of the EU's 5AMLD and 6AMLD that came into effect in December 2020 and the government's desire to align with European Supervisory Authority for Securities ESMA (on ICO, QFi's, and UCIS) whilst driving its token and blockchain agendas.

## **13. Latin America**

### **13.1. Cryptocurrencies**

Laws vary by country.

In Latin America, cryptocurrency regulations run the legislative spectrum. Those countries with harsher regulations include Bolivia which has comprehensively banned cryptocurrencies and exchanges, and Ecuador which has issued warnings on the use, investment, and circulation of all cryptocurrencies apart from the government-issued "SDE" token (a form of e-money pegged to the USD).

By contrast, in Mexico, Argentina, Brazil, Venezuela and Chile, cryptocurrencies are commonly accepted as payment by retail outlets and merchants. For tax purposes, cryptocurrencies are often treated as assets: they are broadly subject to capital gains tax across the region while transactions in Brazil, Argentina, and Chile are also subject to income tax in some contexts.

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<sup>23</sup> Loyens & Loeff, Luxembourg tax authorities issue guidance on tax aspects of virtual currencies, (02 Aug 2018) <https://www.lexology.com/library/detail.aspx?g=e4e51e48-dbcd-4e0c-ab7a-39c5770736dc>, (last accessed on 04 NOV 2021).

### **13.2. Cryptocurrency Exchanges**

Sparse regulation, laws vary by country.

Cryptocurrency exchange regulations in Latin America vary by country although many jurisdictions have no specific laws governing cryptocurrency trade beyond the scope of existing legislation. The degree of variation reflects the acceptance and licensing requirements needed to operate an exchange or accept cryptocurrencies or digital assets across the region. The lack of regulation combined with high adoption rates has made parts of Latin America an attractive option for businesses looking to capitalize on the interest in virtual currencies.

While there is a broad regional regulatory agreement that cryptocurrencies lack legal tender status, many Latin American countries have developed divergent views. This disparity has led to friction between and within the region's traditional banking industries and prompted some banks in Chile to close accounts held by cryptocurrency exchanges in late 2018. Subsequent court rulings have offered short-term protection to these exchanges but it is clear that more definitive guidelines are needed.

In contrast to other Latin American countries, Mexico does, to an extent, regulate cryptocurrency exchanges through the Law to Regulate Financial Technology Companies. The law extends Mexican AML regulations to cryptocurrency services providers by imposing a variety of registration and reporting requirements.

### **13.3. Future Regulations**

Many Latin American countries have expressed concern about the effect of cryptocurrencies on financial stability and their associated money laundering and sanctions risks. Beyond issuing official warnings, however, most financial authorities across the region are still developing their positions and have not revealed plans for any significant future cryptocurrency regulations.

However, some exceptions have emerged: Chile, for example, introduced draft cryptocurrency legislation in April 2019 but has offered scant detail on the legislation since – or what it will do if it comes into effect. In 2020, working with crypto exchanges, Colombia introduced a sandbox test environment for cryptocurrencies, before Brazil's Securities Commission and its Central Bank did the same. The respective cryptocurrency sandbox programs are intended to help firms try out their business models while legislation is being drafted.

## **14. Conclusion**

Cryptocurrencies have posed a unique challenge to the way we look at conducting our affairs in the economical world. Although its legitimacy is at the infancy stage, the cryptocurrency business has achieved a global status irrespective of concerns of legal and territorial jurisdiction. Cryptocurrencies have been subject to abuse in the form of extortion, tax evasion and other criminal activities like drug dealing and terror financing, it is in the interest that cryptocurrencies, instead of banning, should be regulated.

The government must reach and include all important stakeholders in its exercise of formulating new rules and regulations governing cryptocurrencies and virtual currency exchanges. There is considerable support from various corners of the business and tech society for adoption of cryptocurrencies.